



# The Right to Peace: Past, Present and Future

Christian Guillermet Fernández  
David Fernández Puyana

With the contribution of Miguel Bosé



University for Peace



United Nations  
Educational, Scientific and  
Cultural Organization



UNESCO Chair "Peace, Solidarity  
and Intercultural Dialogue"  
Abat Oliba CEU University





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## Acronyms

AC	Human Rights Council Advisory Committee
ASEAN	Association of Southeast Asian Nations
CHR	Commission on Human Rights
CELAC	Community of the Latin American and Caribbean States
CTC	Counter-Terrorism Committee
CTED	Counter-Terrorism Committee Directorate
GRULAC	Group of Latin American and Caribbean Countries
ECOSOC	United Nations Economic and Social Council
EU	European Union
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
NAM	Non-Aligned Movement
OAU	Organisation of the African Union
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
OEWG	Open-Ended Working Group on the Right to Peace
SC	Security Council
SDG	Sustainable Development Goal
UNICEF	United Nations Children's Fund
UNCIO	United Nations Conference on International Organization
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPEACE	University for Peace
UNCIO	United Nations Conference on International Organization
VDPA	Vienna Declaration and Programme of Action



## Acknowledgements

In the adoption of the Declaration on the Right to Peace by the United Nations, we deeply thank the positive collaboration from Ambassadors Manuel B. Dengo, Rodolfo Reyes Rodríguez and Anayansi Rodríguez Camejo and the support received by Mario Vega Hernández, Donna Perry, Jussi Ojala, Christina Papazoglou, Gunnar Stålsett, Juanes, Miguel Bose and Jaime Aranzadi.

The collaboration with the academic world was vital to successfully frame the approach given by the UN Intergovernmental Working Group on the Right to Peace. In this vein, we recognized the insightful comments made by Professors Santiago Ripol (Pompeu Fabra University), Douglass Cassel (Notre Dame University), Rafael Grasa (Autonoma University of Barcelona), Joshua Castellino (Middlessex University), Antonio Papisca and Marco Mascia (Padova University), Carmen Parra (Abat Oliba CEU University) and Cornelis Flinterman (Utrecht University).

Inspired in the work performed by the Peace Nobel Recipients and Mr. Federico Mayor Zaragoza, former Director-General of UNESCO, the real protagonists have been some sectors of civil society, which have enthusiastically supported this initiative in the negotiation process.

In particular, we deeply thank Prof. Francisco Rojas, Rector of the University for Peace, for his valuable contribution to this publication, which clearly responds to the specific mandate on this topic received by the UN General Assembly in its resolution 71/189 entitled “Declaration on the Right to Peace”.

In particular, we pay tribute for the efforts displayed by the Foundation Peace without Borders, the World Council of Churches and the Finn Church Aid during the work at the Permanent Mission of Costa Rica to the United Nations in Geneva, as well as, the joint actions promoted by the International Association of Democratic Lawyers (IADL), the Comunità Papa Giovanni XXIII (APG23), the UN Network of United Network of Young Peacebuilders (UNOY) and the Japanese Committee for the Human Right to Peace (JCHRP) in the past years.

Finally, we would like to express our appreciation to all the people, international organizations and NGOs which have wholeheartedly joined their endeavour to strengthen the linkage between the three United Nations pillars through the universal recognition of the right to enjoy peace, human rights and development.



## **Presentation**

### **H.E. Manuel González Sanz**

Minister for Foreign Affairs of the Republic of Costa Rica

For a country like Costa Rica, which decided in 1949 to abolish the army as a permanent institution, the respect of international law along with the deepening and strengthening of multilateralism are the best guarantee for the defense of democracy, peace, territorial integrity and national sovereignty.

On 3 March 2015, the Legislative Assembly of Costa Rica approved the Proclamation of Peace as a human right and of Costa Rica as a neutral country, by which peace is declared as a fundamental human right in its second article.

On the basis of this recognition, the State is committed to promoting, defending and guaranteeing peace and the culture of peace by all possible means and through the implementation of its active neutrality in conflicts between States and internally in countries, according to international treaties, their principles and purposes, and the law.

This commitment of Costa Rica in the progressive development of the right to peace is transferred even in the international field, converting the promotion of that right into a backbone of our foreign policy. It should be noted that the National Development Plan 2015-2018 recognized that the promotion of human rights, including the human right to peace is one of the main axes of the Costa Rican foreign policy.

In this regard, it is also worth highlighting the speech which was delivered in the High Level Segment of the twenty-eighth session of the Human Rights Council, on 4 March 2015. On this occasion, I underscored that Costa Rica had committed to the preparation of a Declaration on the Right to Peace, from a human rights perspective, with the purpose of strengthening the interrelationship between peace, human rights and development.

I welcome the fact that the work of the Open-Ended Working Group on the Right to Peace of the Human Rights Council, which was chaired by Ambassador Christian Guillermet Fernández of Costa Rica, ended

on 19 December 2016 with the adoption of the Declaration by majority of Member States at the General Assembly of the United Nations.

This Declaration is a historic milestone, which is the fruit of a long process driven by certain sectors of civil society and prominent representatives of culture and art. I take this opportunity to congratulate the authors of this book for the detailed and accurate analysis of the history, perspectives and challenges of the right to peace in the future.

## Presentation

**Prof. Francisco Rojas Aravena**  
**Rector**

United Nations-mandated University for Peace

The **2030 Agenda** established universal goals that are transforming the world in a positive way. It is an action plan that makes it possible to simultaneously achieve sustainable development based on the respect for human rights, the dignity of all people, and the protection of the planet. This plan of action sets forth 17 fundamental objectives – beginning with the fight against hunger – that place the needs of people, the planet, prosperity and Peace at their very center. This global plan of action will be reinforced in a very significant way through debate, the construction of consensus and the advances made on the topic of *the right to peace*.

An essential objective of the United Nations, from the moment of its creation, has been the search for a sustainable peace. This effort, throughout its more than 7 decades of existence, has been permanently reinforced through mechanisms such as the Declaration of Human Rights and the International Covenant on Civil, Political, Social and Cultural Rights, through the development of the concept of human security and the construction of the concept of a culture of Peace, which effectively enable the possibility of achieving a formalization of the *right to peace* as an immanent right of all human beings. Without Peace, there are no rights. Without Peace, there is no development. In contexts of high violence and polarization, there is no Peace. Peace must be built, and for this, prevention is a key concept. Moving from a culture of war to a culture of Peace demands fruitful cooperation between States, civil society organizations and individuals. The development of civic coexistence is essential. The *right to Peace* is expressed as an ethical value, a superior ideal. It is also a duty for all individuals, societies and States with regards to its policies regarding prevention, inclusion and access. These make it possible for all human beings to aspire to the ideal of achieving effective coexistence in contexts of inclusive peace, and to empower

human beings. To develop a culture of Peace is to develop a culture of prevention, cooperation, legality and of a shared responsibility with these essential values.

The *right to Peace* and the debate around it, generate a projection and a positive perspective for humanity. IN debating this issue, the importance of the University for Peace has been recognized and highlighted. Namely, the United Nations has reinforced, through its resolutions on the matter, that «*The University for Peace must contribute to the universal task of educating for peace, dedicating itself to teaching , research, postgraduate training and the dissemination of knowledge.*» It is along these lines that the University reaffirms the essential nature of its mission. We are pleased to be part of this fundamental contribution to the current international debate on Peace. I would like to express the recognition and congratulations on behalf of the University for Peace to Ambassador Christian Guillermet Fernández and to Dr. David Fernández Puyana for the organization and edition of this book. I would also like to express our gratitude to Miguel Bosé for his participation and support of this important issue.

This book, *The Right to Peace: Past, Present and Future*, demonstrates the advances in the debate of this topic, the challenges to delving deeper into some of its aspects, but also the great hopes of strengthening the path towards achieving Peace. This plurinational, multidisciplinary, pluricultural reflection contributes effectively to the essential *leitmotiv* of UPEACE: *if you want Peace, work for Peace.*

## Presentation

**Prof. Carmen Parra Rodríguez**

Chair-holder

UNESCO Chair on Peace, Solidarity and Intercultural Dialogue,  
Abat Oliba CEU University

This Chair was set up in the context of the *International Decade for the Rapprochement of Cultures* (2013-2022). This Chair focuses its attention on two strategic objectives, namely: cooperation for peace, as well as, promotion of intercultural dialogue and rapprochement of cultures and strengthening international science cooperation for peace, sustainability and social inclusion.

The *Action Plan of the International Decade of Rapprochement of Cultures* has stressed that a special effort should be made in order to create synergies between the UNESCO's *Programme of Action for a Culture of Peace and Non-Violence* and the *Action Plan of the Decade* so that they can mutually reinforce each other. In order to create sustainable peace and strengthen cultures of non-violence the capacity of peaceful resolution must be increased by means of education and by building on the values of heritage and contemporary creativity as tools for building peace through dialogue.

As indicated by the Action Plan, “a genuine rapprochement of cultures can happen if governments, international organizations, civil society and religious communities commit to disseminating a message of peace, justice, respect and tolerance based on the cardinal principle of the equal dignity of all cultures and religions”.

The recent adoption of the *Declaration on the Right to Peace* by the General Assembly of the United Nations on 19 December 2017 positively responds to the spirit and letter of the *International Decade for the Rapprochement of Cultures*. In this vein, it is important to recall the last preambular paragraph of the Declaration when it invites “... all stakeholders to guide themselves in their activities by recognizing the high importance of practising tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace...”.

This Declaration offers an opportunity to research and strengthen the positive notion of peace, which is connected to the promotion and protection of human rights and development. I congratulate the authors of this book for enlightening the public about the process carried out at the United Nations and inspiring the creation of future programs on peace building, human rights and reconciliation.

## Presentation

### **Mr. Federico Mayor Zaragoza**

President of the Foundation Culture of Peace and  
Former Director General of UNESCO

In July 2016, the Human Rights Council (HRC) of the United Nations in Geneva recommended to the General Assembly (UNGA) to adopt a *Declaration on the Right to Peace*, which occurred on 19 December 2016 by a majority of its Member States. The Declaration is the result of three years of work with all stakeholders led by Costa Rica. As the Permanent Representative of Cuba said to the HRC at the time of the presentation of the resolution, this Declaration is framed in the context of the recent signing of the Peace Agreements in Colombia.

In order to promote the right to peace, it is imperative to implement the *Declaration and Programme of Action on a Culture of Peace*, which focuses its attention on human security, the eradication of poverty, disarmament, education, development, environment and protection of vulnerable groups, refugees, and migrants.

The *Declaration on the Right to Peace* invites all stakeholders to guide themselves in their activities by recognizing the great importance of practicing tolerance, dialogue, cooperation and solidarity among all peoples and nations of the world as a means to promote peace. To reach this end, the Declaration states that present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war.

At the level of implementation, the Declaration recognizes the crucial role of the United Nations Educational, Scientific and Cultural Organization (UNESCO), which together with the international and national institutions of education for peace, shall globally promote the spirit of tolerance, dialogue, cooperation, and solidarity. To this end, the Declaration recognizes in its operative section that “University for Peace should contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge”.

In particular, the Declaration is the result of the tireless efforts of some distinguished human rights promoters as well as of the important role played by some sectors of civil society for years, which have shown that genuine dialogue among all stakeholders and regional groups is the foundation of peace and understanding in the world. The UNESCO initiative that in 1997 invited Member States to discuss a draft *Declaration on the Human Right to Peace* has finally been realized in the context of the General Assembly.

## Presentation

### **Prof. Antonio Papisca**

UNESCO Chair in Human Rights, Democracy and Peace

### **Prof. Marco Mascia**

Director of the Human Rights Centre and UNESCO Chair on Human Rights, Democracy and Peace, University of Padova (Italy)

On July 1st 2016 the HRC endorsed a resolution recommending the UNGA to adopt the *Declaration on the right to peace* as prepared by the Council's Working Group in the course of four years of debate.

The text includes 5 articles and a large preamble.

Article 1 states that “everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized”.

Article 2 fixes the obligation of states “to respect, implement and promote equality and non-discrimination, justice and the rule of law and guarantee freedom from fear and want as a means to build peace within and between societies”.

This is the multidimensional concept of positive peace, including also social and economic aspects. Consistently, the preamble recalls that “peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing”.

Article 3 fixes the obligation for States, the United Nations, and for the UNESCO to take “appropriate sustainable measure” to implement the Declaration. International, regional, national and local organisations and civil society as well are encouraged “to support and assist in the implementation” of the Declaration.

Article 4 lays down the obligation to promote “international and national institutions of education for peace”, and explicitly referring to the University for Peace, affirms that education for peace is a “great

universal task” to carry out “by engaging in teaching, research, post-graduate training and dissemination of knowledge”.

The conjunction of Article 1 with the very title of the Declaration presupposes that a human right to peace does already exist as implicitly proclaimed by Article 28 of the Universal Declaration of Human Rights (UDHR): “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.

It should be pointed out that the *incipit* of the preamble of the *Declaration on the Right to Peace* makes specific reference to the *United Nations Charter*, the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Vienna Declaration and Action Program*. This means that the Declaration is firmly anchored in human rights international law.

The message stemming from the list of such relevant legal instruments should convince all members of the UNGA to provide unconditioned support to the Declaration as a signal of the renewed commitment of the international community for the effectiveness of human rights international law and of the United Nations Charter.

The Padova University Human Rights Centre and the UNESCO Chair in Human Rights, Democracy and Peace at the same University have promoted and carried out, with the collaboration of the National Coordination of Local Authorities for Peace and Human Rights, a large campaign in Italy, to support the work of the United Nations HRC. More than 300 City Councils and 5 Regional Councils have adopted a petitionary motion in this regard.

In the present dramatic suffering of the human condition worldwide, the adoption of the Declaration would send to all peoples a strong signal of the capacity of the United Nations to provide peace and development for the security and well-being of all members of the human family.

Tribute should be paid to Ambassador Christian Guillermet Fernández and to his legal adviser, Dr. David Fernández Puyana, for their passionate guidance of the Working Group of the HRC in drawing the text of the Declaration.

## **Presentation**

### **Mr. Miguel Bosé**

Co-Founder of the Foundation Peace without Borders

Art may describe forms of expression that carry an aesthetic and/or symbolic dimension, using different media in the context of the human creativity. It should emphasize the role of art as an important vehicle for each person, individually and in community with others, and groups of people to express their views, emphasizing that artistic creativity is an important element for the development of vibrant cultures, which contributes to the functioning of societies.

It is recognized that arts education can instill respect for and appreciation and understanding of creative and artistic expression, and can awaken the ability to be artistically creative.

Music itself is a living process that develops human creativity. As indicated by the musician and peace advocate Yehudi Menuhin, “in the creation everyone has open incalculable possibilities, in the destruction, only one”. Music becomes a key instrument to build peace and express, produce, imagine, innovate and invent different solutions to social problems. Music also features as a means of nonviolent action.

Our Foundation “Peace without Borders” has wanted to contribute through Arts and Music to the promotion of the values of peace, human rights, tolerance and the cease-fire in different parts of the world. It has carried out various activities, such as production of a video and the organization of free outdoor concerts, in which renowned international artists participated. The first concert was held in 2008 in Cucuta, located in the border between Colombia and Venezuela and the second in 2009 at the Revolution Square in Havana (Cuba), with the attendance of more than 1.6 million people.

For our Foundation, peace is a right whose right-holders are all individuals, groups and peoples and a value which should govern international relations. This is how such right is understood by organizations, cities and civil society from the five world regions. This

notion is supported by many public figures who like us are convinced that peace should also govern the human relations. I understand that there does not exist Peace without respect of all Universal Rights for all.

On 19 December 2016, the UNGA, in response to the world-wide demand from grassroots civil society, adopted a *Declaration on the Right to Peace*, in which the Foundation Peace without Borders played a fundamental role of mobilization and awareness before the institutions of the United Nations. Therefore, Universal Rights and Peace will no longer be something to be managed by the world leaders at their will.

As I indicated in the commemoration of the 2011 International Day of Peace held at the Palais des Nations in Geneva, the reasons to adopt a new normative Declaration on the human right to peace within the United Nations are the following:

- It shall help to achieve a coordinated response on a world-wide scale to those threats to human rights arising from the global interdependence of all individuals, peoples and nations;
- It shall strengthen international cooperation, union of interests and joint action in order to preserve not only the fabric and very survival of international society, but also to achieve its collective goals;
- It shall provide a solid basis to the culture of peace;
- It shall give fresh impetus to the struggle against violence and attitudes based on force, imposition and gender discrimination;
- It shall recognize that the holistic concept of peace goes beyond the strict absence of armed conflicts (negative peace). Peace is also positive, since it is linked to the eradication of structural violence as a result of the economic and social inequalities in the world, and to the right of peoples to economic and social development
- It shall consolidate the right to peace in its double dimension, namely individual and collective;
- It shall strengthen dialogue and peaceful coexistence among cultures, civilizations and religions or belief, as a means to combat racism, racial discrimination, xenophobia and related intolerance.

Everyone's participation in the process on the right to peace is important. Peace has your endorsement. Let us together achieve that all governments respect our aspirations as a civil society and implement the Declaration adopted by the United Nations.

Our Foundation calls upon the Member States of the United Nations to join in the progressive development of the right to enjoy peace, in the understanding that peace, human rights and development are closely linked among them, and that the Culture of Peace should be part of our daily lives.

Furthermore, we show our commitment, support and active, transparent and constructive responsibility to this new phase which opens after the adoption by the UN of the *Declaration on the Right to Peace*.



## **Presentation**

### **Open Letter on the Right to Peace Addressed to the Diplomatic Community**

**Ms. Micòl Savia,**  
Representative in Geneva of the  
International Association of Democratic Lawyers (IADL)

**Ms. Maria Mercedes Rossi,**  
Representative in Geneva of  
the Comunità Papa Giovanni XXIII (APG23)

**Mr. Oliver Rizzi Carlson,**  
Representative in Geneva of the  
UN Network of United Network of Young Peacebuilders (UNOY)

On July 1st 2016, the HRC adopted the *Declaration on the Right to Peace* (A/HRC/RES/32/28). Such Declaration is the result of a common and resolute effort carried out by civil society, governments and UN entities with the purpose of advancing in the construction of a future of peace for all humankind.

Our organizations, together with many other civil society organizations from all over the world, actively engaged all along the negotiation process, raising the voice of the voiceless and countless innocent victims of wars and violence in all its forms.

We call upon all UN Member States to support this important initiative and therefore to vote in favor of the *Declaration on the Right to Peace* when it will again be drawn to their attention.

The text, which has been adopted by the HRC following three sessions of an Open-Ended Intergovernmental Group and an intense dialogue, represents an acceptable compromise between different views and aspirations. As civil society organizations we were aiming at a more articulated and substantive document. Nevertheless, we value efforts made to reach a least common denominator.

In today's world, devastated by armed conflicts, hate and poverty, the recognition and declaration by an overwhelming majority of states that "Everyone has the right to enjoy peace", would send to Humanity, and in particular to young and future generations, a very much needed message of peace and hope. Our organizations cannot but recognize the great importance of such message. The adoption of the *UN Declaration on the Right to Peace* will represent a little step forward toward the fulfilment of the solemn promises we made in 1945.

## **Prologue**

### **The Declaration on the Right to Peace: a Long-Standing Debate**

**Ms. Mona Zulficar**

Chairperson of the Drafting Group on the Right to Peace at the  
Advisory Committee UN Human Rights Council (2010-2012)

Since 2008 the HRC has been working on the “Promotion of the right of peoples to peace” inspired by previous resolutions on this issue approved by the UNGA and the former Human Rights Commission, particularly the GA resolution 39/11 of 12 November 1984, entitled Declaration on the Right of Peoples to Peace and the United Nations Millennium Declaration.

In 2010, the HRC also approved the resolution 14/3, requesting “the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace... “.

Therefore, the HRC Advisory Committee (AC) adopted on 6 August 2010 the recommendation 5/2 on the promotion of the right of peoples to peace, establishing a drafting group chaired by Mona Zulficar (Egypt) to prepare a draft declaration on the right of peoples to peace. In light of this mandate, the drafting group initially prepared a progress report on the right to peace, which was submitted to the HRC in its 16<sup>th</sup> regular session (June 2011).

On 12 August 2011, the AC adopted recommendation 7/3 entitled “Drafting Group on the promotion of the right of peoples to peace”, by which it took note of the second progress report submitted by the drafting group (paragraph 1); it welcomed “the responses received to the questionnaire sent out in April 2011, and the discussions and statements made during its seventh session” (paragraph 2); and it welcomed “initiatives by civil society to organize discussions on progress reports of the Advisory Committee with Member States and academic experts” (paragraph 3).

In accordance with HRC resolution 17/16 of 17 June 2011 and AC recommendation 8/4 of 24 February 2012, the AC submitted to the HRC its (third) draft Declaration on the Right to Peace, which was really inspired by the different proposals of Declarations elaborated and advocated by some civil society organizations.

Pursuant resolution 20/15 of 5 July 2012, the HRC decided to “establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace, on the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views.” Ambassador Christian Guillermet-Fernández (Costa Rica) was elected by the Working Group as its Chairperson-Rapporteur, by acclamation. He was nominated by the Group of Latin American and Caribbean Countries (GRULAC).

In the first session of the OEWG, held in Geneva from 18 to 21 February 2013, Mona Zulficar, Chairperson of the Drafting Group at the AC said that the right to peace includes not only negative peace, but also positive peace which addresses the conditions for just and sustainable peace and enables building an environment conducive to social justice, respectful of human dignity and protective of all human rights. On the other hand, Ambassador Christian Guillermet underlined the basic principles, which should conduct the session of the Working Group (i.e. transparency, inclusiveness, consensus, objectivity and realism).

The AC’s text identified, in cooperation with some civil society organizations, the main elements which should be part of the future Declaration (including issues such as migrants, refugees, conscientious objection to military service, disarmament, environment, rights of victims, development and human security). The great added value of the AC’s text was its elaboration on all linkages between the notion on peace and human rights, its efforts to mobilize civil society organizations and also to create the notion of the human right to peace by putting together all these elements in the form of a Declaration. Afterwards, this enabled Member States to make a global assessment about this text and eventually accept or reject it as a good and useful basis to continue the work on this topic.

In the first session, the OEWG witnessed that the text presented by the AC was not properly supported by Member States, even by those countries that actively support the process within the HRC. Consequently, some delegations stated that the last phrase of the resolution 20/15, which indicates “and without prejudging relevant past, present and future views and proposals,” opened the possibility to change it with new ideas and formulations. In addition, they added that a declaration should also be realistic, containing common denominators that are acceptable to all.

In order to keep the important work done by the AC in the drafting process of a Declaration, the Chairperson-Rapporteur decided to recuperate the spirit of the Council resolutions 14/3 of 2010 and 17/16 of 2011, which clearly invite all stakeholders to promote the effective implementation of the Declaration and Programme of Action on a Culture of Peace. It was noted that all the main elements on the right to peace identified by the Advisory Committee had previously been elaborated by Member States, international organizations and Non- Governmental Organizations in the Programmes of Action on Vienna and Culture of Peace. Consequently, the right to peace and culture of peace are different sides of the same coin. This approach was welcomed by different stakeholders, including many civil society organizations.

It should be recalled that in the line of the resolution 14/3, a brief history of the concept of culture of peace was included in the progress report on the right of peoples to peace prepared by the AC in 2011. In particular, this UN body had already focused its attention on the origin of the concept at UNESCO, the national programmes for culture of peace, UNESCO’s medium-term strategy, transdisciplinary project, the relevant work at the UNGA and the meaning of culture of peace.

On 1 July 2016, the HRC in Geneva adopted a Declaration on the Right to Peace by a majority of its Member States. It is the result of three years of work with all stakeholders, in which the role played by some civil society organizations was relevant. The resolution 32/28, to which the Declaration was annexed, was presented by the delegation of Cuba. In its presentation, they emphasized that the adoption of this Declaration was framed in the context of the bilateral

ceasefire and cessation of hostilities signed in Havana, between the Government of Colombia and the Revolutionary Armed forces of Colombia-People's Army (FARC-EP). HRC's work was aided by the invaluable mobilization and leadership shown by public figures from the world of art, culture and sport, gathered around the Foundation Peace Without Borders founded by Miguel Bose and Juanes.

The Declaration was also adopted by the UNGA within the Third Committee of the 71st regular session (October - November 2016) in New York. This was a decisive moment to consolidate all the efforts made to recognize the Human Right to Peace. Many civil society organizations believe that the international community should exert their utmost efforts to reach a future consensual solution for the title and article one of the Declaration, the only remaining issues without agreement among delegations for the time being. For this reason, the negotiation process should be based on dialogue, cooperation and mutual understanding.

The Declaration is the result of the tireless efforts of many peace activists, human rights promoters as well as of the important role played by some sectors of civil society for years, which has shown that genuine dialogue among all stakeholders and regional groups are the foundation of peace and understanding in the world.

I congratulate and praise the authors of this book for their outstanding efforts for keeping alive the spirit of the AC Declaration on the Right to Peace and bringing with success the civil society claim to the UNGA. Quoting Dr. Martin Luther King Jr., I underscore that "We must concentrate not merely on the negative expulsion of war but the positive affirmation of peace".

## General Introduction

**Ambassador Christian Guillermet Fernández**  
**Dr. David Fernández Puyana**

Chairperson-Rapporteur and Legal Assistant of the  
UN Open Ended Working Group on the Right to Peace (2012-2015)

This book proposes the right to enjoy peace, human rights and development as a means to reinforce the linkage between the three main pillars of the United Nations. Since the right to life is massively violated in a context of war and armed conflict, the international community elaborated this fundamental right in the 2016 *Declaration on the Right to Peace* in connection to these latter notions in order to improve the conditions of life of humankind. The right to enjoy peace, human rights and development is more linked to human rights than the so-called right to peace in both its individual and collective dimension. It should be noted that the recent regional and States' practices have still not elaborated a concept of the right to peace linked to human rights. These legal instruments have continued by using the notion of the right to peace in the context of the relationship among States without referring properly to human rights and fundamental freedoms. In addition, as we will see in this research, we should recall that the HRC is mainly devoted to promote and protect victims of human rights violations, even in a context of conflict.

To elaborate this option, the thesis will set the record straight by analyzing the current international legal debate on peace and human rights and the right to peace in the context of the main human rights and intergovernmental bodies of the United Nations. To reach this aim, the thesis will be divided into six main chapters:

The first Chapter shall analyze how the right to peace has been extensively elaborated by well-known humanists, philosophers and poets since the "Renaissance". In this context, Erasmus of Rotterdam, known as the «Prince of the Humanists», was the pre-eminent representative of this new intellectual and ethical advancement of humankind. This movement has always advocated for a conception

of the right to peace as a means to promote dialogue, tolerance, cooperation, cultural diversity and human rights.

Another important philosophical movement, which has strongly advocated for the right to peace, was socialism throughout the XX century. The impact of its agenda has been very relevant within the United Nations. The concept of the right of peoples to peace, which was formed in 1984, is inspired in the notion of peaceful coexistence, which is based on such principles as the rejection of war as a means for the settlement of disputes among states and the settlement of disputes by negotiation; the relations between states must further rest on trust, on economic and cultural cooperation, and on the principles of mutual respect for interests, territorial integrity, and sovereignty; the requirement of non-interference in the domestic affairs of states and recognition of the right of each nation to independently settle its own affairs.

The second Chapter shall partially study the peace agenda and its results in Cold War times. In particular, the *1978 Declaration on Preparation of Societies for life in peace* and the *1984 Declaration on the Right of Peoples to Peace* as an initiative of the socialist countries shall be analyzed in both their legal dimension and their impact in the work of the UNGA. These international standard-setting instruments respond to the strong resurgence of group solidarity among Member States in order to gain access through global institutions to resources, power or representation.

In parallel, other important regional human rights systems have recognised the right to peace, such as the African and Southeast Asia system. In this vein, this Chapter shall deeply study the African Charter on Human and Peoples` Rights, which states that the principles of the preservation of international peace and security, as well as the principles of friendly relations among states, form the basic foundation of the Organization of the African Union. Additionally, the role played by human rights and peace in the Southeast Asia region shall be studied, taking into account that the *ASEAN Declaration on Human Rights* recognised that every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN. For this reason, the notion of the right to (enjoy) peace and security to national and international peace and security shall also be analyzed in light

of the experience and good practices provided by the different African and Southeast Asia human rights bodies.

The third Chapter shall analyze how the right to peace has evolved within the United Nations after the Cold War. In 1998, UNESCO convened at the Headquarters in Paris an Intergovernmental Conference in order to discuss and eventually adopt a *Declaration on the Human Right to Peace*. The complexity of the subject and the main positions of the participants regarding the question of the right to peace will be studied. Additionally, the contribution of the UNGA, Commission on Human Rights and the HRC of the United Nations to the discussion process will be analyzed carefully in light of key international human rights instruments. An analysis of the *Declaration on the Right to Peace* prepared by the Advisory Committee and its linkage with the *Vienna Declaration and Programme of Action* will be elaborated. This Chapter shall also give an overview about the three consecutive sessions of the Intergovernmental Open-Ended Working Group on the Right to Peace and the final adoption by the Human Rights Council and the General Assembly of the United Nations of the *Declaration on the Right to Peace*.

The fourth Chapter shall focus its attention on the comparative analysis between the Council resolutions on the right of peoples to peace and the Chairperson-Rapporteur's text. The *Declaration on the Right to Peace* adopted by the UNGA on 19 December 2016 will pass to the history for having elaborated the human rights approach to a notion, which was traditionally devoted to the relations among States without referring to the importance of protecting the fundamental freedoms of victims of war and conflict. This Chapter shall also study the different components of the text adopted by the UNGA, in particular its Preamble and Operative Part, in light of following elements: firstly, international law and human rights law; secondly, the points of concurrences among all delegations and thirdly, outcome of the consultations held in the context of the on-going process.

The fifth Chapter shall study the ongoing debate about the notion of consensus and dissent in the adoption of international instruments within the United Nations. The adoption by large agreements of peace instruments in the UNGA has been a clear tendency since the creation of the United Nations. An agreement among States and

regional groups could not finally be achieved on the *Declaration on the Right to Peace* within the HRC and the Third Committee of the UNGA, exclusively because of the lack of agreement on the title and Article 1. The Chapter will elaborate those possible elements which could help to work in a more inclusive manner in light of the experience and good practices provided by the UNGA Resolution 3201 (S-VI) on the *Establishment of a New International Economic Order* of 1974.

The sixth Chapter shall analyze the role played by the HRC in the promotion and protection of development, human rights and peace in the understanding that these notions are interlinked and mutually reinforcing. The UNGA clearly decided that the Council should address situations of gross and systematic violations of human rights and also contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies. At the level of implementation, the Chapter shall study the possible measures to be taken by UNESCO and the University for Peace in light of the mandate received from the UNGA. Additionally, the Chapter shall finally study the possible contribution of the *Declaration on the Right to Peace* to the improvement of the Special Procedures of the HRC by stressing the importance of respecting dialogue, tolerance, mediation, assistance and cooperation in the function of the mandates.

Now that the international community has elaborated the notion of the right to enjoy peace, human rights and development through a new declarative instrument adopted by the UNGA, then it has arrived at the moment when everyone should gradually replace violence and wars with the peaceful settlement of conflicts and the respect of all human rights for all; the excessive resources allocated to rearmament should be invested in alleviating hunger and diseases; the effective culture of peace should be easier by the implementation of cooperation policies and dialogue among all peoples, religions and civilizations of the world; the fear from cultural and religious diversity should be replaced by tolerance and respect towards those who are different; the racial hatred should be transformed into human solidarity by means of efficient policies and rules, including education on peace and human rights; and men and women of tomorrow should be considered brothers and sisters able together to build a fairer world which respects the values and principles of international human rights law.

Now that we are well into the 21st century many human rights organisations, peace activists, citizens and governments strongly demand the adoption of policies aimed at preventing wars and conflicts and the United Nations should provide an effective response.

This gradual change of paradigm is necessary because there will always be children, young people, adults and older people of different races and cultures who peacefully resist losing their legitimate right to dream of a world filled with peace and without hatred. For many people of good faith the dreams of brotherhood and hope for mankind result in the demand of universal peace.

In the early years of the twenty-first century, war fatalities have progressively dropped compared to the last century. Over the long term, peace movements have contributed greatly to the emergence of new norms that delegitimise war and promote the value of peace. Fewer wars are starting, more are ending, and those that remain are smaller and more localized than in past years. It follows that we should stress the importance of peace and the possibility of resolving our conflicts in ways other than violence.

The elaboration of the right to enjoy peace, human rights and development will surely contribute to the strengthening of international cooperation and multilateralism and will also influence the current objectives of the United Nations as a fundamental step towards the promotion of peace, tolerance, friendship and brotherhood among all peoples. Today the obligation of the international community is to hear the voice of the voiceless, which strongly demands the right to live in a world free of wars and conflicts!!

*Geneva, 16 November 2017*  
International Day of Philosophy and Tolerance



## **First Part**

### **Section I**

#### **Philosophical approaches on the right to peace**

##### **1. New humanism**

###### **1.1. Analysis**

In October 2010 the Sector for External Relations and Public Information of UNESCO published a paper entitled, “A new humanism for the 21st Century”. This text is the first contribution to UNESCO’s reflection on a new humanism. It was adapted from an address delivered by Ms Irina Bokova, Director-General of UNESCO, in Milan (Italy) on October 7, 2010.

The lasting universal human community is drawn on the fundamental values of humanity, and foremost on the resources of the mind. These are the stakes of the new humanism, where UNESCO is called to have a leading role to play. Therefore, being a humanist today means building bridges among different cultures and strengthening the human community to take up our challenges together. In the twenty-first century, globalisation is no longer about “contacts”, but “sharing”.

In the final statement of the Committee of Experts convened by UNESCO on “Interrelations of Cultures: their contribution to international understanding” held in 1953, participants concluded that “the problem of international understanding is a problem of the relations of cultures. From those relations must emerge a new world community of understanding and mutual respect. That community must take the form of a new humanism in which universality is achieved by the recognition of common values in the diversity of cultures”.

As indicated by Ms Bokova, “our drive must be for a new solidarity, to reintegrate all countries in the universal community. This project may seem utopian, but recent history has also shown the dynamic strength of the desire for unity”. It follows that an accomplished human being is one who recognises coexistence and equality with all

others. Therefore, the new humanism calls for every human being to truly participate in our shared destiny.

Ms Bokova ended her reflection about the new humanism by stressing that “education, science, culture and communications are pillars in the construction of a united human community and the foundations of sustainable development. There is no wiser investment than to place them at the heart of development. This is the challenge of the coming century, and the condition for building peace.”

The purpose of the new humanism is to strengthen and promote the notion of peace through education, international cooperation, dialogue, respect of human dignity and the promotion of all human rights and fundamental freedoms worldwide. The moral principles and values of the new humanism are contained, among others, in the Preamble of the UNESCO Constitution.

Ms Bokova added in her reflection about the new humanism that “the preamble of the UNESCO Constitution reaffirms clearly the humanist framework of all thought and action in the pursuit of peace”.<sup>1</sup>

In her speech, Ms Irina Bokova also outlined that “being a humanist today means adapting the strength of an age-old message to the contours of the modern world. By definition, this work is an ongoing effort that knows no end. The Italian philosopher Pico della Mirandola (1463-1494) expressed this point at the tender age of 24, when he developed the central concept of humanism in his famous Oration on the Dignity of Man, written in Florence in 1486».

In vein of this New Humanism, the right to peace as understood in UNESCO is strongly linked to the movement known as “Renaissance”, which was spread throughout Europe giving new approaches in all human areas. Erasmus was the pre-eminent representative of this new intellectual and ethical advancement of humankind. He is known as the «Prince of the Humanists» for his enormous contribution to the humanities in the world.

In his book “The Complaint of Peace”, Erasmus openly called for the recognition of the right to peace when he said in his famous peace book that everyone should hear the voice of their Sovereign Lord,

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1 Preambular, para.6 of the Constitution of UNESCO.

commanding them upon their duty, to seek peace and abolish war. People should also be persuaded that the world, wearied with its long continued calamities, demands peace, and has a right to insist on this immediate compliance<sup>2</sup>.

Another important humanist and jurist of this time was Hugo Grotius. Along with the earlier works of Francisco de Vitoria and Alberico Gentili, Grotius laid the foundations for international law. He was one of the first to define expressly the idea of one society of states, governed not by force or warfare but by actual laws and mutual agreement to enforce those laws.

His book “The Rights of War and Peace” of 1625 was a monumental effort to restrain such conflicts on the basis of a broad consensus. In this work, Grotius recognized the existence of the right to live in peace in the following terms:

“The reasoning is the same in each case: a citizen who breaks the civil law for the sake of some immediate interest will thereby undermine his own and his descendants’ permanent interests, and a nation which violates the laws of nature and nations will have renounced its right subsequently to live in peace”<sup>3</sup>.

On the basis of this New Humanism, which is deeply rooted in the “Renaissance”, other well-known philosophers, poets and thinkers positively contributed to elaborate in their works the right to peace, such as Immanuel Kant, Rousseau, Schiller, Victor Hugo or Voltaire<sup>4</sup>.

In parallel, on 20 June 1789, the members of the French Estates-General for the Third Estate, who had begun to call themselves the National Assembly, took the Tennis Court Oath. In this context, Constituent Assembly approved on 22 May 1790 the Decree of Declaration of Peace in the World by which declared in its Article 1 that the right to peace belongs to the nation<sup>5</sup>.

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2 <http://pazsinfronteras.org/en/el-derecho-a-la-paz-de-los-ideales-a-la-realidad-por-erasmo-de-rotterdam/>

3 <http://pazsinfronteras.org/en/reconociendo-el-derecho-a-vivir-en-paz-por-hugo-grocio/>

4 <http://pazsinfronteras.org/en/noticias/>

5 <http://pazsinfronteras.org/en/figuras-claves-de-la-historia-de-francia-abogan-por-el-derecho-a-la-paz/>

Among these greatest thinkers, Ortega y Gasset, who is considered one of the most influential Spanish philosophers of the twentieth century, wrote in 1938 his famous reflection entitled “Concerning pacifism...”. In this work, he explained in a brilliant manner the ethical and legal bases upon which world peace should be built and stated that peace is the right as form of relationship among peoples<sup>6</sup>.

In the period of the League of Nations, several relevant and well-known jurists produced important manuals on international law and extensively elaborated the principles and rules of the right to peace. In particular, Charles Dupuy<sup>7</sup>, Stelio Seferides<sup>8</sup>, Maurice Bourquin<sup>9</sup>, Louis Le Fur<sup>10</sup> and Erich Kaufmann<sup>11</sup> deeply developed these ideas in the «Le Recueil des Cours de l’Académie de Droit International de La Haye (RCADI)». All of them agreed to recognize the importance of international law to promote peace, cooperation and dialogue.

## **1.2. Impact of the Humanist agenda within the United Nations**

On the initiative of UNESCO, the UNGA proclaimed 1995 the United Nations Year for Tolerance and designated UNESCO as lead agency for this Year. In conformity with its mandate and in order to call public attention worldwide to the urgent matter of tolerance, the General Conference of UNESCO solemnly adopted on 16 November 1995, the 50th anniversary of the signature of UNESCO’s Constitution, the Declaration of the Principles of Tolerance. The Member States of UNESCO, meeting in Paris at the twenty-eighth session of the General Conference, from 25 October to 16 November 1995.

This Declaration defines tolerance in its article 1.1. as the “... respect, acceptance and appreciation of the rich diversity of our world’s cultures, our forms of expression and ways of being human.

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6 <http://pazsinfronteras.org/en/d-ortega-y-gasset-el-gran-visionario-del-derecho-a-la-paz/>

7 DUPUY, Charles: “Règles générales du droit de la paix”, RCADI, t. 32 (1930–II), pp. 5–287

8 SÉFÉRIDES, Stélio: “Principes généraux du droit international de la paix”, RCADI, t. 34 (1930–IV), pp. 182–487

9 BOURQUIN, Maurice: “Règles générales du droit de la paix”, RCADI, t. 35 (1931–II), pp. 5–227

10 LE FUR, Louis: “Règles générales du droit de la paix”, RCADI, t. 54 (1935–IV), pp. 5–304

11 KAUFMANN, Erich: “Règles générales du droit de la paix”, RCADI, t. 54 (1935–IV), pp. 313–613

It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace”.

On 12 December 1996, the UNGA adopted resolution 51/95 by which takes note of the *UNESCO Declaration of the Principle on Tolerance* and the follow-up Plan of Action and invited Member States to consider applying the Declaration of Principles at the national level. Art. 1.4 outlines the right to live in peace as follows:

«...means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behaviour and values, have the right to live in peace and to be as they are».

In the report A/54/546 on the *United Nations Year of Dialogue among Civilizations* of 1999 elaborated by the Secretary-General, he says that other concepts with similar and complementary purposes and values have preceded the Dialogue among Civilizations, such as the recent UNGA resolutions on the culture of tolerance and the culture for peace. He also said that tolerance “... is the recognition that human beings are diverse and have the right to live in peace with their diversity while not imposing their beliefs on others”.

## 2. Socialism

### 2.1. Analysis

Marxism has so far not given any adequate definition of war and peace, and this follows, inter alia, from the circumstance that Marxist literature uses the term ‘war’ in a narrower sense than that of “peace”<sup>12</sup>.

As indicated by the philosopher Engels, war in the broader sense of the term is an armed struggle between global societies (clans, tribes and states); further armed struggle between social classes (civil war) and the armed struggle waged by a subjected nation (nations) against a state that is striving to impede its independent development. For

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12 K. Kára, On the Marxist theory of war and peace, *Journal of Peace Research*, Vol. 5, No. 1 (1968), p. 2

him, the origin of war in this sense goes back to the very beginnings of mankind<sup>13</sup>.

War in this sense is a special form of political violence. It is an act of armed violence on the part of a state or states, designed to subject another state (or states) to its will. In its essence war is an armed struggle waged for specific political goals and is thereby a continuation of policy by other, i.e. extremely violent means. ‘War is a component of the whole and that whole is policy’; it is not an end in itself, but a means of policy<sup>14</sup>.

It is generally held that the formation of a world Communist society will be a phase where wars will no longer exist, but these are only assertions of a general nature. Marxism does not view violence as something that is a priori negative or positive. Violence can play a dual role: a reactionary or progressive one. It is in these terms that Marxism also assesses the role of wars or revolutions. That is why Marxism rejects all theories or views that categorically repudiate violence. Marxism recognizes the justification of the use of violence provided such use is relevant to historical progress<sup>15</sup>.

In the same line of the *Great Soviet Encyclopaedia*<sup>16</sup>, the *Czech Prirucni slovník naučný dictionary* defined the term ‘peace’ as follows<sup>17</sup>:

“A state in relations between people, nations and states characterized by peaceful and friendly coexistence and by the settlement of outstanding issues by negotiations and agreement. Lasting peace is one of the goals of the international working class movement and of the foreign policies of the socialist countries”

In the narrower or proper sense of the term, peace is a specific form of relationships among states, when collisions between them are not resolved by armed struggle and when states settle their relationships and strive to achieve their goals by peaceful political means, i.e. by means that do not have the nature of armed violence, but the nature of a less sharp and a more or less concealed violence or persuasion: in other words by means of diplomacy.

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13 F. Engels: *Anti-Dühring*, publ. Svoboda 1949, Praha, p. 155

14 Lenin, *Clausewitz’ book On War*, publ. Nase vojsko, Praha, 1959, p. 25

15 K. Kára, *On the Marxist theory of war and peace*, op. cit. 12, p. 4

16 *Bolshaja Sovjetskaja Encyclopedia*, 2nd edition, Vol. 27

17 *Prirucni Slovník Naučný*, Volume 3, publ. Czechoslovak Academy of Sciences, Praha, 1966, p. 164

Peace can also differ in nature, since there can be peace rooted in slavery and peace rooted in freedom. Hence peace can be just or unjust. Marxism holds that just peace is not founded on aggression, and respects the independent development and interests of the countries concerned<sup>18</sup>.

Social revolution is a progressive qualitative change of a specific social order. In the more narrow sense social revolution signifies a progressive qualitative change of political power. The transition from feudalism to capitalism was achieved by revolution of the bourgeois type. The transition from capitalism to socialism is achieved by revolution of the socialist type<sup>19</sup>.

Lenin's sceptical view of the possibility of socialist revolution achieving victory by peaceful means, arrived at in terms of the conditions of his time, in no way meant that he failed to understand its import. Lenin's attitude on peaceful revolution is also significant for us in the sense that whenever there was any chance of adopting the peaceful way in Russia, he always preferred it to violent revolution involving an armed struggle for state power, and he made the greatest efforts to achieve the peaceful form<sup>20</sup>.

Lenin proceeded from the premise that socialism could best be developed in conditions of peace, and orientated the USSR towards a policy of peace, that could avert this or that eventuality of war, but that was incapable of eliminating the unavoidability of wars, since these arise from the essential nature of the imperialist system<sup>21</sup>.

In his work on imperialism, Lenin outlined that the unevenness of economic and political development that is the law inherent in capitalism in the phase of imperialism is still in a process of change. In the period of imperialism the law of the uneven economic and political development of the individual countries is characterized by the circumstance that the uneven development of a number of countries proceeds in leaps, and that some rapidly push others out of the world markets. It is from this law that Lenin then deduced that

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18 K. Kára, On the Marxist theory of war and peace, op. cit. 12, p. 7

19 K. Kára, On the Marxist theory of war and peace, op. cit. 12, p. 12

20 V. I. Lenin, Selected Works, II., SNPL, Praha, 1955, p. 115

21 K. Kára, On the Marxist theory of war and peace, op. cit. 12, p. 20

wars were unavoidable in imperialism, and he called this period the epoch of wars and revolutions<sup>22</sup>.

## 2.2. Impact of the socialist agenda within the United Nations

From the decree on Peace in 1917 to Gorbachev's "Zero option" in 1987, the themes of Peace and disarmament were recurrent and fundamental topics in Soviet foreign policy. After Trotsky suggested the idea of peace without arms, from 1918 the USSR quickly came back to a more pragmatic conception by setting up a powerful Red Army. Crowned with glory thanks to its victory over Nazism, soon after World War II, the USSR went so far as to promote the set of pacifist themes as a central pillar of its doctrine; it became its universal standard bearer<sup>23</sup>.

For some authors, the very language of peace was distorted by the cold war ideological struggle. The USSR and its allies described itself as defending "peace", while the USA and West emphasized the goal of "freedom". These two relevant principles, embodied in the UN Charter, came to be conceived as polar opposites. Consequently, in that time "peace" was perceived as a subversive notion in accordance with many intellectuals and politicians. Vera Brittain complained that the communist front groups were making peace a "dirty word"<sup>24</sup>. The identification of peace with communism became so pervasive that some groups placed the word "peace" in quotation mark<sup>25</sup>.

This attempt of the USSR and its allies to pursue the peace agenda had an effect and impact in the work of the United Nations. Both the *1978 Declaration on Preparation of Societies for life in peace* and the *1984 Declaration on the Right of Peoples to Peace* were promoted by this group of States. These international standard-setting instruments respond to the strong resurgence of group solidarity among Member States in order to gain access through global institutions to resources, power or representation.

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22 35 V. I. Lenin, *Imperialism as the Highest Stage of Capitalism*, publ. Svoboda, Praha

23 Cortright, D. «Peace: a history of movement and ideas», Cambridge University Press, New York (USA), p. 119

24 Le Bourgeois, J., "La propagande soviétique de 1917 à 1991 : paix et désarmement au service de l'idéologie ?", p. 94-123

25 Wittner, *One world or none: a history of the world nuclear disarmament movement through 1953*, Vol. I of the *Struggle against bomb*, Stanford University Press, p. 319-20

## Section II

### Peace agenda in the Cold War

#### Universal level

#### 1. Declaration on Preparation of Societies for life in peace

##### 1.1. Historical approach

At its 61<sup>st</sup> meeting<sup>26</sup>, held in New York on 4 December 1978, the representative of Poland introduced the draft resolution (A/C.1/33/L.58) entitled *Declaration on the Preparation of Societies for Life in Peace*<sup>27</sup>, on behalf of twenty-eight Member States of the United Nations<sup>28</sup>.

Afterwards, at the 67<sup>th</sup> meeting, held some days later on 8 December, the representative of Poland added, upon consultation with the sponsors, a reference to the *UDHR* of 10 December 1948 in the last preambular paragraph. The draft resolution, as revised, was adopted by a roll-call vote of 100 to none, and one abstention<sup>29</sup>. Subsequently, a group of delegations informed the Secretariat that, had they been present, they would have voted in favour<sup>30</sup>.

At its 85<sup>th</sup> plenary meeting, on 15 December 1978, the UNGA definitively adopted resolution 33/73 entitled “Declaration on the

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26 First Committee of the General Assembly

27 Doc. UNGA, A/33/486, 1978, p. 2-9

28 Afghanistan, Algeria, Argentina, Benin, Colombia, Czechoslovakia, the German Democratic Republic, Ghana, Hungary, Indonesia, Madagascar, Malaysia, Peru, Philippines, Venezuela, Viet Nam and Yugoslavia, subsequently joined by Bulgaria, Congo, Ethiopia, Mauritius, Mongolia, Morocco, Panama, Syrian Arab Republic, Tunisia and the United Republic of Cameroon

29 United States of America

30 Angola, Bangladesh, Cuba, Malaysia, Saudi Arabia and the United Republic of Cameroon

Preparation of Societies for Life in Peace” under the leadership of Poland and by 138 votes<sup>31</sup> to one, with two abstentions<sup>32</sup>.

In regards to the Declaration, the United States said that, while the propagation of racism, racial discrimination and apartheid was abhorrent, it could not accept the proposition that Governments should impose standards of thought and speech. Australia, the United States and the members of the European Communities felt that the declaration made inadequate reference to a number of basic human rights, the enjoyment of which was essential to a just and peaceful life. Norway and Sweden also had reservations. Japan felt that some elements in the text required further study, in particular the legal concept of crimes against peace<sup>33</sup>.

As indicated by Mr. Indalecio Liévano, President of the 33rd<sup>o</sup> regular session of the UNGA, after the vote, the resolution adopted by the UNGA constitutes a fundamental declaration of principles and also represents a milestone in the history of the United Nations<sup>34</sup>.

Accordingly, Mr. Henryk Jaroszek, Permanent Representative of Poland to the United Nations in New York, also pointed out that the UNGA had just performed an act of great significance because

31 Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian, Canada, Cape Verde, Central African Empire, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Singapore, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian, USSR, United Arab Emirates, United Kingdom, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire and Zambia

32 United States of America and Israel

33 Doc. Yearbook of the United Nations (1978), p. 163-164

34 Doc. UNGA, 33rd session 1978, Official records, Plenary meetings, Vol. 3, p. 1501

this Declaration offers a realistic and tangible programme on how to make that profound craving come true. In addition, he added that the primary purpose of the Declaration is “the strengthening of international security and détente, the building up of confidence among nations and the creation of a more propitious atmosphere for progress in disarmament by way of measures which the Charter of the United Nations defines as the determination to practice tolerance and live together in peace with one another as good neighbours”<sup>35</sup>.

The initiative of the preparation of societies for life in peace was originally introduced by Mr. Edward Gierek<sup>36</sup> in a speech delivered before the UNGA at its twenty-ninth session on 10 December 1974. He said that “it is our obligation to overcome prejudice, distrust, intolerance, chauvinism and racialism, to inculcate in the younger generation a respect for other nations and a conviction or the right of all to live in freedom, equality and peace”<sup>37</sup>.

However, on 28 September 1978, the initiative was formally presented to the UNGA by Mr. Emil Wojtaswek, Minister for Foreign Affairs of Poland in the following terms:

“Preparation for life in peace is the kind of activity which could be defined as the building of an infrastructure of peace in the consciousness of nations. The creation of a peaceful world can neither be fully effective nor durable unless there is a most profound awareness in the minds of men that world peace is of supreme value and thereby an objective of the highest priority”<sup>38</sup>

## 1.2. Legal analysis

The Declaration consists of four main parts. Its preamble reaffirms and makes reference to the existing United Nations accomplishment aimed to fostering the principle of friendly relations and co-operation among States. Part I of the Declaration spells out the eight main principles, which will guide Member States in the preparation of societies for life in peace. Part II calls upon all States to act and to ensure that the provisions of the Declaration will be translated into the language of national and international practice. Part III

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35 Doc. UNGA, 33rd session 1978, op. cit., note 311, p. 1501

36 First Secretary of the Central Committee of the Polish United Workers' Party

37 Doc. A/PV.2264, p. 17

38 Doc. A/33/PV.12, p. 43

proposes concrete follow-up measures to be taken on a national and international level toward the implementation of the Declaration.

The main legal instruments used by the drafters of the Declaration in its part I aimed to legally justifying the eight principles, which will guide States in its purpose to prepare their societies for life in peace, are the following, namely: 1. Recognition of the right to life in peace: UDHR<sup>39</sup> and the International Covenant on Civil and Political Rights (ICCPR)<sup>40</sup>; 2. Qualification of the war of aggression as a crime against peace: UNGA Resolution 95 (I) on planning, preparation, initiation or waging of a war of aggression<sup>41</sup>, the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States*<sup>42</sup> and the UNGA Resolution 3314 (XXIX) on the definition of aggression<sup>43</sup>; 3. Prohibition of the propaganda of war: Resolution 110 (II) on Measures to be taken against propaganda and the inciters of a new war<sup>44</sup> and the ICCPR<sup>45</sup>; 4. Strengthening of the cooperation in peace: Charter of the United Nations<sup>46</sup>; 5. Respect of the right of self-determination of peoples, independence, sovereignty, territorial integrity and independence: *Declaration on the Granting*

39 Article 3: “Everyone has the right to life, liberty and security of person”.

40 Article 6: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

41 Principle VI: “a. Crimes against peace: i. Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; ii. Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i)” (11 December 1946)

42 Art. 1: “...A war of aggression constitutes a crime against the peace, for which there is responsibility under international law...” Doc. A/RES/25/2625, 24 October 1970

43 Art. 1: “Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition”. Res. 3313 (XXIX), 14 December 1974

44 Art. 1: “Condemns all forms of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression”. UNGA Resolution 110 (II) of 3 November 1947

45 Art. 20.1: “Any propaganda for war shall be prohibited by law”. G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

46 Art. 1.3: “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”

*of Independence to Colonial Countries and Peoples*<sup>47</sup>, the *Declaration on the Strengthening of International Security*<sup>48</sup> and the *Declaration on the Deepening and Consolidation of International Détente*<sup>49</sup>; 6. Elimination of the threat inherent in the arms race: Final Document of the special session of the UNGA devoted to disarmament<sup>50</sup>; 7. Discouragement of all manifestation and practices of intolerance, racism, racial discrimination, colonialism, apartheid and other human rights and fundamental freedoms: *International Convention on the Suppression and Punishment of the Crime of Apartheid*<sup>51</sup>, *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*<sup>52</sup> and the *International Convention*

47 Art. 1: “The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation”. Doc. UNGA resolution 1514 (XV) of 14 December 1960

48 Art. 2: “Calls upon all States to adhere strictly in their international relations to the purposes and principles of the Charter, including the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations; the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; the duty of States to cooperate with one another in accordance with the Charter; the principle of equal rights and self-determination of peoples; the principle of sovereign equality of States; and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter”. Doc. UNGA resolution 25/2734 of 16 December 1970

49 Art. 1: “1. To adhere firmly to and promote the implementation of the provisions of the Charter of the United Nations, as well as the universally accepted principles and declarations aimed at enhancing world peace and security and the development of friendly and co-operative relations among States, and to fulfil their obligations arising from multilateral treaties and agreements serving the achievement of these objectives”. UNGA, Resolution A/RES/32/155 of 19 December 1977

50 First Special Session of the General Assembly devoted to Disarmament (1978), A/S-10/2 Final document of SSOD-I: Resolution and Decisions of the Tenth Special Session of the GA

51 Art. 1: “The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination...” UNGA. res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243

52 Art. 1.b: “(b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nurnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid...”. UNGA res. 2391 (XXIII), annex, 23 U.N. GAOR Supp.

on the *Elimination of All Forms of Racial Discrimination*<sup>53</sup> and 8. Discouragement of advocacy of hatred and prejudice: *ICCPR*<sup>54</sup> and the *Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples*<sup>55</sup>.

Part II of the Declaration is devoted to calling upon all States to adopt mainly two measures in order to implement the eight principles contained in Part I<sup>56</sup>, namely: 1. Educational processes and teaching methods as well as media information with the task of educating societies and young generations in the peaceful values of democracy, openness, tolerance, racial equality, empathy and justice; 2. The development of bilateral and international cooperation programs with the purpose of preparing societies for life in peace.

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(No. 18) at 40, U.N. Doc. A/7218 (1968)

- 53 Art. 1.1: “1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” and art. 3: “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”. UNGA resolution 2106 (XX) of 21 December 1965
- 54 Art. 20.2: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. UNGA res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.
- 55 Principle I: “Young people shall be brought up in the spirit of peace, justice, freedom, mutual respect and understanding in order to promote equal rights for all human beings and all nations, economic and social progress, disarmament and the maintenance of international peace and security”. UNGA resolution A/RES/20/2037 of 7 December 1965
- 56 “Calls upon all States, in order to implement the above principles:  
To act perseveringly and consistently, with due regard for the constitutional rights and the role of the family, the institutions and the organizations concerned:  
(i) To ensure that their policies relevant to the implementation of the present Declaration, including educational processes and teaching methods as well as media information activities, incorporate contents compatible with the task of the preparation for life in peace of entire societies and, in particular, the young generations;  
(ii) Therefore, to discourage and eliminate incitement to racial hatred, national or other discrimination, injustice or advocacy of violence and war;  
(a) To develop various forms of bilateral and multilateral co-operation, also in international, governmental and non-governmental organizations, with a view to enhancing preparation of societies to live in peace and, in particular, exchanging experiences on projects pursued with that end in view”;

As pointed out by Mr. Eugeniusz Kulaga, Vice-Minister for Foreign Affairs of Poland, on 15 December 1978 before the first Committee, “the preparation of societies for life in peace might be described as a specific kind of education... The countless wars which haunted mankind for centuries have developed more of an education for and mentality of war than of an education for and mentality of peace”. In addition, he added that “the ultimate goal of the preparation of societies for life in peace is that of bringing about a situation in which all future generations, in their attitudes towards other nations, shall not have to overcome the legacies of ignorance and prejudice of past epochs”<sup>57</sup>.

Education based on the values of tolerance and peace will help to create an intellectual and moral solidarity of mankind for the transformation of the obsolete maxim “si vis pacem, para bellum” into the one reflecting the present aspiration of humanity – “si vis pacem, para pacem” (if you desire peace, prepare for peace) -.

The *Declaration on the Preparation of Societies for Life in Peace* and the UDHR<sup>58</sup> share the same legal ways aimed to widely promoting the peace values and principles contained in both instruments, by proclaiming teaching and education as a key elements to construe more peaceful societies.

Part III proposes concrete follow-up measures to be adopted by Governments, UN specialized agencies (i.e. UNESCO), mass media and civil society organizations in order to implement the Declaration<sup>59</sup>.

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57 Doc. UNGA 33rd session, 1978, Official records, First Committee, Doc. A/C1/33/PV, p. 35

58 Preamble of the UDHR: “**Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”.

59 “1. Recommends that the governmental and nongovernmental organizations concerned should initiate appropriate action towards the implementation of the present Declaration;  
2. States that a full implementation of the principles enshrined in the present Declaration calls for concerted action on the part of Governments, the United Nations and the specialized agencies, in particular the United Nations Educational, Scientific and Cultural Organization, as well as other interested international and national organizations, both governmental and non-governmental;

One highlight among these measures is the creation of a broad education for peace aimed at bringing mankind to a new era of progress and solidarity among peoples, the strengthening of a new pedagogy of peace by programmes that would breed a culture of peace and international friendship and the promotion of an enlightened public opinion. It follows that governments have a particular responsibility to encourage the education of their peoples for the purposes of peace, co-operation and understanding among nations in accordance with the purposes of the UN Charter<sup>60</sup>.

### 1.3. Follow-up of the Declaration

Pursuant to the UNGA resolution 33/73 adopted in 1978, the Secretary-General, on 13 February 1981, addressed a note to the Governments of Member States or members of specialized agencies, requesting information about measures taken or intended to be taken by them to promote the implementation of the provision of the *Declaration on the Preparation of Societies for Life in Peace*. In parallel, the Under-Secretary General for Political and Security Council Affairs addressed, on 30 January 1981, a letter to the Director-General of UNESCO asking him about the initiatives taken in the education of people in the spirit of peace, peaceful coexistence and friendly co-operation.

As of 31 August 1981, replies containing such information had been received from nine States<sup>61</sup>. After this date, five other States replied to the Secretary-General by sending relevant information about the implementation of the Declaration<sup>62</sup>.

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3. Requests the Secretary-General to follow the progress made in the implementation of the present Declaration and to submit periodic reports thereon to the General Assembly, the first such report to be submitted not later than at its thirty-sixth session”.

60 Doc. UNGA 33rd session, 1978, Official records, First Committee, Doc. A/C1/33/PV, p. 40-41

61 Cuba, German Democratic Republic, Hungary, Kuwait, Mexico, Poland, Rwanda, Senegal and Ukrainian Soviet Socialist Republic. Doc. A/36/386, Report of the Secretary-General on the implementation of the Declaration on the Preparation of Societies for Live in Peace, 10 September 1981.

62 Bulgaria and Union of Soviet Socialist Republic in Doc. A/36/386, Add.1 of 2 October 1981; Byelorussian Soviet Socialist Republic and Kuwait in Doc. A/36/386, Add.2 of 10 November 1981 and Mongolia in Doc. A/36/386, Add.3 of 11 December 1981

Among the most repeated replies, in which governments mostly coincided, were the following: strong condemnation of the policy carried out by the Imperialist Powers, the colonialism, neo-colonialism, apartheid and racism<sup>63</sup>; the re-affirmation of the principles of independence, sovereignty and the right of self-determination of peoples<sup>64</sup>; consolidation of the process of détente<sup>65</sup>; arms limitation, disarmament and confidence-building measures<sup>66</sup>; the role played by the mass media in the progressive elimination of the hate speech and propaganda of war<sup>67</sup>; the implementation of the UNESCO recommendations on education for peace into the schools and revision of those textbooks which contain implicit messages of intolerance and racism<sup>68</sup>; the enactment of special laws aimed to punishing any prejudicial discrimination of citizens on the grounds of sex, religious affiliation or nationality and the enforcement of peace<sup>69</sup>; the creation of bilateral and multilateral channels to promote the political, economic, social, cultural and scientific-technical co-operation among States, peoples and individuals<sup>70</sup>; the observance of international occasions which promote the principle of peace<sup>71</sup> and the promotion of the peaceful settlement of disputes (i.e. international mediation)<sup>72</sup>.

In a letter of 20 February 1981 to the Secretary-General, Poland, the initiator of the Declaration in 1978, described what it had done to implement the Declaration by teaching a “mentality of peace” in schools; it mentioned the recognition given to the document in various

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63 Cuba, German Democratic Republic, Hungary, Ukrainian Soviet Socialist Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic, Mongolia

64 Cuba, Ukrainian Soviet Socialist Republic, Byelorussian Soviet Socialist Republic  
65 German Democratic Republic, Bulgaria, Mongolia

66 German Democratic Republic, Hungary, Rwanda, Senegal, Ukrainian Soviet Socialist Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic, Mongolia

67 German Democratic Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic

68 German Democratic Republic, Hungary, Kuwait, Ukrainian Soviet Socialist Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic

69 Hungary, Rwanda, Ukrainian Soviet Socialist Republic, Kuwait, Mongolia

70 Hungary, Kuwait, Rwanda, Ukrainian Soviet Socialist Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic

71 Kuwait

72 Rwanda, Senegal

international bodies and suggested internal, regional and multilateral activities by State<sup>73</sup>.

On 9 December 1981, the UNGA adopted the resolution 36/104 entitled “Implementation of the *Declaration on the Preparation of Societies for Life in Peace*” by 143 votes to none with two abstentions<sup>74</sup> by which it took note of the “report of the Secretary General”; reaffirmed “the lasting importance of the preparation of societies for life in peace as part of all constructive efforts at shaping relations among States and strengthening international peace and security” and stressed “the paramount value of human consciousness for the fulfillment of the purposes and principles of the Charter of the United Nations”. In addition, it invited “all States to intensify their efforts toward the implementation of the Declaration by strictly observing the principles enshrined in the Declaration and taking all necessary steps towards that end at the national and international level” and reiterated its appeal for concerted actions... to give tangible effect to the supreme importance and need of establishing, maintaining and strengthening a just and durable peace for present and future generations”.

Abstaining in the vote the United States noted what it regarded as two fundamental flaws in the Declaration and the resolution: there was inadequate reference to human rights, and the idea that States should prepare their citizens for life in peace and use information media and schools to achieve what the resolution’s preamble referred to as the “moulding of human consciousness” to fulfil the purposes and principles of the United Nations Charter was antithetical to free societies, whose Governments were prohibited from attempting to dictate or mould the opinion of their citizens<sup>75</sup>.

Reservations on this preambular phrase were also voiced by some States that voted for the resolution. The United Kingdom, on behalf of the European Community (EC) members, rejected the concept of controlling information sources, and also thought the call in paragraph 2 for action by Governments, the United Nations and specialized agencies might be interpreted as placing them on the same level, whereas the United Nations should exercise a coordinating role. The

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73 Doc. UNGA, A/36/101-140, p. 1

74 United States of America and Israel

75 Doc. Yearbook of the United Nations (1981), p. 149-150

Netherlands thought the preambular phrase seemed to imply state activities that could prejudice the exercise of freedoms by individuals and also believed, as did Austria, that the concept of life in peace must be related to human rights. Poland, on behalf of the sponsors, did not accept a Canadian suggestion that the phrase “positive moulding of human consciousness” be replaced by “encouraging in the human consciousness”<sup>76</sup>.

On 16 November 1982, the UNGA adopted the resolution 37/16 entitled “International Year of Peace” without vote<sup>77</sup> under the leadership of Costa Rica and the sponsorship of thirty-one Member States<sup>78</sup> by which it accepted the proposal made by the Economic and Social Council (ECOSOC) in its resolution 1982/15 and declared 1986 to be the International Year of Peace. In addition, it invited all States, all organizations within the United Nations system and interested non-governmental organizations to exert all possible efforts for the preparation and observance of the International Year of Peace, and to respond generously with contributions to attain the objectives of the Year.

Afterwards, on 15 October 1984, the Secretary-General received a reply from Oman by which it called for love and harmony among mankind and recalled its compromise to consolidate its political and economic relations on the basis of the principle of non-interference and the right of States to choose their social, economic and political systems without force and compulsion. In addition, it recalled that they proclaimed the Youth Year in 1983 in order to strengthen links among future generations, to consolidate ties of co-operation and to establish, maintain and strengthen a just and durable peace<sup>79</sup>.

Later, on 17 December 1984, the UNGA passed the resolution 39/157 entitled “Implementation of the Declaration on the Preparation of

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76 Doc. Yearbook of the United Nations (1981), p. 150

77 Doc. A/37/PV.69, International Year of Peace, 16 November 1982

78 Sponsors of the resolution 37/16: Bahamas, Barbados, Bolivia, Chile, China, Colombia, Costa Rica, Cyprus, Dominican Republic, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Honduras, India, Jamaica, Liberia, Malta, Nepal, Nicaragua, Pakistan, Panama, Philippines, Romania, Samoa, Senegal, Singapore, Uruguay, Venezuela and Zaire

79 Doc. A/39/143, Add.1, Report of the Secretary-General on the implementation of the Declaration on the Preparation of Societies for Live in Peace, 26 November 1984.

Societies for Life in Peace” under the leadership of Poland and the sponsorship of twenty-four Member States<sup>80</sup>. It was adopted by 119 votes to none and twenty-eight abstentions<sup>81</sup>. In accordance with the resolution, the UNGA invited all stakeholders “to incorporate active promotion of the ideas of the preparation of societies for live in peace in their programmes, including those concerning the observances of the International Year of Peace, 1986”; reaffirmed “the determination of the peoples of the United Nations to establish lasting conditions of world peace, international understanding and mutually beneficial co-operation”; recognized “the role and great historic responsibility of Governments, heads of State or Government as well as other statesmen, politicians, diplomats and civil leaders for the establishment, maintenance and strengthening of a just and durable peace for present and future generations”; requested “the Secretary-General to consider convening in 1986, within the programme of the International Year of Peace, a panel of peace research experts to consider, in a comprehensive manner, questions pertaining to the implementation of the Declaration” and further requested “the Secretary-General to continue following the progress made in the implementation of the Declaration on all planes and in the light of the observances of the International Year of Peace, and to submit a report thereon to the UNGA no later than at its forty-second session”.

Brazil said it abstained because it felt the text condoned State promotion of ideological directions which might curtail the rights of private organizations; given the fact that few Member States had replied to the Secretary-General’s request, only a short procedural text on the question was justified. Supporting these views, the Federal Republic of Germany regretted the absence of any meaningful reference to the concept of human rights, while the Netherlands declared that the

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80 Algeria, Benin, Bulgaria, Cameroon, Congo, Costa Rica, Czechoslovakia, Ecuador, German Democratic Republic, Ghana, Hungary, Indonesia, Madagascar, Mauritius, Mongolia, Panama, Peru, Philippines, Poland, Syrian Arab Republic, Tunisia, Uruguay, Viet Nam, Yugoslavia, in *Yearbook of the United Nations* (1984), p. 118

81 Australia, Austria, Bahamas, Belgium, Brazil, Canada, Denmark, Finland, France, Federal Republic of Germany, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Saint Lucia, Saint Vincent and the Grenadines, Spain, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America, in *Doc. UNGA, 39th session, 1984, Official records, Plenary meetings, V. III, p. 1904*

notion pertaining to the positive moulding of human consciousness<sup>82</sup> could prejudge the exercise of individual freedom<sup>83</sup>.

Afterwards, on 7 December 1987, the UNGA adopted the resolution 42/91 entitled “Implementation of the *Declaration on the Preparation of Societies for Life in Peace*” with the sponsorship of twenty Member States<sup>84</sup> by 128 votes<sup>85</sup> to none and twenty-four abstentions<sup>86</sup> by which solemnly reaffirmed “the lasting validity of the purposes and principles enshrined in the *Declaration on the Preparation of Societies for Life in Peace*, based on the *Charter of the United Nations*”; reaffirmed “the determination of the peoples of the United Nations to establish lasting

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82 Preamble, paragraph 2: “Recalling also its resolution 36/104 of 9 December 1981, in which, inter alia, it reaffirmed the lasting importance of the preparation of societies for life in peace as part of all constructive efforts to shape relations among States and to strengthen international peace and security, and recognized the paramount value of positive moulding of human consciousness for the fulfilment of the purposes and principles of the Charter of the United Nations”

83 Doc. Yearbook of the United Nations (1984), p. 118

84 Afghanistan, Algeria, Bulgaria, Cameroon, Congo, Costa Rica, Czechoslovakia, Ethiopia, German Democratic Republic, Hungary, Indonesia, Madagascar, Mongolia, Panama, Peru, Poland, Syrian Arab Republic, Tunisia, Viet Nam, Yugoslavia.

85 Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian SSR, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Gabon, Gambia, German Democratic Republic, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian SSR, USSR, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe

86 Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Federal Republic of, Greece, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Turkey, United Kingdom, United States

conditions of world peace, international understanding and mutually beneficial co-operation”; urged “all States to continue their sustained efforts towards the fullest implementation of the Declaration at the national and the international levels and towards increasing its national and international role by strictly adhering to the principles enshrined in that document” and recommended “that all Governments and appropriate institutions, while elaborating their policies, in particular their education programmes and school curricula, should keep in mind the principles contained in the Declaration”.

In explanation of its abstention, the United States said the specific terms of the text, like its predecessors, were based on premises that it could not accept. First, it suggested that societies were not prepared for life in peace; that was not so in the United States or it presumed in the majority of other nations. Secondly, the notion that Governments should mould the thinking of their people was totally alien to societies where, as in the United States, it was the people who moulded Governments. Thirdly, the draft resolution stressed the right to life in peace but ignored other basic human rights. The text also referred to valuable experience gained in the course of the implementation of the Declaration. In that connection, the United States could not help noting that only one year after adoption of the Declaration, one of the Governments sponsoring the current draft resolution had launched, together with massive foreign forces, a brutal war on its own population, which still continued<sup>87</sup>.

Later, on 7 December 1988, the UNGA adopted the resolution 42/91 entitled “Tenth anniversary of the adoption of the *Declaration on the Preparation of Societies for Life in Peace*” with the sponsorship of eighteen Member States<sup>88</sup> by 128 votes<sup>89</sup> to none and twenty-four

87 Doc. Yearbook of the United Nations (1984), p. 118

88 Afghanistan, Algeria, Bulgaria, Cameroon, Costa Rica. German Democratic Republic, Hungary, Indonesia. Madagascar, Mongolia, Panama, Peru, Philippines, Poland, Syrian Arab Republic, Tunisia, Viet Nam, Yugoslavia

89 Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian SSR, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Gabon, Gambia, German Democratic Republic, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Hondu-

abstentions<sup>90</sup> by which solemnly reaffirmed “the lasting validity of the purposes and principles enshrined in the *Declaration on the Preparation of Societies for Life in Peace*, based on the *Charter of the United Nations*”; noted “with appreciation the important role that the Declaration has played in promoting world peace and international security, common understanding and mutually beneficial co-operation” and called upon “all States to spare no efforts towards the fullest implementation of the Declaration at the national and international levels and towards increasing its national and international role by strictly adhering to the principles enshrined in that document”.

Finally, on 12 December 2002, the UNGA adopted the resolution 42/91 entitled “Implementation of the Declaration on the Preparation of Societies for Life in Peace” without vote by which recognized “the impact that the *Declaration on the Preparation of Societies for Life in Peace* has exerted in efforts designed to promote international peace and security and to raise public awareness of their importance for the future of nations; commended “all Governments, the United Nations and the concerned organizations of its system and other international as well as national organizations —both governmental and non-governmental—for their valuable contribution to the implementation of the principles and objectives of the Declaration”; invited “all States to guide themselves in their activities by principles enshrined in the Declaration aimed at establishing, maintaining and strengthening a just and durable peace for present and future generations” and appeal “to all States to continue utilizing the United Nations

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ras, Hungary, India, Indonesia, Iran, Iraq, Jordan, Kenya, Kuwait, Lao People’s Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian SSR, USSR, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe

90 Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Federal Republic of, Greece, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Turkey, United Kingdom, United States

potential to strengthen international peace and security, confidence and understanding as well as mutually beneficial co-operation among States in the common interest of all mankind”.

## **2. Declaration on the Right of Peoples to Peace**

### **2.1. Historical approach**

In a letter of 11 July 1984, Mongolia requested the inclusion in the agenda of the thirty-ninth regular session of the UNGA an item on the right of peoples to peace. They annexed to the letter an explanatory memorandum, which stated that adoption by the Assembly of an appropriate document would make a substantial contribution to the support of the peoples’ struggle to achieve a peaceful life<sup>91</sup>.

In its thirty-ninth session, the UNGA discussed on 12 November 1984 the draft resolution A/39/L.14, as orally revised by Mongolia.

In general terms, most of the governmental representatives<sup>92</sup>, which took the floor, stated that the right of peoples to peace was implicitly recognised by the international community in accordance with the UN Charter. In order to protect and promote this right, they proposed that States should effectively implement and respect the following set of principles contained in Art. 2 of the UN Charter, namely: prohibition of the threat or use of force against the territorial integrity or political independence of any State, the settlement of international disputes by peaceful means, the prohibition to intervene in matters within the domestic jurisdiction of any State, the cooperation among States, the self-determination of peoples and the sovereign equality of States. These delegations also stressed that the respect of the latter principles should help to eliminate the scourge of war, which has brought only death and suffering, and to create a useful tool to fight for peace and against nuclear weapons. In addition, States stated that the disarmament, the limitation of the arms race, the economic and social development of States, the improvement of the quality of life in our planet and the attainment of social progress and justice are vital to promote the right of peoples to peace.

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91 Doc. Yearbook of the United Nations (1984), p. 118

92 Mongolia, Union of Soviet Socialist Republics, German Democratic Republic, Bulgaria, Viet Nam, Hungary, Poland, Byelorussian Soviet Socialist Republic, Lao People’s Democratic Republic, Czechoslovakia, Cuba, India and Malaysia

Other governmental delegations<sup>93</sup> stated that while peace is an indispensable condition of human survival, it cannot be peace at any price. In addition, peace should be developed in accordance with the principles of the UN Charter and the rights to freedom, to self-determination, to justice and to a decent life.

Finally, another group of countries<sup>94</sup> stressed that the right of peoples to peace has no legal basis. In addition, it does not explain how the right to peace might correspond with these principles or fit in with the established and carefully constructed body of law developed from them. The concept of peace is not fully compatible with the concept of which the *Charter of the United Nations* is based. The Charter indeed proceeds on a substantive notion of peace, not merely a formal concept.

All the above positions were extensively elaborated by Member States during the debate of the draft resolution as follows:

During the debate, Mr. **Dashtsheren** (Mongolia) stated that “every people and every individual should enjoy life in peace, since peace is *sine qua non* of the attainment of all the noble aspirations the world. The supremacy of the right to peace over other fundamental rights of peoples and individuals is recognized in the Charter of the United Nations”. He added that “the right of peoples to peace, that is, the entitlement of peoples to live in and fight for peace, is implicitly recognized by the international community<sup>95</sup>”. According to him, “the right of peoples to peace provides the basis for peace, anti-war, anti-nuclear movements throughout the world”. Moreover, he said that “in order to protect and strengthen the right of peoples to peace, not only should so-called negative actions, such as refraining from the use of force, refraining from intervening or interfering in the international affairs of others, be taken, but also positive actions, such as strengthening confidence-building measures, settling international

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93 Malaysia and Philippines.

94 European Community

95 Mongolia pointed out that the right of peoples to peace is rooted in the following instruments, namely: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Definition of Aggression (res. 3314 (XXIX)), the Definition on Principles of International Law concerning Friendly Relations and Co-operation among States, the Declaration on the Preparation of Societies for Life in Peace and numerous resolutions adopted by the General Assembly.

disputes exclusively by peaceful means, accelerating the economic and social development of States, ensuring social progress and justice”<sup>96</sup>.

Afterwards, Mr. **Troyanovsky** (Union of Soviet Socialist Republics) stated that “life in conditions of peace and the prevention of war, which brings only death and suffering, have long been the cherished dream of all peoples ... It was for this purpose that the United Nations was founded and its Charter reference was made to the need to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”. He also pointed also that “in the nuclear age the establishment of a lasting peace on earth represents the primary condition for the preservation of human civilization and the survival of mankind and expresses the will of all peoples to eradicate war from the life of mankind and above all, to avert a world-wide nuclear catastrophe”. According to him, “guaranteeing the right of peoples to peace demands that the policies of States be directed toward the elimination of the threat of war, particularly nuclear war, renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the United Nations”<sup>97</sup>.

Later, Mr. **Ott** (German Democratic Republic) stressed that “the right to peace is the most significant and fundamental human right. Its guarantee and implementation are basic prerequisites of mankind and for overcoming the manifold political, economic and social problems it is faced with today”. He added that “States are called upon to provide the legal and material guarantees of the right to peace through measures in the field of disarmament, renunciation of the use of force and the settlement of international disputes exclusively by peaceful means”<sup>98</sup>.

In its turn of intervention, Mr. **Garvalov** (Bulgaria) stated that “... the growing danger of nuclear war is the most important issue for the international community and ... that the right of peoples to peace should be guaranteed by all States ... The right to peace makes States assume obligations such as those relating to the non-use of force or

96 Doc. UNGA, 39th session, 1984, Official Records, Plenary meetings VII, A/39/PV.32-70, p. 1001-1002

97 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p. 1003

98 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p. 1004-1005

threat of force in international relations, the peaceful settlement of disputes by way of negotiations, co-operation in saving present and succeeding generations from the scourge of war, the suppression of acts of aggression in international relations”<sup>99</sup>.

Afterwards, Mr. **Pham Ngac** (Viet Nam) stressed that “the arsenals of nuclear weapons continue to pile up and are capable of killing the whole of mankind many times over and that in these circumstances the right of peoples to peace has become more pressing than ever”. He added that “the right to peace is the inherent right of every man on Earth. This right has been testified to through the long history of mankind and clearly established as the most fundamental human right. The effective enjoyment of human rights can be realized only in an environment of peace and development. Therefore, peace, development and human rights, are organically linked, with peace as the sine qua non condition for the achievement of freedom, social progress and justice”. Moreover, he said that “peace and security, independence and development are noble goals that peoples of the world are striving for. With a just and durable peace, strengthened by successive disarmament measures, peoples of the world could freely engage in economic and social development and promote friendly ties among nations”.

Later, Mr. **Meiszter** (Hungary) pointed out that “it is clear that there is a close relationship between peace, human rights and development, and that one is inseparable from the others ... The *Declaration on the Preparation of Societies for Life in Peace* pronounced the principle that the right to peace is inherent, as are other rights ... Today, the greatest and most direct danger for the right of peoples to peace is raised by an eventual use of nuclear weapons ... For the right of peoples to life in peace to be strengthened, negative restraints alone are not sufficient. Positive actions, such as strengthening international peace and security, accelerating economic and social development, promoting understanding among people, should also be taken ... Peace should mean much more than the absence of war, violence or conflict. Peace should be promoted by a positive relationship between States and peoples based on co-operation, mutual trust, understanding and justice”<sup>100</sup>.

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99 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p. 1006

100 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p. 1008-1009

Mr. **Freyberg** (Poland) stated that “the right to life in peace and other human rights and development constitute an indivisible whole. Without respect for the right to life in peace, discussions on all human rights and on development become pointless. In the nuclear era, and with the existence of other modern weapons of mass destruction the elimination of war is a pre-condition of the survival of humanity ... A ban on the right war – *ius ad bellum* – will become fully effective only when the currently applicable anti-war legislation – *ius contra bellum*- is supplemented by an extensive system of legislation on the right to peace – *ius ad pacem* - ... In order gradually to strengthen *ius ad pacem* positive actions should be undertaken, such as: strengthening international peace and security; limiting the arms race and undertaking meaningful disarmament negotiations; developing confidence – building measures in all spheres of international life; accelerating economic and social development; protecting human rights and preparing societies for life in peace ... This Declaration constitutes an important achievement in the historical process aimed at the ultimate and complete eradication of war from the life of nations. It was precisely that document which directly confirmed the right of individuals, States and all mankind to life in peace”<sup>101</sup>.

Afterwards, Mr. **Gurinovich** (Byelorussian Soviet Socialist Republic) stated that “his country bases its relations with other States on observance of the principles of sovereign equality, mutual abstention from the use or threat of use of force, the inviolability of borders, the territorial integrity of States, the peaceful settlement of disputes, non-intervention in internal affairs, respect for human rights and fundamental freedoms, equality, the right of peoples to determine their own future, co-operation among States and the conscientious fulfillment of obligations stemming from the generally recognized principles and norms of international law and from treaties ... The Soviet Union was the first to favour the prohibition of and to condemn the use of nuclear weapons, as also the spreading of war propaganda and its doctrines, and to propose measures to eliminate nuclear weapons through a freeze, a test ban and a staged programme of nuclear disarmament until these weapons of mass destruction have been entirely eliminated ... They (States) must take the necessary efforts both nationally and internationally to provide a juridical and

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101 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p. 1009

material guarantee of this fundamental right of peoples to live in peace by taking practical steps to remove the nuclear threat, promote disarmament, preclude the use of force in international relations and attempt to resolve international disputes by peaceful means. In conditions of peace it is possible to tackle the problems of the well-being of peoples, their prosperity and their economic and social progress”<sup>102</sup>.

Later, Mr. **Saignavongs** (Lao People’s Democratic Republic) said that “in making the maintenance of international peace and security one of the fundamental purposes provides aspirations with a legal character, in other words, they made them a right – the right of peoples to peace - ... For the right to peace to be realized it would require respect for certain priorities and certain principles. First, the most urgent problem consists in averting the danger of a nuclear war, curbing the nuclear arms race, realizing real disarmament and preventing the militarization of outer space ... The path leading to confidence for the prevention of all wars is the cessation of the arms race, a return to good relations between States, a return to détente. Another condition for the realization of the right to peace is respect for the principles of peaceful coexistence. At present the international community is made up of States with different political and social regimes ... Peaceful coexistence also means respect for the principle of non-intervention and non-interference in the affairs of other States ... respect for independence, sovereignty and territorial integrity of other States ... there is the principle of the inviolability of existing international boundaries, including those inherited from the colonial era”<sup>103</sup>.

In its turn of intervention, Mr. **César** (Czechoslovakia) pointed out that “the vast majority of Member States have feelings of extreme alarm for the future of the world, and they are making their voices heard ever more loudly for the adoption of effective steps to remove the impending threat of nuclear annihilation and to ensure the prime human right, the right to live in conditions of peace and security ... It is only under peaceful conditions that we can effectively tackle all the other world-wide problems facing mankind, to guarantee the comprehensive economic, social, intellectual and spiritual development

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102 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p. 1010 - 1011

103 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p. 1011-1012

of civilization. We are profoundly requirement if all human rights and freedoms are to be fully realized and if the genuine worth of the human personality is to be assured ... We also attach considerable importance to the development and further strengthening of the principle of the non-use of force in international relations”<sup>104</sup>.

Later, Mr. **Verma** (India) said that “peace is of paramount importance for mankind to live under conditions of justice, prosperity and equality ... Peace is the essential prerequisite for the improvement of the quality of life in our planet ... The draft declaration on the right of peoples to peace focuses on the need to avert a world-wide nuclear catastrophe and recognizes that to ensure a peaceful life for peoples is the sacred duty of each State. It also emphasizes that policies of States should be directed toward the elimination of threat of war, particularly nuclear war, renunciation of the use of force in international relations, and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations ... From those first measures the world must proceed to nuclear disarmament, for nuclear disarmament is the only way to prevent nuclear war ... Peace is not merely the absence of war, it must be based on justice and equality, because intolerable inequality and exploitation remain the most important causes of tension, conflict and violence in the world. However, peace and disarmament are the underlying prerequisites for achieving the other cherished goals of independence, justice and development in our interdependent world”<sup>105</sup>.

Afterwards, Mr. **Oramas Oliva** (Cuba) stated that “the right of peoples to peace was recognized by the United Nations as long ago as 1945, when the signatories to the Charter of the United Nations pointed to the need to save succeeding generations from the scourge of war. However, a few weeks later, when a horrified world witnessed the massacres of Hiroshima and Nagasaki, the need to make a reality of that noble idea became much more obvious ... The overwhelming majority of speakers in the Assembly have recognized that the most critical and urgent task today is the safeguarding of international peace and security. The technological possibility of the destruction of our planet and the human species emphasizes even more our need to work for peace and to guarantee peace as an inalienable right of peoples

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104 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p. 1013-1014

105 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p. 1014-1015

... We must work resolutely to ensure observance of and respect for the principles of international law, in particular those relating to the non-use of force in international relations, to the peaceful settlement of disputes and to respect for the independence, sovereignty and self-determination of peoples”<sup>106</sup>.

Mr. **Zain** (Malaysia) said that his delegation “is frankly skeptical that any declaration on the right of peoples to peace will in and of itself bring the international community one step nearer to the goal of peace which we all cherish, or even ... it will contribute to the efforts aimed at the strengthening of international peace and security ... we believe its adoption could actually do harm to the prestige and credibility of the Organization ... It can be said that while peace is an indispensable condition of human survival, let alone human progress, it cannot be peace at any price, it cannot be an imposed peace, it cannot be an imposed peace, it cannot be a peace policed by certain Powers by their superior military might. By peace, therefore, we must mean peace with justice, and therefore it can be argued by extension that the right of peoples to peace must be coupled with their right to freedom, to self-determination, to justice and to a decent life ... In the present circumstances, my delegation feels compelled not to participate in the voting. We believe that this would reflect our position more accurately than an abstention, because what my delegation is saying essentially is that we are skeptical as to both the approach which lies behind the proposal and the actual draft declaration itself, and would not wish to be part of it”<sup>107</sup>.

Afterward, Mr. **Arcilla** (Philippines) stated that “a draft declaration of such significance deserves to be formulated in a more exhaustive and balanced manner, always bearing in mind, as it were, the principles embodied in the Charter of the United Nations”<sup>108</sup>. It was for this reason that the Philippines delegation abstained in the voting.

Later, Mr. **O'Connor** (Ireland) pointed out on behalf of the 10 States who were members of the European Community, that “the text of the annex to the draft resolution has not agreed legal basis for its assertions, although it does refer to the maintenance of international

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106 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p.1015-1016

107 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p.1016-1017

108 Doc. UNGA, 39th session, 1984, *op. cit.*, note 96, p.1017

peace and security in accordance with the Charter. It also refers to the fundamental principles of international law set forth in the Charter of the United Nations. However, it does not explain how the right to peace might correspond with these principles or fit in with the established and carefully constructed body of law developed from them”. About the questions which arise, he singled out five: “first, it is not clear how the text could be reconciled with the right to self-defense as contained in the Charter. Secondly, how would the draft relate to human rights and fundamental freedoms as set out in the Charter? Thirdly, who may invoke the right to peace? How would the right be vindicated? Fourthly, on what foundation in existing international law would the draft base the obligation of States to which it refers? And fifthly, how would the draft declaration be reconciled with Art. 2, paragraph 4, of the Charter<sup>109</sup>, which also forbids the threat as well as the use of force ... Apart from these queries of a legal character, there is a more fundamental point of substance. In the view of the Ten, the concept of peace as contained in the draft declaration is not fully compatible with the concept of which the Charter of the United Nations is based. The Charter indeed proceeds on a substantive notion of peace, not merely a formal concept. The Charter does not reduce peace to the absence or elimination of war or the threat of war, let alone one particular type of war<sup>110</sup>. For all these reasons, the Ten abstained on the draft resolution.

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109 Art. 2.4 of the UN Charter: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”

110 Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p.1017

Next, Mr. **Paul Lusaka**, President of the UNGA, called for a registered vote. The result was 92<sup>111</sup> to none and 34 abstentions<sup>112</sup>. Twenty-nine States were absent from the vote<sup>113</sup> and two countries did not participate<sup>114</sup>. The resolution 39/11 was sponsored by 8 States<sup>115</sup>.

After the vote, Mr. **Papajorgji** (Albania) said it had not participated in the vote since it believed the draft did not deal with the main aspects of the problem (i.e. crime of aggression and intervention) and did not mention the two imperialist super-Powers, the USSR and the United States, whose rivalry for hegemony was detrimental to peace and security<sup>116</sup>.

The delegations of Angola, the Islamic Republic of Iran, Lesotho and Saudi Arabia subsequently informed the Secretariat that they had intended to vote in favour of the draft resolution.

## 2.2. Legal analysis

In the *Declaration on the Right of Peoples to Peace*, we can find in its Preamble six far-reaching axioms, and in particular the following:

- 111 Afghanistan, Algeria, Argentina, Bahamas Bahrain, Bangladesh, Belize, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian, Central African Republic, Chile, China, Colombia, Congo, Cuba, Cyprus Czechoslovakia, Democratic Yemen, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, German Democratic Republic, Ghana, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iraq, Ivory Coast, Jordan, Kenya, Kuwait, Lao Peoples Democratic Republic, Lebanon, Liberia, Libyan Arab Jamahiriya, Madagascar, Maldives Mali, Mauritania, Mauritius, Mexico, Mongolia, Mozambique, Nepal, Nicaragua, Nigeria, Oman, Pakistan, Panama, Peru, Poland, Qatar, Romania, Rwanda, Sao Tome and Principe, Seychelles, Sierra Leone, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Thailand, Togo, Tunisia, Uganda, Ukrainian SSR, USSR, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire and Zambia
- 112 Australia, Austria, Belgium, Brunei, Darussalam, Cameroon, Canada, Cape Verde, Denmark, Finland, France, Gabon, Germany, Federal Republic of, Greece, Grenada, Guinea-Bissau, Iceland, Ireland, Italy, Japan, Luxembourg, Malawi, Netherlands, New Zealand, Niger, Norway, Philippines Portugal, Saint Christopher and Nevis, Senegal, Spain, Sweden, Turkey, United Kingdom and United States
- 113 Those absent included Iran, Israel, Morocco, Saudi Arabia and several Third World Countries
- 114 Albania and Malaysia
- 115 Bulgaria, Cuba, Equatorial Guinea, German Democratic Republic, Lao Peoples Democratic Republic, Libyan Arab Jamahiriya, Mongolia and Nicaragua
- 116 Doc. Yearbook of the United Nations (1984), p. 119

1. Reaffirmation that the principal aim of the United Nations is the maintenance of international peace and security; 2. Reaffirmation of the fundamental principles of international law set forth in the Charter of the United Nations; 3. The will and the aspirations of all peoples to eradicate war from the life of mankind and, above all, to avert a world-wide nuclear catastrophe; 4. That life without war serves as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations; 5. That in the nuclear age the establishment of a lasting peace on Earth represents the primary condition for the preservation of human civilization and the survival of mankind and 6. That the maintenance of a peaceful life for peoples is the sacred duty of each State.

The final statement, which constitutes the passionate culmination of the Preamble to the *Declaration on the Right of Peoples to Peace*, places the fundamental distinction between “Peoples” and “States”. The fate of “Peoples” is squarely described here as dependent on and determined by the policies of States. This places an enormous, responsibility on the shoulders of policy-makers and policy-influencers of the States.

Taking into account these axioms of the Preamble, the right to peace resolution contains four substantive sections: 1. The solemn proclamation that the peoples of our planet have a sacred right to peace; 2. The solemn declaration that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State; 3. The demand that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the *Charter of the United Nations*; 4. The supplication to all States and all international organizations to do their utmost in implementing the right of peoples to peace.

The solemn proclamation that people of our planet have a “sacred right to peace” is extraordinarily elevated language for an assemblage of government representatives, many of whom are jurists, who in the tradition of Enlightenment usually avoid entering the realm of the

sacred. Furthermore, the reference to the population of the United Nations Member States as “the peoples of our planet” shows the human masses as being more than citizens of various countries of the Earth who share a common terrestrial origin. To belong to the same identical planet is recognized as incomparably more significant than to belong to different parts of the planet.

The solemn declaration that the preservation of the right of peoples to peace and the promotion of its implementation, constitutes a fundamental obligation of each State. It asserts a basic, evident, non-transferable obligation of each State to preserve the right of peoples to peace and to foster the exercise of this right to peace by all other government.

In order to achieve the goals of the resolution, each State has to fulfil its own obligations to promote the implementation of the right of peoples to peace. These are incontrovertibly elementary obligations of all UN Member States. The resolution requires above all, a new intensity, a new dedication, a new sense of urgency in the efforts of world governments to end and to settle international strife and war preparations.

### **2.3. Follow-up of the Declaration**

In 1985, the UNGA adopted two important resolutions on the International Year of Peace and one on the right of peoples to peace.

Firstly, on 24 October 1985, the UNGA adopted the resolution 40/3 without vote under the leadership of Costa Rica and the sponsorship of fifty-four Member States<sup>117</sup> by which “approves the Proclamation of the International Year of Peace”. In accordance with this Proclamation, “... the promotion of international peace and security requires continuing and positive action by States and peoples aimed at the prevention of war, removal of various threats to peace –including the nuclear

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<sup>117</sup> Antigua and Barbuda, Argentina, Australia, Bahamas, Bangladesh, Barbados, Belize, Bolivia, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Gabon, Gambia, German Democratic Republic, Ghana, Guatemala, Honduras, Jamaica, Kenya, Lebanon, Maldives, Malta, Mauritius, Mongolia, Morocco, Nepal, New Zealand, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Saint Lucia, Samoa, Senegal, Thailand, Togo, Uruguay and Venezuela

threat -, respect for the principle of non-use of force, the resolution of conflicts and the peaceful settlements of disputes, confidence – building measures, disarmament, the maintenance of outer space for peaceful uses, development, the promotion and exercise of human rights and fundamental freedoms, decolonization in accordance with the principle of self-determination, the elimination of racial discrimination and apartheid, the enhancement of the quality of life, satisfaction of human needs and the protection of environment”; “... peoples must live together in peace and practice tolerance, and it has been recognized that education, information, science and culture can contribute to that end”; “... the International Year of Peace is not only a celebration or commemoration, but an opportunity to reflect and act creatively and systematically in fulfilling the purposes of the United Nations”. Finally, the UNGA “solemnly proclaims 1986 to be the International Year of Peace and calls upon all peoples to join with the United Nations in resolute efforts to safeguard peace and the future of humanity”<sup>118</sup>.

Secondly, on 11 November 1985, the UNGA adopted the resolution 40/10 without vote under the continued leadership of Costa Rica and the sponsorship of fifty-three Member States<sup>119</sup> by which recalled that “in the nuclear age the establishment of a lasting peace on Earth constitutes the primary condition for the preservation of civilization and the survival of mankind”; emphasized “the importance of continuing the coordination and co-operation established among United Nations programmes and activities related to the promotion of the International Year of Peace” and requested “the Secretary-General to report to the UNGA at its forty-first session on the implementation of the programme of the International Year of Peace”<sup>120</sup>.

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118 Doc. UNGA Resolution 40/3 on the International Year of Peace, 49th plenary meeting, 24 October 1985

119 Antigua and Barbuda, Argentina, Australia, Bahamas, Bangladesh, Barbados, Bolivia, Brunei Darussalam, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Gambia, German Democratic Republic, Guatemala, Guyana, Honduras, Indonesia, Ivory Coast, Jamaica, Lebanon, Mongolia, Nepal, New Zealand, Nicaragua, Pakistan, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Romania, Samoa, Senegal, Singapore, Sri Lanka, Thailand, Togo, Trinidad and Tobago, Uruguay and Venezuela

120 Doc. UNGA Resolution 40/10 on the Programme of the International Year of Peace, 70th plenary meeting, 11 November 1985

In addition, on 11 November 1985, the UNGA adopted resolution 40/11 on the right of peoples to peace<sup>121</sup> with the sponsorship of thirteen Member States<sup>122</sup> by one hundred-nine<sup>123</sup> to none and the abstention of twenty-nine States<sup>124</sup> by which recalled the “*Declaration on the Right of Peoples to Peace ...*” and that “... pursuant to the Declaration, all States and international organizations are urged to do their utmost to contribute to the implementation of the right of peoples to peace”. Moreover, it called upon “all States and international organizations to do their utmost to implement the provisions of the *Declaration on the Right of Peoples to Peace*” and requested “the Secretary-General, when submitting his report on the implementation of the programme for the International Year of Peace, to report on the measures taken by Member States and international organizations in the implementation of the *Declaration on the Right of Peoples to Peace*”.

Albania, which did not participate in the vote, felt that the resolution did not say enough, since it did not indicate the sources of the tense

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121 Doc. UNGA Resolution 40/11 on right of peoples to peace, 70th plenary meeting, 11 November 1985

122 Angola, Bulgaria, Cuba, German Democratic Republic, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Madagascar, Mali, Mauritania, Mauritius, Mongolia, Nicaragua and Viet Nam

123 Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Brazil, Bulgaria, Burma, Burundi, Byelorussian SSR, Cameroon, Cape Verde, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Gambia, German Democratic Republic, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Madagascar, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Mozambique, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Peru, Poland, Qatar, Romania, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone Somalia, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian SSR, USSR, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

124 Australia, Austria, Belgium, Canada, Central African Republic, Denmark, Finland, France, Gabon, Germany, Federal Republic of, Greece, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Paraguay, Philippines, Portugal, Spain, Swaziland, Sweden, Turkey, United Kingdom and United States

world situation, which, it said, were the super-Powers' hegemonistic and military policies, including the militarization of outer space<sup>125</sup>.

Upon the request of the resolution 40/11 on the right of peoples to peace of 11 November 1985, on 4 April 1986, the Secretary-General addressed a verbal note to the Governments of Member States and to the international organizations inviting them to submit their views on the International Year of Peace. As of 20 August 1986, ten substantive replies had been received<sup>126</sup>.

In its turn of reply, Australia pointed out that "... the fourth preambular paragraph and operative paragraph 2 of the Declaration could be interpreted as an endorsement of a philosophy that States may suppress human rights, freedom of speech, religion, individual liberty and so on, in the name of an orderly and peaceful society. The Declaration implies that the world should seek peace at any price ..." and "the Declaration omits any references to previously agreed human rights instruments such as the Charter of the United Nations, the UDHR and the ICCPR, which provide ample authority against the proposition that any one right is inherently so important that it can be a pre-condition of all the others". In addition, Australia explained all those initiatives carried out in its country in the context of the International Year of Peace with view of promoting the values of peace (i.e. Australian Peace Awards, education programmes or seminars). Moreover, Australia stressed that the right of peoples to peace should be not pursued at the expense of other basic human rights<sup>127</sup>.

As to the replies of the socialist countries, they agreed to highlight that it is of crucial importance to guarantee the right of peoples to peace in the current complex and tense situation in the world<sup>128</sup>, the need to make constant efforts aimed at implementing the right of peoples to peace (i.e. prohibition of propaganda of war and education)<sup>129</sup>, the

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125 Doc. Yearbook of the United Nations (1985), p. 125

126 Member States: Australia, Bulgaria, Czechoslovakia, Democratic Yemen and Mongolia and Specialized Agencies: International Labour Organization, Food and Agriculture Organization of the United Nations, World Health Organization, World Bank and International Atomic Energy Agency in Doc. A/41/628 on the International Year of Peace: Report of the Secretary-General, 20 September 1986

127 Doc. A/41/628 on the *International Year of Peace: Report of the Secretary-General*, 20 September 1986, p. 2-3

128 Bulgaria (p. 3)

129 Bulgaria (p. 4), Czechoslovakia (p. 5), Mongolia (p. 11)

elimination of war (i.e. nuclear war) and arms race, international cooperation, renunciation of use of force and peaceful settlement of disputes<sup>130</sup>. In addition, they informed about other initiatives, such as programmes of radio, television, press, seminars, banners, festivals or films as a means to enhance the right of peoples to peace.

On the other hand, some specialized agencies briefly explained their viewpoint about the implementation of the right of peoples to peace: International Labour Organisation – the enjoyment of the human rights and the enforcement of the UN Charter by the Security Council (SC) is necessary-, Food and Agriculture Organization of the United Nations – hunger, poverty and malnutrition are a threat to peace – health, peace and co-operation are emphasized in its Constitution -, World Bank – peace and development are closely interrelated – International Atomic Energy Agency – promotion of the peaceful uses of atomic energy-<sup>131</sup>.

On 24 October 1986, the UNGA adopted resolution 41/10 on the right of peoples to peace<sup>132</sup> with the sponsorship of twelve Member States<sup>133</sup> by one hundred-four<sup>134</sup> to none and the abstention of thirty-

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130 Bulgaria (p. 4), Czechoslovakia (p. 5, 6), Mongolia (p. 9)

131 Doc. A/41/628 on the International Year of Peace: Report of the Secretary-General, 20 September 1986, p. 11-13

132 Doc. UNGA Resolution 41/10 on right of peoples to peace, plenary meeting, 24 October 1986

133 Bulgaria, Byelorussian, Cuba, Czechoslovakia, German Democratic Republic, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Mauritania, Mongolia, Nicaragua, Syrian Arab Republic and Viet Nam.

134 Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador Equatorial Guinea, Ethiopia, Gabon, Gambia, German Democratic Republic, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Hungary, India, Indonesia, Iran, Iraq, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Qatar, Rwanda, Saint Lucia, Sao Tome and Principe, Somalia, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Uganda, Ukrainian SSR, USSR, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia and Zimbabwe

three States<sup>135</sup> by which called upon “all States and international organizations to do their utmost to contribute to the implementation of the right of peoples to peace through the adoption of appropriate measures at both the national and international levels”; requested “the Secretary-General to invite States and international organizations to inform him of the measures taken or being taken for the implementation of the *Declaration on the Right of Peoples to Peace* with a view to securing this right” and further requested “the Secretary-General to submit to the UNGA at its forty-third session a report on the implementation of the present resolution”.

The United Kingdom, speaking on behalf of the 12 States members of the European Community, explained that their abstentions were based on doubts about the compatibility of the 1984 Declaration with the Charter and the value of such declaratory measures to the cause of peace. The United States said that it shared those views. Australia, also indicating its misgivings about the Declaration, asserted that it saw no need for paragraphs 4 and 5 of the resolution, particularly in view of their budgetary implications. Senegal wanted it clearly understood that, in its view, the right of peoples to peace should not take precedence over human rights.

Introducing the text on behalf of the sponsors, Mongolia noted that the Declaration continued to receive growing support from the world community; its implementation by all States would help strengthen international peace and security and help eliminate the threat of nuclear war. The Assembly should continue to consider its implementation every year or every two years<sup>136</sup>.

Pursuant to the request of the UNGA in resolution 41/10, the Secretary-General, on 12 February 1988, addressed a *note verbale* to the Governments of Member States and international organizations inviting them to submit their views on the right of peoples to peace. As at 25 August 1988, thirteen Member States replied to the Secretary-General’s request<sup>137</sup>.

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135 Australia, Austria, Belgium, Canada, Denmark, Fiji, Finland, France, Germany, Federal Republic of, Greece, Iceland, Ireland, Israel, Italy, Japan, Liberia, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Samoa, Senegal, Sierra Leone, Solomon Islands, Spain, Suriname, Sweden, Tunisia, Turkey, United Kingdom, United States and Zaire.

136 Doc. Yearbook of the United Nations (1986), p. 119

137 Brunei Darussalam, Burkina Faso, Byelorussian Soviet Socialist Republic, Chile,

As of the replies, they agreed to highlight that Member States should be more active in the progressive elimination of nuclear weapons<sup>138</sup>, strengthening of international cooperation among States<sup>139</sup>, organization of events on sports and culture<sup>140</sup>, creation of the social conditions for achieving harmony and development<sup>141</sup>, promotion of the security in the ecological, humanitarian, social, economic, political and military fields<sup>142</sup>, reduction and control of armed forces and conventional weapons and disarmament<sup>143</sup>, inclusion of the principles contained in the right of peoples to peace at the national level<sup>144</sup>, improvement of the health, housing and educational system and reduction of poverty<sup>145</sup>, the prevention and punishment of terrorist acts<sup>146</sup> and conclusion of peace agreements<sup>147</sup>.

On 11 November 1988, the UNGA adopted resolution 43/22 on the right of peoples to peace<sup>148</sup> with the sponsorship of fifty Member States<sup>149</sup> by one hundred eighteen<sup>150</sup> to none and the abstention of twenty-nine

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Libyan Arab Jamahiriya, Mexico, Mongolia, Nicaragua, Poland, Sri Lanka, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republic and Viet Nam. Doc. A/43/602, Right of Peoples to Peace: Report of the Secretary-General, 29 September 1988

138 Brunei Darussalam (p. 3), Byelorussia (p. 4), Chile (p. 10), Poland (p. 15), Ukraine (p. 17), Union of Soviet Socialist Republic (p. 19)

139 Burkina Fasso (p. 4), Chile (p. 8), Libya (p. 11), Poland (p. 14)

140 Burkina Fasso (p. 4)

141 Burkina Fasso, Byelorussia (p. 4), Ukraine (p. 18)

142 Byelorussia (p. 5), Poland (p. 15), Union of Soviet Socialist Republic (p. 19)

143 Byelorussia (p. 5), Chile (p. 9), Mexico (p. 13), Poland (p. 14-15), Ukraine (p. 17-18), Union of Soviet Socialist Republic (p. 19)

144 Chile (p. 6-7)

145 Chile (p. 7)

146 Chile (p. 11)

147 Ukraine (p. 18)

148 Doc. UNGA Resolution 41/10 on right of peoples to peace, plenary meeting, 24 October 1986

149 Bulgaria, Byelorussian SSR, Cuba, Czechoslovakia, German Democratic Republic, Leo People's Democratic Republic, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mauritius, Mongolia, Nicaragua, Romania, Syrian Arab Republic and Viet Nam

150 Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bhutan, Bolivia, Botswana, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Gabon, Gambia, German Democratic Republic, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho,

States<sup>151</sup> by which reaffirmed that “the lasting importance and validity of the *Declaration on the Right of Peoples to Peace*”; considered that “the efforts of non-governmental organizations and world public opinion play an important role in the implementation of the Declaration” and invited “all States and international organizations to continue their efforts towards the implementation of the Declaration at the national and international levels”.

On 18 December 2002, the UNGA adopted resolution 57/216 on the right of peoples to peace<sup>152</sup> by one hundred sixty-six<sup>153</sup> to fifty three<sup>154</sup>

- Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Nicaragua, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian, USSR, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe
- 151 Australia, Austria, Belgium, Brazil, Canada, Denmark, Djibouti, Fiji, Finland, France, Germany, Federal Republic of, Greece, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Samoa, Senegal, Spain, Sweden, Turkey, United Kingdom, United States
- 152 UNGA Resolution 41/10 on right of peoples to peace, plenary meeting, 24 October 1986
- 153 Afghanistan, Algeria, Angola, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Chad, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Gabon, Gambia, Ghana, Grenada, Guinea, Guyana, Haiti, Honduras, Indonesia, Iran (Islamic Republic of), Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Solomon Islands, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, United Arab Emirates, United Republic of Tanzania, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia and Zimbabwe
- 154 Albania, Andorra, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Micronesia (Federated States of), Monaco, Netherlands, New Zealand, Norway, Palau, Po-

and the abstention of fourteen States<sup>155</sup> by which it emphasized that “ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use or threat of use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations”; affirmed “that all States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries” and urged “the international community to devote part of the resources made available by the implementation of disarmament and arms limitation agreements to economic and social development, with a view to reducing the ever-widening gap between developed and developing countries, and to promote the realization of all human rights for all”.

Mr. Enkhsaikhan (Mongolia) pointed out that in 1984 it was his country that initiated consideration by the UNGA and adoption of the Declaration of the Right of Peoples to Peace. He added that “the importance of the Declaration at that time was in the reaffirmation of the fundamental right of peoples to live in peace, without war, as it is solemnly declared in the Preamble of the *Charter of the United Nations*. The Declaration’s goal is as relevant today as it was two decades ago”<sup>156</sup>.

Finally, since 2003 the UNGA has adopted four resolutions<sup>157</sup> entitled “Promotion of peace as a vital requirement for the full enjoyment of all human rights by all” by around 120 votes to 50 –principally, from developed countries-, and ten abstentions, which have recognized the importance of respect of the right of peoples to peace, the elimination

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land, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

155 Argentina, Brazil, Chile, Ethiopia, Fiji, Guatemala, India, Madagascar, Nauru, Samoa, Singapore, Tonga, Uruguay, Uzbekistan

156 Doc. A/57/PV.77, 18 December 2002, p. 31

157 Doc. A/Res/67/173, 22 March 2013; A/Res/65/222, 21 December 2010; A/Res/60/163, 16 December 2005; A/Res/58/192, 22 December 2003

of nuclear weapons, the promotion of the right to development and the step forward on this topic carried out by the HRC with the establishment of the Open-Ended Working Group on the Right to Peace in 2012.

## Regional level

### 1. The right of peoples to peace and security in Africa

#### 1.1. Introduction

In traditional African societies peace is not an abstract poetic concept, but rather a practical concept.<sup>158</sup> Peace is conceived not only in relation to conflict and war, but also as a purpose or objective to be progressively realised in connection to freedom, justice, equality, dignity, security and stability.<sup>159</sup>

The emerging right of peoples to peace and security is a unique African international law construction that has been inadvertently, and noticeably as a result of the terrorism phenomenon, exported into the international legal framework. The African unique understanding of the notion of ‘peace’ seems to require more than previous conceptions of it allowed.

It is very interesting to highlight that this difference in conceptions is visible in the different legal systems’ legal frameworks. This translates into mutations of the international legal framework on non-intervention, where, Africa once more, has exported the idea that non-intervention includes states refraining from supporting terrorist activities in other states and that asylum-seekers do not engage in terrorist activities against their countries of origin.

#### 1.2. Peoples’ rights under the African Charter

On 14 July 1999, the Organisation of the African Union (OAU) adopted the *Convention on the Prevention and Combating of Terrorism*,<sup>160</sup> by which member states recalled in its Preamble the purposes and principles enshrined in the *Charter of the Organisation of African*

158 p. 28, Hyacinth Kalu, “Together as one: interfaith relationships between African traditional religion, Islam and Christianity in Nigeria”, Interfaith Series, vol. II, 2011

159 Kofi Annan, “In Larger Freedom - Towards Development, Security and Human Rights for All, Report of the Secretary-General of the United Nations for decision by Heads of State and Government in September 2005”. Doc. A/59/2005 of 21 March 2005, para. 78

160 *OAU Convention on the Prevention and Combating of Terrorism*, 14 July 1999, 2219 UNTS 179.

*Unity* (OAU Charter),<sup>161</sup> in particular its clauses relating to the security, stability, development of friendly relations and cooperation among its member states.

According to the *Protocol relating to the Establishment of the Peace and Security Council of the African Union*,<sup>162</sup> the objectives for which the Peace and Security Council (PSC) is established include to co-ordinate and harmonise continental efforts in preventing and combating international terrorism.

The PSC is mandated to seek close cooperation with the African Commission on Human and Peoples' Rights (African Commission) in all matters relevant to its objectives and mandate. In this regard, the African Commission is required to bring to the attention of the PSC any information relevant to the latter institution's objectives and mandate.

The African Charter was inspired by African legal philosophy as well as African needs.<sup>163</sup> The Preamble of the *African Charter* indicates that the African Charter draws its inspiration from the OAU Charter which stipulates that 'freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples'. The Preamble reaffirms

the pledge... made in Article 2 of the OAU Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify... cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

The African Charter is divided into three parts. Firstly, the two chapters of Part I deal with rights and duties. While chapter I sets

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161 The Preamble of the Convention on the Prevention and Combating of Terrorism Says: "Considering the purposes and principles enshrined in the Charter of the Organization of African Unity, in particular its clauses relating to the security, stability, development of friendly relations and cooperation among its Member States"

162 Art. 3 is devoted to the objectives for which the Peace and Security Council is established

163 Réunion des experts pour l'elaboration d'un avant-projet de Charte africaine des droits de l'homme et des peuples 1-2 (mimeo 1979), 1.

out the human and peoples' rights to be protected under the African Charter, chapter II sets out the individual's duties toward his family and society, the state and other legally recognised communities and the international community. Secondly, Part II of the African Charter elaborates those measures aimed at safeguarding the rights contained in Part I, such as the establishment of an African Commission. Finally, Part III establishes general provisions concerning the African Commission.

The African Charter imposes an obligation upon the individual not only toward other individuals but also toward the state of which s/he is a citizen in the following terms: '...the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone'.<sup>164</sup>

Neither the *European Convention on Human Rights*<sup>165</sup> nor and the *American Convention on Human Rights*<sup>166</sup> mentions such as duties and responsibilities obligation by the individual to the state. However, the notion of individual responsibility to the community is firmly ingrained in African tradition and is consistent with historical traditions and values of African civilisation upon which the African Charter relied.<sup>167</sup>

Therefore, one aspect of the *African Charter* is its inclusion of group, collective or peoples' rights as distinct rights in relation to civil and political rights and economic, social and cultural rights.<sup>168</sup> According to some African scholars, in the African traditional way of living, the communal relationship is really important:

"living in Africa means abandoning the right to be individual, particular, competitive, selfish, aggressive, conquering being ... in order to be with others, in peace and harmony with the living and the

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164 Preamble paragraph 6, African Charter on Human and Peoples' Rights.

165 European Convention on Human Rights, was opened for signature in Rome on 4 November 1950 and came into force in 1953

166 The American Convention on Human Rights, also known as the Pact of San José, was adopted in San José, Costa Rica, on 22 November 1969 and came into force on 18 July 1978

167 Gittleman R 'The African Charter on Human and Peoples' Rights: A legal analysis', p 676

168 Nmeielle V, *The African Human Rights system: its laws, practice and institutions* (2001) 138.

dead, with the natural environment and the spirits that people it or give life to it”.<sup>169</sup>

Preambular paragraph 5 of the *African Charter* reinforces the relationship between peoples’ rights and human rights in the following terms:

“Recognising on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights”.

In regards to the relationship between individual and peoples’ rights, the African Commission has attempted to avoid a controversial area by treating an issue of peoples’ rights as one of individual rights. However, the ‘Commission has also held some individual rights have a collective element and become a right of people’.<sup>170</sup>

There is no generally accepted definition of people; neither does the *African Charter* offer one. The drafters of the African Charter wanted to leave the notion of ‘peoples’ undefined. Keba M’Baye explained that the draft deliberately refused to indulge in the definition of ‘peoples’ so as not to end up in difficult discussions. In fact, he concluded that it was difficult to agree in a definition about the notion of “peoples”. Consequently, the drafters omitted to define the “peoples”, to which rights are granted, in that treaty to avoid unresolved discussions.<sup>171</sup>

However, the African Court on Human and Peoples’ Rights (African Court) had an opportunity to pronounce on this question in its case *Ogiek v. Kenya*.<sup>172</sup> Jurists and scholars found some characteristics about the notion of “peoples” at the Meeting of Experts on International Law held on February 1990 in Paris under auspices of UNESCO.

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169 M’Baye K ‘The Organization of African Unity’ (1982) *International Dimension of Human Rights* 589.

170 Murray R *The African Commission on Human and Peoples’ Rights and International Law* (2000) 109.

171 Viljoen F ‘The African Charter on Human and Peoples’ Rights: The travaux préparatoires in the light of subsequent practice’ 25 *Human Rights Law Journal*, 2004, 317.

172 Ssenyonjo M *The African Regional Human Rights System: 30 years after the African Charter on Human and Peoples’ Rights* 2012 107-108 and case *African Commission on Human and Peoples’ Rights v Republic of Kenya*, ACtHPR Application 006/2012.

These characteristics include:

1. An enjoyment by a group of individuals of all the following features:
  - (i) Common historical tradition,
  - (ii) Ethnic group identity,
  - (iii) Cultural homogeneity,
  - (iv) Linguistic unity,
  - (v) Religious or ideological affinity,
  - (vi) Territorial connection, and
  - (vii) Common economic life.
2. The group on a whole must have the will to be identified as a people or the consciousness of being a people.

Although the African Commission has not defined the notion of people, it has given some indications on its meaning. It seems to consider that a people is a population of a state, for example, the people of Rwanda or even the people of the African continent as a whole. The African Commission has expressly stated that a people is not the state itself nor does it use the term to refer to minority or ethnic groups.<sup>173</sup>

While the African Commission recognised that ‘all peoples have a right to self-determination’, it admitted that ‘there may however, be controversy as to the definition of peoples and the content of this right’.<sup>174</sup> Although the African Commission said that some groups were considered a people, it expressly denied the right to self-determination or the independence from the state itself.<sup>175</sup> The territorial integrity of existing state was upheld, with an emphasis on national unity.<sup>176</sup> The African Commission has concluded in several

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173 Murray R *The African Commission on Human and Peoples’ Rights and International Law* 104-105. Please, also see para. 195-201 in case 232/99 John D. Ouko / Kenya

174 *Katangese Peoples’ Congress v. Zaire*, ACmHPR Comm. 75/92 (1995), 8<sup>th</sup> Annual Activity Report.

175 Examination of State Reports: Gambia, Zimbabwe and Senegal, ACHPR (2012), 12<sup>th</sup> session.

176 *Katangese Peoples’ Congress v. Zaire*, 8<sup>th</sup> Annual Activity Report-260/02 Bakweri Land Claims Committee / Cameroon (2002); 266/03 Kevin Mgwanga Gunme et al / Cameroun (2003)

cases<sup>177</sup> that the principle of self-determination under the African Charter should be applied in accordance with OAU Charter, which excludes the right to secession.

The African Commission did not completely rule out the possibility of self-determination in the form of secession, but only under certain conditions, such as ‘there are no allegations of specific breaches of other human rights apart from the claim of the denial of self-determination’.<sup>178</sup> The African Commission suggests that the degree of self-determination is linked with that of the degree of representativeness of the government.<sup>179</sup>

In addition, the African Commission has stated on a number of occasions that peoples have duties, such as to promote rights and to protect and ensure democracy through fair elections, to ensure peace and to respect the territorial integrity of the particular state.<sup>180</sup>

Peoples’ rights under the *African Charter* span from Article 19 to 24. Article 19 guarantees the equality of all peoples and prohibits the domination of a people by another. Article 20 provides for the right of all peoples to self-determination. Article 21 guarantees the right of all peoples to freely dispose of their wealth and natural resources and to exercise several related rights. Article 22 deals with the right to development.

### 1.3. Definition

Article 23(1) of the *African Charter* states that the principles of the preservation of international peace and security, as well as the principles of friendly relations among states form the basic foundation of the OAU:

“All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly

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177 75/92 *Katangese People’ Congress v. Zaire*, 260/02, Bakweri Land Claims Committee v. Cameroon (2004) and 266/03 *Kevin Mgwanga Gunme et al v. Cameroon* (2009); *Endorois Welfare Council (On Behalf Of the Endorois Community) v Kenya* (2016)

178 *Katangese Peoples’ Congress v. Zaire*, 8<sup>th</sup> Annual Activity Report

179 Kirgis F ‘The degrees of self-determination in the United Nations Era’ 88 *American Journal of International Law*, 1994, 307.

180 Murray R *The African Commission on Human and Peoples’ Rights and International Law* 112.

affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States”.

The recognition of a right of the African peoples to peace should be seen as an aspiration common to all peoples of the world. The importance of this provision seems clear with respect to the direct or indirect repercussions of armed conflicts on the situation of the African peoples concerned.<sup>181</sup>

The African Charter refers to none of the legal instruments on disarmament; instead, it refers to the ‘principle of solidarity and friendly relations’, which can be found in the UN Charter and reaffirmed by the OAU Charter. In referring to the international law, which traditionally governs the conduct of States, Article 23 does not condemn all use of force or violence, which in principle remains legitimate in situations of self-defence.<sup>182</sup> As indicated by Fatsah Ouguergouz, ‘in the field of peace and security *stricto sensu*, the clearest expression of the principle of solidarity should be in the mutual defence treaties signed by certain African states’.<sup>183</sup>

The notion of security, included in Article 23, should be interpreted in light of the governmental statement elaborated by the Heads of State and Government, who solemnly declared in the OAU Assembly held in Lome (Togo) in 2000 that:

“The security of all Africans and their States as a whole is indispensable for stability, development and cooperation in Africa. This should be a sacred responsibility of all African States – individually and collectively – which must be exercised within the basic framework of the African Charter on Human and Peoples’ Rights and other relevant international instruments”.<sup>184</sup>

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181 Ouguergouz F, *The African Charter on Human and Peoples’ Rights: A comprehensive agenda for human dignity and sustainable democracy in Africa*, Martinus Nijhoff, 2003, 340-341.

182 Ouguergouz F, *La Charte africaine des droits de l’homme et des peuples: une approche juridique des droits de l’homme entre tradition et modernité*, Presses Universitaires de France pour l’Institut Universitaire de hautes études internationales, 1993, 215.

183 Ouguergouz F, *The African Charter on Human and Peoples’ Rights*, 345.

184 AHG/Decl. 4 (XXXVI), “Conference on Security, Stability, Development and Cooperation in Africa Solemn Declaration”, adopted by the OUA Assembly of Heads of State and Government at its Thirty-Sixth Ordinary Meeting held in Lomé (Togo) on 10-12 July 2000, para. 10 (c).

For some years, African leaders have attained this objective by doing their utmost to prevent conflicts. In this connection, it is relevant to note that, in a 1999 resolution devoted to the human rights in Africa, the African Commission decided to ‘establish cooperation with the OAU Mechanism for Conflict Prevention, Management and Resolution’.<sup>185</sup>

For practical purposes, it is difficult to see how Article 23(1) can be efficient in terms of enforcing the right to national and international peace and security. The African Charter does not contain enough directives to aid the enforcement of the right. The Treaty limits the whole question of peace to ensuring that an asylee does not engage in subversive activities against the country of origin or any other party to the African Charter<sup>186</sup>; and provides a prohibition of the use of the territory of a member state for subversive or terrorist activities.<sup>187</sup> Consequently, these two circumstances serve as a means to preserve the notion of state sovereignty and non-intervention in the internal affairs of a member state of the OAU.<sup>188</sup>

States have not expressly undertaken to disarm, to reduce their arsenals or to devote only a minimum of resources to defensive weapons. The implementation of the right of African peoples to peace would seem to be exhausted in the obligation for the state to prevent any subversive or terrorist armed activities in the line of the UN practice.<sup>189</sup> It follows that ‘this is a fresh codification of a rule of general international law prohibiting subversive or terrorist armed activities’<sup>190</sup>...

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185 “Resolution on the Human Rights Situation in Africa”, adopted by the African Commission at its 26<sup>th</sup> Ordinary Session held in Kigali (Rwanda) from 1 to 15 November 1999.

186 Article 23(2)(a)

187 Article 23(2)(b)

188 Nmhielle V, *The African Human Rights system: its laws, practice and institutions*, 153.

189 Paragraph 2, UNGA *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty*, UN A/RES/20/2131 (XX), 21<sup>st</sup> December 1965 and UNGA *Declaration on principles of international law concerning friendly relations and cooperation among states in accordance with the Charter of the United Nations*, UN A/RES/25/2625 (XXV), 24 October 1970.

190 Ouguergouz, *The African Charter on Human and Peoples’ Rights*, 345

Therefore, the definition of subversive activities included in Article 23(2) reaffirms a principle of African international law,<sup>191</sup> which prohibits subversive armed activities<sup>192</sup> and any private propaganda encouraging terrorism and murder in the following terms:

“For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: ... (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter”.

The prohibition of supporting terrorist activities in the territory of another member state should be interpreted in light of the *Protocol on Non-Aggression and Mutual Defence in the Great Lakes Region* of 2006,<sup>193</sup> which states that the encouragement, support, harbouring or provision of any assistance for the commission of terrorist acts and other violent trans-national organised crimes against a member state constitute acts of aggression, regardless of a declaration of war by a state, group of states, organisation of states, or armed groups, or by any foreign entity whatsoever.

The holders of the right of peoples to peace and security would be the states. People of each state are subject to the prohibition laid down in Article 23(2). Therefore, ‘it might thus legitimately be concluded that the only subject and beneficiary of the right in question is the people forming a state’.<sup>194</sup> The dual reference to the national and international contexts included in Article 23(1) permits the following interpretation: both the people of a state taken as a whole, and its different ethnic components taken individually have the right of peoples to peace. As regards to the debtors of this right, they are primarily the states parties to the African Charter.<sup>195</sup>

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191 Article 31(3)(c), *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331. Most of the States parties to the African Charter were also parties to the 1969 OUA Convention on Refugees.

192 Paragraph 2, UNGA *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty*, speaks of “subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State.”

193 Article 3 of the *Protocol on Non-Aggression and Mutual Defence in the Great Lakes*

194 Ouguergouz, *The African Charter on Human and Peoples’ Rights*, 352.

195 Ouguergouz F, *The African Charter on Human and Peoples’ Rights*, 353.

In the *Black Mauritanian* decision, a violation of Article 23 against a people by its own State was found and the African Commission determined that unprovoked attacks on villages constitute a denial of the right to live in peace and security. The African Commission also found a duty to respect the right to peace and security imposed on the State and a possible duty to protect peoples from infringement by third parties.<sup>196</sup>

In the context of the national peace and security against a state by other states in the region, the Commission found in *DR Congo v Burundi, Rwanda and Uganda*<sup>197</sup> that other states violated the right of the people of the Democratic Republic of Congo (DRC) to peace and security. The African Commission disapproved the occupation of the complainant's territory by armed forces on the basis that it contravened Article 23 of the African Charter.

These decisions may indicate the direction the African Commission could adopt in future cases. The main subject of the right of peoples to peace and security could be specific people within a territory or the entire people of a State. The African Commission has not had many opportunities to pronounce on Article 23.<sup>198</sup> However, the case No. 002/2013 – The African Commission on Human and Peoples' Rights v. Libya and the 2017 Ogiek case of the African Court of Human and Peoples' Rights have recently developed this provision of African Charter.

Therefore, it would appear that states are in a better position to enforce a violation of the right than individuals, through the inter-state communications procedure.<sup>199</sup> It follows that if a state harbours

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196 Black Mauritanian decision issued by the African Commission on Human and Peoples' Rights

197 *DR Congo v. Burundi, Rwanda and Uganda*, ACmHPR Comm. 227/99, 15<sup>th</sup> Annual Activity Report.

198 Ssenyonjo M, *The African Regional Human Rights System: 30 years after the African Charter on Human and Peoples' Rights*, Martinus Njihoff, 2012 116.

199 Article 47 of the Charter: "If a State Party to the present Charter has good reasons to believe that another State Party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This Communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the Communication, the State to which the Communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible, relevant information

citizens of other states who are engaged in subversive or terrorist activities against other member states, those member states, rather than individuals, will be in a better position to complain under the African Charter against the harbouring State.<sup>200</sup> This principle is also embodied in the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 in its article 3.2, which prohibits subversive activities in the following terms: such as “Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio”.

#### 1.4. Promoting peace and security at the domestic level

At the national level, making peace and security a right within the legal state system would be linked to the obligation of the state to keep safe the people under its jurisdiction. Conversely, at the international level, this right should be interpreted in the context of the relations between states in accordance with the main principles of international law. It follows that in the African Charter the preponderant position of the states is fundamental. Therefore, the right of peoples to peace shall be invoked before the regional human rights bodies as a grievance against the state or as a mechanism of defence.<sup>201</sup>

The concept of the right of peoples to peace and security has been explicitly included in constitutions of African countries like Burundi, Cameroon, DRC and Guinea Bissau.<sup>202</sup> However, these constitutional

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relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available”.

200 Nmehielle, *The African Human Rights system: its laws, practice and institutions* 154. See also OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969

201 H Ascensio ‘Article 23’, in M Kamto *La Charte africaine des droits de l’Homme et des peuples et le Protocole relative création de la Cour africaine des droits de l’Homme: commentaire article par article* 2011 601.

202 **Burundi (2005)** – “All Burundians have the right to live in Burundi within peace and within security. They must live together in harmony, while respecting the human dignity and tolerating their differences» (Article 14); **Cameroon (1972)** – “All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States” (Article 23); **Republic of Congo (2001)** – “all Congolese have the right to peace and security on the national as

texts have elaborated this concept by taking into account a conception based only on the relationships between states and without referring to human rights issues. In particular, these constitutions took into account some of the principles contained in Article 2 of the UN Charter, namely: the prohibition of the threat or use of force against the territorial integrity or political independence of any state, the settlement of international disputes by peaceful means, the prohibition to intervene in matters within the domestic jurisdiction of any state, the cooperation among states, the self-determination of peoples, and the sovereign equality of States.

## 2. The Role of Human Rights and Peace in the Southeast Asia Region

### 2.1. Introduction

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 when representatives from Indonesia, Malaysia, the Philippines, Singapore and Thailand signed the Bangkok Declaration. Today, this regional organization has grown to ten Members, after the accession of Brunei Darussalam (1984), Vietnam (1995), Laos and Myanmar (1997), and Cambodia (1999). ASEAN was designed to further such aims and purposes as the maintenance and enhancement of peace, security and stability, and the strengthening of human rights, fundamental freedoms and peace-orientated values in the region.

During the second informal ASEAN summit, attended by several of the existing members and held in Kuala Lumpur, Malaysia, on 15 December 1997, adopted the ASEAN Vision 2020, which set out a broad vision for ASEAN in the year 2020 described as “a concert of Southeast Asian Nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.”<sup>203</sup>

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well as on the international level (Article 52) and **Guinea Bissau (1996)**- “... proclaims her eternal gratitude to those fighters who, through their voluntary sacrifice, guaranteed the liberation of the Homeland from foreign domination, by re-winning national dignity and our people’s right to freedom, progress, and peace” (Article 5). Please, see at <http://confinder.richmond.edu/>

203 Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam

In doing so, the Heads of State and Government reaffirmed their commitment to the aims and purposes of the Association as set forth in the 1967 Bangkok Declaration—in particular, the aim to promote regional cooperation in Southeast Asia using the spirit of equality and partnership while contributing to peace, progress and prosperity in the region. In addition, these leaders recalled that ASEAN had successfully created a community of Southeast Asian nations at peace with one another and with the world, and one that was rapidly increasing prosperity of its peoples while steadily improving their lives.

Additionally, the Heads of State and Government pledged that the ASEAN region would be, by 2020, a Zone of Peace, Freedom and Neutrality, as envisaged in the 1971 Kuala Lumpur Declaration, as well being a region where territorial and other disputes would be resolved peacefully. They also envisaged a Southeast Asia free from nuclear weapons, wherein all existing Nuclear Weapon States would comply with the *Protocols of the Southeast Asia Nuclear Weapons Free Zone Treaty*. They further proposed the establishment of an ASEAN Regional Forum that could be used for confidence-building, preventive diplomacy, promoting conflict-resolution. Finally, they promoted the ideal of ASEAN as an effective force for peace, justice and moderation in the Asia-Pacific and the world.

These commitments were made shortly after the adoption of the Hanoi Action Plan, which took place on 5 December 1997, during the Second Informal Summit of ASEAN. This Plan was the first step in a series of actions that would help ASEAN reaches the goals later laid out in the ASEAN 2020 Vision. It discusses the first period of the Vision's timeline, from 1999-2004, while planning for reviews every three years to assess its progress. This plan incorporated economic and social aims that, upon realization, would closer integrate the member states.

## **2.2. The Adoption of the ASEAN Human Rights Declaration**

The ASEAN Human Rights Declaration was adopted on 17-18 November 2012 during the 21st ASEAN Summit and the Special Meeting of the ASEAN Intergovernmental Commission on Human Rights, chaired by Dr. Om Yenteng, Senior Minister and representative of Cambodia

to the Commission.<sup>204</sup> In his opening remarks, Cambodian Prime Minister Hun Sen stated that the adoption of the Declaration would promote peace, security, reconciliation, and the protection of human rights in the ASEAN region.

To reaffirm the commitment of ASEAN Member States, the Heads of State and Government signed the Phnom Penh Statement on the adoption of the *ASEAN Human Rights Declaration*. In doing so, they acknowledged, as stated in paragraph 4 of the Statement, that the ASEAN Intergovernmental Commission on Human Rights would contribute to the building of a people-oriented ASEAN Community, and act as a vehicle for the promotion of progressive social development and justice, the full realization of human dignity, and the attainment of a higher quality of life for ASEAN peoples.

On 23 August 2013, the ASEAN Day of Celebration, Bruneian Ambassador Emaleen Abd Rahman Teo, Chair of the Committee of Permanent Representatives to ASEAN, stated that ASEAN was making every effort to build a community that would allow its people to live in peace, stability, and prosperity, and would enhance their wellbeing, livelihood, and welfare. To achieve this goal, he recognized that it is vital for ASEAN to ensure that the rights of its people are promoted and protected.

At this event, Mr. Le Luong Minh, Secretary-General of ASEAN, stressed that human rights are interrelated and indivisible, comprising civil, political, economic, social and cultural rights, that they should be addressed in a balanced and integrated manner, and that they should be promoted and protected with due regard for specific social, cultural, and political circumstances. He added that, in a diversified but united region, in order for people to share aspirations for peace, development and dignity, the ASEAN's approach to human rights must be one that ensures unity in diversity.

### **2.3. Definition**

The first of the general principles enshrined in the *ASEAN Declaration on Human Rights* states that “all persons are born free and equal in

<sup>204</sup> Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam

dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.” Following up on this statement, the ASEAN compromise with the values and purposes of peace is laid out in Article 38 of the Declaration, as a follows:

“Every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realized. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region”.

It is interesting to highlight that, with this provisions assertion of the “right to enjoy peace,” the notion of “peace” is read in conjunction with the “the right to enjoy.” According to the Black Law Dictionary, the expression “enjoyment” is defined as the “possession and fruition of a right, privilege or incorporeal hereditament,” and synonymous with “comfort, consolation, contentment, ease, happiness and satisfaction.” It thus follows that “peace,” which this document inexorably links to the idea of “enjoyment,” can be understood either as a right of all people, or as an aspiration or privilege to be reached by all humankind.

In order to better understand the notion of “enjoyment” in comparative international law, we should consider its definition in scientific and medical fields. Few commentators have explicitly worked on the definition and implications of the right to enjoy the benefits of scientific progress in relation to the availability, accessibility, acceptability and quality of this right<sup>205</sup>. In addition, there has been rich discussion concerning the responsibilities of State Parties to respect, protect, and fulfill this right. In particular, we can look at article 15.3 of the International Covenant on Economic, Social and Cultural Rights (CESCR), which indicates that its signatory States Parties must “recognize the right of everyone...to enjoy the benefits of scientific progress and its applications.” Similarly, the preamble of the Council

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205 The Special Rapporteur on cultural rights identifies four general obligations: “access to the benefits of science by everyone, without discrimination; opportunities for all to contribute to the scientific enterprise and freedom indispensable for scientific research; participation of individuals and communities in decision-making; and an enabling environment fostering the conservation, development and diffusion of science and technology.”

of Europe's Convention on Human Rights and Biomedicine contains a provisions concerning "the need for international cooperation so that all humanity may enjoy the benefits of biology and medicine."

The other field in which the notion of "enjoyment" is elaborated on is that of cultural rights. Article 27 of the ICCPR recognizes that "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

The UN Human Rights Committee has stated that this Article is intended to "ensur[e] the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole." Meanwhile, the UN Committee on Economic, Social and Cultural Rights has also stated that, in order to ensure the enjoyment of the right to take part in cultural life, countries should provide cultural services, such as libraries, museums, theatres, cinemas and sports stadiums, that are open for everyone to enjoy and benefit from.

It should be noted that, while Article 27 describes cultural rights as ones to be enjoyed as a community, they nevertheless remain individual, not collective rights. The individuals who enjoy these rights are those belonging to a group that shares a common culture, religion, or language, and thus cultural rights must thus be distinguished from the right to self-determination. The Committee on Economic Social and Cultural Rights has stated that cultural rights may be exercised by a person as an individual, in association with others, or as an individual within a community or group.

Taking into account the previous provisions, in which the notion of "enjoyment" has been used, it should be concluded that the inclusion of the right to enjoy peace in legal documents is intended to ensure that authorities, such as those of ASEAN, take measures to guarantee that peace may be enjoyed in a natural and dignified manner, and that the individual has every possible means to do so. Nevertheless, we note that "peace" is a holistic concept that extends beyond the strict absence of armed conflicts; It is also linked to the eradication of

structural violence that results from economic and social inequalities, and to the effective and indiscriminate respect for all human rights.

The requisite of human rights protection for the enjoyment of peace is a key element in Article 38 of the *ASEAN Human Rights Declaration*, which states that “[e]very person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, *such that the rights set forth in this Declaration can be fully realized* [italics added].” We emphasize this last section in order to draw attention to the existing linkage between peace and human rights in the ASEAN Declaration. ASEAN’s association of human rights and fundamental freedoms can also clearly be seen in Section IV, paragraph 4.8 of the Hanoi Plan of Action (1997), which states that:

“ASEAN committed itself to enhance exchange of information in the field of human rights among ASEAN countries in order to promote and protect all human rights and fundamental freedoms in accordance with the *Charter of the United Nations*, the *Universal Declaration of Human Rights* and the *Vienna Declaration and Programme of Action*”.

The *ASEAN Human Rights Declaration* similarly reaffirms, in its Preamble, the organization’s commitment to these international human rights agreements and instruments to which ASEAN Member States are party.



## Section III

### Peace Agenda after the Cold War

#### 1. Initiative on the human right to peace within the United Nations Educational, Scientific and Cultural Organization (UNESCO)

##### 1.1. Las Palmas

In January 1997, Mr. Federico Mayor Zaragoza, Director-General, prepared a declaration on the human right to peace in which he emphasized that 'lasting peace is a prerequisite for the exercise of all human rights and duties' and that the right to live in peace should be added to the list of already recognized human rights. This declaration was presented to the Secretary-General of the United Nations, the Ministers of Foreign Affairs and Ministers of Education of Member States, NGOs, human rights centres, and academic and educational institutions<sup>206</sup>.

From 23 to 25 February 1997, an expert meeting on the human right to peace was organized by the University of Las Palmas, the Tricontinental Institute of Parliamentary Democracy and Human Rights and UNESCO with the support of the Government of the Canary Islands in Las Palmas (Spain). This meeting gathered together 30 participants, among them well-known specialists in international law and human rights<sup>207</sup>.

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206 Doc. 29 C/59, Report by the Director-General on the Human Right to Peace, 29 October 1997, p. 1-2

207 Mr M. Bedjaoui (Algeria) and Mr R. Ranjeva (Madagascar), judges of the International Court of Justice; Judge A. Cançado Trindade (Brazil), member of the Inter-American Court of Justice; Mr I. Nguema (Gabon), President of the African Commission of Human and Peoples' Rights; Mr A. Eide (Norway) and Mr G. Guerin (Italy), directors of human rights institutes; and Mr E. Roucouas (Greece), member of the United Nations Commission on International Law.

Experts attending the meeting recognized the intimate linkage between human rights and peace in accordance with international human rights law<sup>208</sup> and some UNESCO documents<sup>209</sup>. In addition, participants underlined that “the right of states to peace is already well established in international law as a result of the prohibition of war by the United Nations Charter, the prohibition of the use and threat of force, the recognition of a war of aggression as a crime against peace, the introduction of responsibility for aggression, as well as the recognition of the so-called fundamental rights of states”<sup>210</sup>. Moreover, experts recalled some other United Nations instruments, which have expressly recognized the right to peace<sup>211</sup>.

The meeting held in Las Palmas concluded that the human right to peace should be recognized, guaranteed and protected at the international level through the preparation and adoption of a Declaration on the Human Right to Peace. It was also stressed

208 Preamble to the **UNESCO Constitution**: “... the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil ...”; Article 1 of the UNESCO Constitution: ‘The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms ...’. Other important instruments are the following: the **Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights** (1978) and the **Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms** (1974).

209 Preamble and Articles 1 and 55 of the **United Nations Charter**, the Preamble and Article 28 of the **Universal Declaration of Human Rights**, the Preamble of the **International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights**. In addition, the third preambular paragraph of the **Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States** (1970) stressed ‘the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights’. This linkage was reaffirmed by the **Vienna Declaration and Programme of Action** of 1993.

210 Doc. 29 C/59, Report by the Director-General on the Human Right to Peace, 29 October 1997, p. 3

211 **Istanbul Declaration**, adopted during the twenty first International Conference of the Red Cross, **resolution 5/XXXII** of the Commission on Human Rights (1976), **Declaration on the Preparation of Societies for Life in Peace** (1978) and **Declaration on the Right of Peoples to Peace** (1984).

that such a declaration could lead to the adoption of constitutional, legislative and administrative measures at national level. The participants also asked the Director-General to continue the work with a view to elaborating a draft declaration on this subject, identifying the essential components of the human right to peace and presenting it to the twenty-ninth session of the General Conference on the eve of 1998, year of the fiftieth anniversary of the UDHR<sup>212</sup>.

In addition, experts noted that “the maintenance and restoration of peace between and within states comes up against political, economic, social and cultural obstacles that should be overcome by appropriate measures, in particular, those of an ethical and legal nature”; recognized that “all human beings have a right to peace which is inherent in their human dignity” and also considered that “the realization of the human right to peace implies necessarily that corresponding duties be assumed by individuals, states, international organizations and all other actors in society”<sup>213</sup>.

## 1.2. Oslo

From 6 to 8 June 1997, a meeting on the human right to peace was held in Oslo on the initiative of Dr A. Eide, Director of the Norwegian Institute of Human Rights. The Director of the Institute chaired and coordinated the participation of some eminent experts during the debate<sup>214</sup>.

The main objective of the meeting was to discuss, prepare and eventually adopt a Draft *Declaration on the Human Right to Peace*. Participants once again agreed that the preparation of such a declaration in the new circumstances created by the fall of the Berlin Wall and in an international context of violence and internal conflicts was of utmost importance. The text elaborated by experts was presented by the Director-General, who took part in the final session of the meeting, to the Norwegian press and radio<sup>215</sup>.

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212 Doc. 29 C/59, *op. cit.*, note 210, p. 3-4

213 Doc. 29 C/59, *op. cit.*, note 210, Annex I, p. 7

214 Mr Asdrubal Aguiar, Minister of the Presidency of Venezuela, Ambassador H. Gross Espiell (Uruguay), Professor K. Vasak (France), Professor C. Zenghi (Italy) and Professor Rafaa Ben Achour (Tunisia).

215 Doc. 29 C/59, *op. cit.*, note 210, p. 4

The Oslo Draft *Declaration on the Human Right to Peace* in its preamble refers to the main instruments in which the human right to peace is legally founded. In accordance with the drafters the enabling human right to peace is based on the Charter of the United Nations<sup>216</sup>, the Constitution of UNESCO<sup>217</sup>, the UDHR<sup>218</sup> and the International Covenants on Economic, Social, Cultural, Civil and Political Rights<sup>219</sup>. As recognized by drafters, “the recognition of a human right to peace can give peace its full human dimension”<sup>220</sup>.

In addition, the drafters pointed out in the Preamble of the Oslo Declaration the importance of international co-operation in the promotion of the human right to peace: “international co-operation is essential for the promotion and protection of the human right to peace, since it can only be respected, guaranteed and realized through the combined efforts of states, international organizations, both governmental and nongovernmental, and of individuals and public and private entities”<sup>221</sup>.

Art. 1 on “peace as a human right” of the Oslo draft Declaration defined peace from the negative perspective - understood it as absence of internal or international conflict- and also reaffirmed that the right to peace is deeply rooted in the human dignity. It proclaimed that “every human being has the right to peace, which is inherent in the dignity of the human person. War and all other armed conflicts, violence in all its forms and whatever its origin, and insecurity also, are intrinsically incompatible with the human right to peace”.

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216 Preamble and Articles 1 and 55 of the United Nations Charter

217 UNESCO, Preamble: “Since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed” and Art. 1: “... Contribute to the maintenance of peace and security and the common welfare of mankind by participating in the activities of UNESCO which aim to advance the mutual knowledge and understanding of peoples, give fresh impulse to popular education and to the spread of culture, and preserve, increase and diffuse knowledge”

218 Preamble of the UDHR: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”

219 Preamble of the ICCPR and ICESCR: “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”

220 Doc. 29 C/59, *op. cit.*, note 210, p. 4

221 Preambular Paragraph 11 in Doc. 29 C/59, Report by the Director-General on the Human Right to Peace, 29 October 1997, Annex II, p. 8

Moreover, it stressed that “the human right to peace must be guaranteed, respected and implemented without any discrimination in either internal or international contexts by all states and other members of the international community”.

As of Art. 2 on “peace as a duty”, peace is understood in a more positive manner by linking it with the obligation of States to implement policies of disarmament, opposition to acts of aggression, the promotion of human rights and the fight against inequalities and poverty. As indicated by the drafters, the violation of human rights, and in particular poverty, constitutes a clear threat or disruption to peace<sup>222</sup>.

The positive approach to peace contained in the latter provision complements with Art. 3 on “Peace through the culture of peace” by stressing that “the culture of peace, whose aim is to build the defences of peace in the minds of human beings every day through education, science and communication, must constitute the means of achieving the global implementation of the human right to peace”. It follows that education is a vital element to promote and strengthen the culture of peace<sup>223</sup>.

Finally, the Oslo draft Declaration calls upon all stakeholders to promote and implement the human right to peace through the adoption of multiple measures in different fields, and in particular education. In addition, it also recognized that international solidarity and the human right to peace are concepts mutually reinforced and interdependent<sup>224</sup>.

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222 Art. 2 (a) Every human being, all states and other members of the international community and all peoples have the duty to contribute to the maintenance and construction of peace, and to the prevention of armed conflicts and of violence in all its forms. It is incumbent upon them notably to favour disarmament and to oppose by all legitimate means acts of aggression and systematic, massive and flagrant violations of human rights which constitute a threat to peace; (b) As inequalities, exclusion and poverty can result in the disruption of peace both at international level and internally, it is the duty of states to promote and encourage social justice both on their own territory and at the international level, in particular through an appropriate policy aimed at sustainable human development;

223 Art. 3 (b): “The culture of peace requires recognition and respect for - and the daily practice of - a set of ethical values and democratic ideals which are based on the intellectual and moral solidarity of humanity”.

224 1. Calls upon all individuals, all states, all international organizations, governmental and non-governmental, and, in a general way, all social actors, to promote

At the beginning of July 1997, the Director-General sent a letter to the Heads of State of all Member States, in which was accompanied the Draft Declaration on the Human Right to Peace prepared by the Oslo meeting. The aim of this letter was to present the Director-General's ideas on the human right to peace, to inform Member States on the development of this idea and to present briefly the normative background. Finally, the letter introduced the Oslo Draft Declaration to Member States in order to receive their opinions on this initiative<sup>225</sup>.

As at 22 October 1997, 42 Member States had replied to the Director-General's letter<sup>226</sup>. In regards to the answers, there were three different groups of countries, namely:

Twenty-eight Member States supported the initiative and also affirmed their commitment to the values set out in the *Charter of the United Nations* and the Constitution of UNESCO, particularly to peace and to the need permanently to enshrine the right to peace as a human right which is fundamental to the building of a culture of peace<sup>227</sup>.

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and to implement the human right to peace; 2. Urges all states, bearing in mind the requirements of international solidarity, to take, with a view to the implementation of the human right to peace, all appropriate measures of a constitutional, legislative and administrative nature at the economic, social and cultural levels, and in the fields of education, science and communication.

225 Doc. 29 C/59, *op. cit.*, note 210, p. 4-5

226 People's Democratic Republic of Algeria, the Republic of Angola, the Azerbaijani Republic, Barbados, the Republic of Belarus, Belize, Cambodia, Canada, the Republic of Croatia, the Republic of El Salvador, the French Republic, the Republic of the Gambia, Georgia, the Republic of Ghana, Grenada, the Co-operative Republic of Guyana, Jamaica, the Republic of Kazakhstan, the Lebanese Republic, the Grand Duchy of Luxembourg, the Republic of Maldives, the Republic of Malta, the Principality of Monaco, the Republic of Mozambique, the Republic of Namibia, the Kingdom of Nepal, the Kingdom of the Netherlands, New Zealand, the Republic of the Philippines, the Republic of Poland, the Portuguese Republic, the Republic of Moldova, the Republic of San Marino, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Democratic Socialist Republic of Sri Lanka, the Swiss Confederation, the Republic of Trinidad and Tobago, the Republic of Tunisia, the Republic of Uganda and Ukraine. Doc. letter DG/19/97/LAC/199 of 1 July 1997

227 Doc. 29 C/59, *op. cit.*, note 210, p. 5

Ten Member States suggested changes or proposed amendments<sup>228</sup> to the Draft Declaration while at the same time expressing interest, in the principles of the initiative<sup>229</sup>.

Four Member States expressed reservations regarding the possible adoption by UNESCO of the Draft *Declaration on the Human Right to Peace*. They were of the view that the matter lay more properly within the competence of the UNGA of the United Nations, and that UNESCO should focus its efforts on its own fields of competence rather than on a declaration on human rights<sup>230</sup>.

### 1.3. Bamako and Maputo

After the Oslo meeting, other meetings were held in other countries, at which the need to recognize the human right to peace was affirmed. Those meetings resulted in documents such as the Bamako Declaration (Mali), adopted on the occasion of Peace Week and the Maputo Declaration (Mozambique), adopted by the International Conference on the Culture of Peace and Governance<sup>231</sup>.

The participants in Peace Week, held in Bamako from 24 to 28 March 1997, in the presence of high level dignitaries<sup>232</sup>, launched “an appeal to African leaders to put an end to the suffering of their peoples by opting for good governance, which gives precedence to participation rather than exclusion and to dialogue rather than confrontation - governance which respects democratic principles and human rights”<sup>233</sup>.

The appeal, which was included in the Bamako Declaration, was addressed to the various actors in society - women, young people, elected representatives, members of the armed forces, communicators and educators -. It proclaims “the need to work for the building of peace and democracy and for development in a spirit of solidarity and tolerance”<sup>234</sup>.

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228 Amendments: inclusion of a provision referring to the promotion of sustainable development and prevention of all forms of discrimination

229 Doc. 29 C/59, *op. cit.*, note 210, p. 5

230 Doc. 29 C/59, *op. cit.*, note 210, p. 5

231 Doc. 29 C/59, *op. cit.*, note 210, p. 4

232 President Henri Konan Bédié of Côte d'Ivoire, President Alpha Oumar Konaré of Mali and the Director-General of UNESCO, Mr Federico Mayor.

233 Doc. 29 C/59, *op. cit.*, note 210, Annex III: Bamako Declaration, p. 10

234 Doc. 29 C/59, *op. cit.*, note 210, Annex III: Bamako Declaration, p. 10

In addition, the Bamako Declaration noted that “the proliferation of arms, and in particular light weapons, is a threat to peace and stability in several subregions of the continent, and continues to feed the sources of insecurity”. It also reaffirmed that “without peace there can be no democracy, and that without democracy there can be no development” and subsequently that “without peace it is impossible to guarantee respect for human rights”. Therefore, the Bamako Declaration pointed out that promotion and enforcement of peace is closely connected to elimination of arms, development, democracy and protection of human rights<sup>235</sup>.

Finally, participants in the Peace Week declared that “the human right to peace is a fundamental right without which respect for human rights is illusory”.

From 1 to 4 September 1997, the President of Mozambique, with the support of the Director-General of UNESCO and the Secretary-General of Organization of the African Union, organized an International Conference on the Culture of Peace and Good Governance in Maputo.

Participants in the meeting launched “an urgent appeal to the populations of the subregion and to decision-makers to work for an effective and rapid transition to a culture of peace, in particular by paying special attention to the victims of war and first and foremost to those belonging to the vulnerable sectors of the population”.

In both the Preamble and dispositive section of the Maputo Declaration, participants stressed that the following legal components are essential to give a specific content to the human right to peace, namely: the transition from a culture rooted in war, prejudice and violence to a culture of peace and tolerance<sup>236</sup>; sustainable economic and social development and a system of participatory democracy<sup>237</sup>; elimination of the huge social disparities and empowerment of vulnerable sectors

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235 Doc. 29 C/59, *op. cit.*, note 210, Annex III: Bamako Declaration, p. 10

236 Preamble, paragraph 1 : “Mindful that the transition from a culture rooted in war, prejudice and violence to a culture of peace and tolerance can be achieved only with the help of all peoples of the region, the decision-makers, the elected representatives, the educators and particularly young people and women”

237 Preamble, paragraph 2: “Convinced that a necessary accompaniment to peace-building is sustainable economic and social development and a system of participatory democracy based on governance informed by the democratic principles of justice, freedom, tolerance and solidarity”

of the population<sup>238</sup>; healthy environment<sup>239</sup>; peace as a precondition for ensuring respect for human rights<sup>240</sup> and promotion of education for tolerance, human rights and democracy<sup>241</sup>.

Finally, participants in the International Conference declared that “at a time when humankind is preparing to mark the fiftieth anniversary of the Universal Declaration of Human Rights, reaffirm that the human right to peace is an inalienable right, without which respect for the other rights cannot be guaranteed”<sup>242</sup>.

#### **1.4. International consultation of governmental experts on the human right to peace**

Pursuant to the resolution 29 C/Resolution 43<sup>243</sup> on the draft *Declaration on the Human Right to Peace*, UNESCO acknowledged “the intimate link between peace and human rights”<sup>244</sup>; took note of “Article 3 of the UDHR which proclaims that ‘everyone has the right to life, liberty and security of person’”<sup>245</sup> and also recognized that “the absence of peace seriously impairs respect for human life and dignity and the full implementation of all human rights and

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238 Preamble, paragraph 4: “Bearing in mind that the huge social disparities existing at the national and international levels constitute one of the main sources of conflict, together with the highly disturbing plight of the victims of violence and, more particularly, of the vulnerable sectors of the population”

239 Preamble, paragraph 6: “Aware of our responsibility towards future generations and their right to live in peace in a healthy environment”

240 Preamble, paragraph 7: “Recalling that UNESCO’s mission, as enshrined in its Constitution, is to construct ‘the defences of peace’ in ‘the minds of men’, that peace is a precondition for ensuring respect for human rights, and that without peace there can be neither development nor democracy”

241 Dispositive provision n. 1: “Pledge to champion education for tolerance, human rights and democracy throughout life, to foster reconciliation through the sharing and equitable distribution of resources of all kinds, and to stimulate the practice of democracy on a day-to-day basis, and support studies and experiments in reconciliation that can serve to prevent conflicts”

Dispositive provision n. 4: “Recommend, further, that an overhaul of curricula be undertaken in order to strengthen programmes of civic and moral education, and encourage the expansion of UNESCO clubs while at the same time noting with satisfaction the OAU initiative to set up similar Clubs”

242 Doc. 29 C/59, *op. cit.*, note 493, Annex IV: Maputo Declaration, p. 12

243 Doc. 29 C/Resolution 43, Resolution adopted on the report of Commission V at the 27th plenary meeting, on 12 November 1997

244 Preamble, paragraph 3

245 Preamble, paragraph 4

fundamental freedoms”<sup>246</sup>. In addition, it recalled the *Declaration on the Preparation of Societies for Life in Peace* (15 December 1978) and the *Declaration on the Right of Peoples to Peace* (12 November 1984), both adopted by the UNGA of the United Nations<sup>247</sup>.

Additionally, UNESCO invited the Director-General “to convene an international consultation of governmental experts to examine the matter in light of the discussions that took place during the 29th session of the General Conference and of the replies of the Heads of State or Government”.

From 5 to 9 March 1998, 117 Member States<sup>248</sup> of UNESCO Governmental met at UNESCO Headquarters in Paris. Moreover, Observers<sup>249</sup>, intergovernmental organizations<sup>250</sup> and civil society organizations sent representatives to the meeting.

At the beginning of the Consultation the Chairperson<sup>251</sup> and the members of its Bureau<sup>252</sup> were elected. In accordance with its Rules

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246 Preamble, paragraph 8

247 Preamble, paragraph 6

248 Albania, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Belize, Benin, Bolivia, Brazil, Bulgaria, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lao People’s Democratic Republic, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malawi, Malaysia, Mauritius, Mexico, Monaco, Morocco, Mozambique, Namibia, Nepal, Netherlands, Nicaragua, Niger, Nigeria, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Seychelles, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen and Zimbabwe.

249 Palestine and the Holy See

250 Agency for Cultural and Technical Co-operation, Commonwealth Secretariat, Council of Europe, Inter-American Development Bank, Latin Union, League of Arab States, Organization of African Unity and Organization of American States

251 Mr. Alexandre Kouznetsov (Russian Federation)

252 Vice-chairpersons: Canada, Democratic Republic of the Congo, Egypt and Malaysia. Rapporteur: Venezuela

of Procedure<sup>253</sup>, the meeting established a Drafting Committee consisting of representatives of several countries<sup>254</sup>.

The meeting was opened by the Director-General of UNESCO who, welcoming the participants and observers, delivered an address in which he recalled the events organized in preparation of the International Consultation<sup>255</sup>, the Preamble to the Charter of the United Nations<sup>256</sup>, the Agenda for Peace elaborated by Mr. Boutros Boutros-Ghali<sup>257</sup> and the transdisciplinary project of Culture of Peace<sup>258</sup>.

He then introduced the *Draft Declaration on the Human Right to Peace as the Foundation of the Culture of Peace*, in which he outlined the legal basis of the human right to peace<sup>259</sup> and its linkage with the Culture of Peace<sup>260</sup>. In addition, he proclaimed in the draft Declaration that “the right of every human being to peace constitutes

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253 Doc. SHS-98/CONF.201/2

254 Belarus, Bulgaria, Dominican Republic, France, Germany, Iran (Islamic Republic of), Japan, Malawi, Morocco, Senegal, Syrian Arab Republic and Uruguay.

255 Meeting held in Las Palmas (February 1997) and Oslo (June 1997)

256 Preamble, paragraph 1: “We the Peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind ...”

257 An agenda for peace: preventive diplomacy, peacemaking and peace-keeping, Report of the Secretary-General, Doc. A/47/277, S/24111, 17 June 1992

258 Doc. 28 C/Resolution 5.3, 1995

259 **Charter of the United Nations, Preamble:** the peoples of the United Nations are determined “to practise tolerance and live together in peace with one another as good neighbours” and **Art. 1:** the first purpose of the United Nations is the maintenance of international peace and security; **Art. 1 of the UNESCO Charter:** the purpose of the Organization is to contribute to peace and security among nations through education, science, culture and communication; **Preamble to the Universal Declaration of Human Rights:** “the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”; **Declaration on the Preparation of Societies for Life in Peace** (15 December 1978) and the **Declaration on the Right of Peoples to Peace** (12 November 1984), both adopted by the General Assembly of the United Nations

260 Doc. UNGA resolution 50/173 of 22 December 1995, entitled “**United Nations Decade for Human Rights Education: towards a culture of peace**”; Declaration adopted by the General Conference of UNESCO at its 29th session on “**The Responsibilities of the Present Generations Towards Future Generations**”; UNGA, “**International Year for the Culture of Peace**” (year 2000), 20 November 1997.

the foundation of the culture of peace”<sup>261</sup> and also that “violence in all its forms is intrinsically incompatible with the right of every human being to peace; since inequalities, exclusion and poverty are liable to lead to violations of international peace and internal peace ...”<sup>262</sup>.

In his opening remarks, the Director-General also stated that “the main aim of the Consultation was to seek, in a spirit of consensus, general agreement with a view to recognition of the human right to peace as the foundation of the culture of peace, so that UNESCO might make a major contribution to the fiftieth anniversary of the Universal Declaration of Human Rights”<sup>263</sup>.

Afterwards, the Representative of the United Nations read out a message sent to the International Consultation by the Secretary-General of the United Nations. In his message, Mr. Kofi Annan stated that “respect for human rights is the best guarantee of peace and the establishment of a durable peace is a condition of the respect for human rights” and also that “the struggle for peace is the struggle for human rights and the struggle for human rights is the struggle for peace”. Finally, he showed his honor to witness the emergence of the “right to live in peace” as a fundamental human right<sup>264</sup>.

During the general debate, Member States were unanimous regarding the existence of an indivisible link between all human rights and peace<sup>265</sup> and also recognized that the Draft Declaration to be prepared would primarily be an ethical document designed to proclaim principles<sup>266</sup>. In addition, for a large number of speakers a declaration

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261 Art. 2, in Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, Doc. 154 EX/40, 17 April 1998, Annex II, p. 11-13

262 Art. 4 in Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 261, Annex II, p. 11-13

263 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 261, paragraph 4, p. 5

264 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 261, Annex IV, p. 18-19

265 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 261, paragraph 12, p. 8-9

266 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 261, paragraph 16, p. 9-10

on the human right to peace would form the very basis of a culture of peace. Moreover, some Member States stressed that the human right to peace is already mentioned in several international instruments, and saw there a process similar to that which had been initiated in the case of the right to development<sup>267</sup>.

However, a number of Member States expressed doubts and reservations concerning the relevance of defining peace as a human right, its content and scope and UNESCO's competence to draw up a standard-setting instrument on that subject<sup>268</sup>. In particular, Luxembourg on behalf of the EU, said that they cannot support the draft declaration on the Human Right to Peace, which is made ineffective by certain aspects and therefore needs more work. Afterwards, Austria stated that no one can doubt their commitment to a culture of peace which has given a renaissance to UNESCO thanks to the actions of the Director-General. But the idea of the Human Right to Peace undermines the idea of human rights. It cannot be enforced - who will enforce the Human Right to Peace?-. In accordance with Denmark, the Declaration confounds human rights and peace which should be addressed separately. For France, the Human Right to Peace indicates that peace is a precondition for human rights, a position that would weaken human rights. Japan added that the new proposal should be considered by the UNGA and SC. Afterward, Italy said that it is not advisable to invent new human rights while existing rights are not being respected. The Netherlands and Switzerland also stated that the right to peace cannot be a cause but a result - one could not deny fundamental rights in the name of the right to peace. Australia added that the time they had spent on this issue is distracting them from the real issues of the culture of peace<sup>269</sup>.

In his final address the Rapporteur drew attention to the complexity of the subject examined and outlined the three main positions of the participants regarding the question of the right to peace: those who thought that it should be fully established as a human right; those

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267 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 261, paragraph 13, p. 9

268 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 261, paragraph 14, p. 9

269 See in <http://www.culture-of-peace.info/annexes/commissionV/summary.html>

who believed that it should be recognized as a moral right; and those for whom peace was not a human right, but an aspiration of human beings. However, he pointed out that “all the participants had agreed on the fact that a lasting peace could only exist in a situation where human rights were respected and on the existence of an indivisible link between human rights and peace”<sup>270</sup>.

Afterwards, the Director-General of UNESCO stated that “the meeting represented an important stage in the task of constructing peace and that a thorough study of its fruitful debates and conclusions would provide him with the essential ideas required for planning the next stages in the process”<sup>271</sup>.

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270 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 261, paragraph 21, p. 10

271 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 261, paragraph 23, p. 10

## **2. United Nations**

### **2.1. Introduction**

After the collapse of the USSR, Cuba decided to reinvigorate the traditional notion of the right of peoples to peace within the United Nations system in the understanding that the right to peace is principally devoted to the relationship among countries and the condemnation of war.

Unlike the new constitutions approved in both the Russian Federation and the former East bloc, the Constitution of the Republic of Cuba continued recognizing in its Preamble the socio-political ideas of Marx, Engels, and Lenin and outlined that all the regimes of the exploitation of man by man cause the humiliation of the exploited and the degradation of the human nature of the exploiters and that only under socialism and communism man could free from all forms of exploitation —slavery, servitude and capitalism—.

Inspired in the notion of peaceful coexistence, article 12 declares that Cuba adopts anti-imperialist and internationalist principles, and consequently, ratifies its aspiration for a worthy, true, and valid peace for all States, large and small, weak and powerful, based on the respect for the independence and sovereignty of peoples and the right to self-determination. Also it reaffirms the “... principles of equality of rights, free determination of peoples, territorial integrity, independence of States, international cooperation for mutual and equitable benefit and interest, peaceful settlement of controversies, marked by equality and respect, and the other principles proclaimed in the United Nations Charter and in other international treaties to which Cuba is a party”.

Like article 38 of the 1977 USSR Constitution, which recognized the right of asylum to foreigners persecuted for defending the interests of the working people and the cause of peace, article 13 of the Cuban Constitution “grants asylum to those persecuted for their ideals or struggles for democratic rights against imperialism, fascism, colonialism and neo-colonialism; against discrimination and racism; for national liberation; for the rights and demands of the workers, peasants, and students; for their progressive political, scientific, artistic, and literary activities; and for socialism and peace”.

Although the USSR was dissolved on 26 December 1991, some ideas and principles based on the Marxist conception of peace keep still alive in the United Nations. In fact, the Non-Aligned Movement (NAM), which represents nearly two-thirds of the United Nations' members, based its action on the following principles: the mutual respect for each other's territorial integrity and sovereignty; mutual non-aggression; mutual non-interference in domestic affairs; equality and mutual benefit and peaceful co-existence.

In this context, the traditional construction of the right to peace, which was and is actually supported by the whole NAM, emphasizes that ensuring the exercise of this right and its promotion demands that the policies of States be directed towards the elimination of the threat of war, the renunciation of the use or threat of use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations.

This conception is rooted in Marxism, which holds that just peace is not founded on aggression, but in the full respect of the independent development and interests of all countries. According to some thinkers, communism could best be developed in conditions of peace, but that was incapable of eliminating the unavoidability of wars, since these arise from the essential nature of the imperialist system.

## **2.2. Commission on Human Rights**

From 2001 to 2003 the Commission on Human Rights (CHR) adopted two resolutions entitled “promotion of the right of peoples to peace”<sup>272</sup>. In particular, at the 78th meeting, Mr. Rodolfo Reyes, representative of Cuba, introduced draft resolution E/CN.4/2001/L.95, sponsored by several countries<sup>273</sup> and said that the text aimed to consolidate and promote the international community's conviction that “life without war serve(d) as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental freedoms

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272 Commission on Human Rights resolution 2001/69, 25 April 2001 and resolution 2002/71, 25 April 2002

273 Algeria, Angola, Burundi, Cuba, the Democratic People's Republic of Korea, the Democratic Republic of the Congo, Ghana, Haiti, the Libyan Arab Jamahiriya, the Republic of the Congo, Rwanda, the Sudan and Togo. Kenya, Madagascar, Panama, Tunisia and Yemen subsequently joined the sponsors.

proclaimed by the United Nations”, as enshrined in the *Declaration on the Right of Peoples to Peace*. He added that following extensive open-ended consultations, a significant part of the text and the original title (“human rights and disarmament”) had been modified to ensure that the draft resolution would be widely acceptable<sup>274</sup>.

In the explanation of vote before the vote, Mr. Noirfalise, representative of Belgium, speaking in explanation of the position of the European Union (hereinafter, EU) and its associated countries<sup>275</sup>, said that some of the issues raised in the draft resolution were better dealt with in other forums. International Peace and Security were essential for the realization of all human rights, including the right to development, but military spending continued to be high. There was therefore a need for Governments to set priorities in favour of development and the promotion and protection of human rights. He added that the draft resolution dealt only with the relationship between States and not with the relationship between a State and its citizens, which was the Commission’s core mandate. Moreover, the *Declaration on the Right of Peoples to Peace* had not been agreed to by consensus. The Union was also uncomfortable with the idea that there was a right to peace, which was not established in any international human rights instrument<sup>276</sup>.

Ms. Gervais-Vidricaire, representative of Canada, speaking also on behalf of Norway, said that neither delegation had supported the *Declaration on the Right of Peoples to Peace* (which had been approved by the UNGA in 1984 by 92 votes to none, with 34 abstentions). Both delegations maintained their concerns regarding the concept of the “right to peace”, including the content of such a right and the specific obligations of States. The draft resolution dealt with matters more appropriately addressed in other forums, such as the UNGA, SC and

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274 Doc. E/CN.4/2001/SR.78, Summary record of the 78<sup>th</sup> session, 1 May 2001, p. 20-21

275 Members of the European Union that are members of the Commission - France, Germany, Italy, Portugal, Spain and the United Kingdom of Great Britain and Northern Ireland; the associated countries that are members of the Commission - the Czech Republic, Latvia, Poland and Romania - aligned themselves with the statement),

276 Doc. E/CN.4/2001/SR.78, Summary record of the 78<sup>th</sup> session, 1 May 2001, p. 23-24

Conference on Disarmament. She thus urged the members of the Commission to oppose the draft resolution<sup>277</sup>.

Mr. Moose, representative of the United States, said that his delegation was deeply concerned that the draft resolution dealt largely with disarmament and relations between States, issues which were more appropriately addressed in the First Committee of the UNGA and other forums. The Commission should avoid politicization<sup>278</sup>.

At the request of the representative of Belgium, a roll-call vote was taken on the draft resolution, which was adopted by 29 votes<sup>279</sup> to 16<sup>280</sup>, with 7 abstentions<sup>281</sup>.

In explanation of vote after the vote, Ms. Kunadi, representative of India, said that, although the text contained agreed-upon language from various international instruments and although her delegation noted in particular the second preambular paragraph and paragraph 4, it did not consider the Commission to be the appropriate forum for examining disarmament issues<sup>282</sup>.

Afterwards, Ms. Ruiz de Angulo, representative of Costa Rica, said that she did not agree with the preceding speaker. The Commission was indeed the appropriate forum to address such issues, since disarmament was crucial to the protection of human rights. The draft resolution complemented other resolutions adopted by the Commission with the aim of promoting a culture of peace. Costa Rica possessed no army, having opted to devote its national resources to education and development<sup>283</sup>.

Afterwards, at the 56<sup>th</sup> meeting of the Commission, the representative of Cuba introduced draft resolution E/CN.4/2002/L.90, sponsored by

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277 Doc. E/CN.4/2001/SR.78, *op. cit.*, note 274, p. 25

278 Doc. E/CN.4/2001/SR.78, *op. cit.*, note 274, p. 26

279 Algeria, Burundi, China, Costa Rica, Cuba, Democratic Republic of the Congo, Ecuador, Indonesia, Kenya, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mauritius, Mexico, Niger, Nigeria, Pakistan, Peru, Qatar, Russian Federation, Saudi Arabia, South Africa, Swaziland, Syrian Arab Republic, Thailand, Uruguay, Venezuela, Viet Nam, Zambia.

280 Belgium, Canada, Czech Republic, France, Germany, Italy, Japan, Latvia, Norway, Poland, Portugal, Republic of Korea, Romania, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America.

281 Argentina, Brazil, Cameroon, Colombia, Guatemala, India, Senegal.

282 Doc. E/CN.4/2002/SR.56, Summary record of the 56<sup>th</sup> session, 1 May 2001, p. 30

283 Doc. E/CN.4/2001/SR.56, *op. cit.*, note 282, p. 31

several countries by saying that the absence of war is the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms, and in particular the right to life. To ensure the exercise of the right of peoples to peace the policies of States should be directed towards the elimination of the threat of war, the renunciation of the use or threat of use of force in international relations, the settlement of international disputes by peaceful means, the respect of the principle of territorial integrity and the respect of independence of States on the basis of the *Charter of the United Nations*. In addition, the international community should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries<sup>284</sup>.

In the explanation of vote before the vote, Mr. Perez Villanueva y Tovar, representative of Spain, speaking in explanation of the position of the EU and its associated countries<sup>285</sup>, said that some of the issues raised in the draft resolution were better dealt with in other forums. He added that the draft resolution dealt only with the relationship between States and not with the relationship between a State and its citizens, which was the Commission's core mandate. The Union was also uncomfortable with the idea that there was a right to peace, which was not established in any international human rights instrument<sup>286</sup>.

Ms. Gervais-Vidricaire, representative of Canada, said that her country rejected the *Declaration on the Right of Peoples to Peace*. She maintained their concerns regarding the concept of the "right to peace", including the content of such a right and the specific content of this right. The draft resolution dealt with matters (i.e. peace and security and disarmament) more appropriately addressed in other forums<sup>287</sup>.

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284 Doc. E/CN.4/2001/SR.78, Summary record of the 78<sup>th</sup> session, 9 August 2002, p. 44

285 Members of the European Union that are members of the Commission - France, Germany, Italy, Portugal, Spain and the United Kingdom of Great Britain and Northern Ireland; the associated countries that are members of the Commission - the Czech Republic, Latvia, Poland and Romania - aligned themselves with the statement),

286 Doc. E/CN.4/2001/SR.78, *op. cit.*, note 284, p. 48

287 Doc. E/CN.4/2001/SR.78, *op. cit.*, note 284, p. 49

At the request of the representative of Spain, a roll-call vote was taken on the draft resolution, which was adopted by 33 votes<sup>288</sup> to 15<sup>289</sup>, with 5 abstentions<sup>290</sup>.

Both resolution 2001/69 of 25 April 2001 and resolution 2002/71 of 25 April 2002, adopted by the CHR, referred to several topics of human rights, namely: firstly, Art. 28 of the UDHR, which states that “everyone is entitled to a social and international order in which the rights and freedoms set forth in the UDHR can be fully realized” (Preamble); secondly, “life without war is the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms” (Preamble) and thirdly, the encouragement to avoid “the resurgence of a new arms race, bearing in mind all the resulting predictable consequences for global peace and security, for development and for the full realization of all human rights” (Paragraph 7 and 8).

In general terms, the latter resolutions have basically elaborated in their Preambles the fundamental principles of international law set forth in Art. 2 of the Charter of the United Nations, namely: sovereignty, territorial integrity and political independence of States and non-intervention. In addition, these two resolutions have stressed the importance of promoting the right of self-determination of peoples, the relationship between disarmament and development and a life without war as primary international prerequisites for the material well-being, development and progress of countries.

In the operative sections of these resolutions the CHR has elaborated the concept of the right of peoples to peace taking exclusively into account questions principally devoted to the relationship among States. In particular, they focused their attention on the elimination of the threat of war – particularly nuclear war – the renunciation of the

288 Algeria, Armenia, Bahrain, Burundi, Cameroon, Chile, China, Costa Rica, Cuba, Democratic Republic of the Congo, Ecuador, Indonesia, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Peru, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, Sudan, Swaziland, Syrian Arab Republic, Thailand, Togo, Uganda, Uruguay, Venezuela, Viet Nam, Zambia.

289 Austria, Belgium, Canada, Croatia, Czech Republic, France, Germany, Italy, Japan, Poland, Portugal, Republic of Korea, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland.

290 Argentina, Brazil, Guatemala, India, and Senegal.

use of force in international relations, the settlement of international disputes by peaceful means, the achievement of a general and complete disarmament under effective international control and the elimination of weapons with indiscriminate effects on human health. Additionally, they solemnly declared that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State.

As a consequence of introducing a more human rights approach to the right of peoples to peace, in 2003 the Commission changed the title of the three following resolutions as follows “Promotion of peace as a vital requirement for the full enjoyment of all human rights by all”<sup>291</sup>.

In 2003 and 2004 the CHR slowly began to elaborate the component of human rights in this topic jointly to the principles of international law - Art 2 of the UN Charter- by emphasizing that an international system should be “based on respect of the principles enshrined in the *Charter of the United Nations* and the promotion of all human rights and fundamental freedoms”<sup>292</sup>. After that, the Commission urged “all States to respect and to put into practice the principles and purposes of the Charter of the United Nations in their relations with all other States, irrespective of their political, economic or social systems”<sup>293</sup> and to promote the peaceful settlement of disputes “as a vital requirement for the promotion and protection of all human rights of everyone and all peoples”<sup>294</sup>.

In particular, at the 61th meeting, Mr. Gonzalez, representative of Cuba, introduced draft resolution E/CN.4/2003/L.76, sponsored by several countries<sup>295</sup> and said that it reaffirms the commitment of all States to promoting peace and underlined the importance

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291 Commission on Human Rights resolution 2003/61, 24 April 2003; resolution 2004/65, 21 April 2004 and resolution 2005/56, 20 April 2005

292 Paragraph 4, resolution 2003/61, 24 April and paragraph 6, resolution 2004/65, 21 April 2004

293 Paragraph 5, resolution 2003/61, 24 April and paragraph 6, resolution 2004/65, 21 April 2004

294 paragraph 6, resolution 2004/65, 21 April 2004

295 Algeria, China, Cuba, Democratic Republic of the Congo, Kenya, Libyan Arab Jamahiriya, Sierra Leone, Swaziland, Sudan, Syrian Arab Republic, Togo and Zimbabwe and the observers for Angola, Belarus, Botswana, Burundi, Equatorial Guinea, Haiti, Iran (Islamic Republic of), Iraq, Mozambique, People’s Democratic Republic of Korea, Qatar, Rwanda and Tunisia.

of enhancing the role and effectiveness of the United Nations in strengthening international peace and security. In addition, it rejects the use of violence in pursuit of political aims and stressed that only peaceful political solutions could assure a stable and democratic future for peoples throughout the world and urged all States to respect the principles enshrined in the Charter of the United Nations and international law. He stated that Paragraph 1 was a new element, stressing that peace was a vital requirement for the promotion and protection of human rights for all<sup>296</sup>.

In the explanation of vote before the vote, Ms. Gorove, representative of the United States of America, said that a draft resolution on the topic of promoting peace was inappropriate for the Commission<sup>297</sup>.

Ms. Whelan, representative of Ireland, speaking on behalf of the member States of the EU that were members of the Commission and of Poland, with the endorsement of the whole EU, the acceding countries and the associated countries, said that some of the issues raised in the draft resolution were better dealt with in other forums. Moreover, the draft resolution dealt only with the relationship between States and not the relationship between the State and its citizens or the exercise of individuals' human rights vis-à-vis the State, which was the core mandate of the Commission<sup>298</sup>.

Afterwards, Mr. Soualem, representative of Algeria, said he hoped that the draft resolution would be adopted by a large majority because the strengthening of peace was also a means of strengthening human rights<sup>299</sup>.

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296 Doc. E/CN.4/2003/SR.61, Summary record of the 61<sup>th</sup> session, 26 May 2003, p. 48

297 Doc. E/CN.4/2003/SR.61, *op. cit.*, note 296, p. 26

298 Doc. E/CN.4/2003/SR.61, *op. cit.*, note 296, p. 27

299 Doc. E/CN.4/2003/SR.61, *op. cit.*, note 296, p. 28

At the request of the representative of the United States of America, a roll-call vote was taken on the draft resolution, which was adopted by 33 votes<sup>300</sup> to 16<sup>301</sup>, with 4 abstentions<sup>302</sup>.

The arguments used by Cuba, Ireland on behalf of the EU and the United States of America to be in favour or against the draft resolution E/CN.4/2004/L.68 were exactly the same as in previous years. However, Ireland added in the explanation of vote before the vote that the text failed to emphasize that the absence of peace did not justify failure to respect human rights<sup>303</sup>. The latter resolution took into consideration some of the human rights elements already included in the resolutions 2001/69 of 25 April 2001 and 2002/71 of 25 April 2002 (i.e. Art. 28 of the UDHR and the relationship between the right to life and war). Nevertheless, at the request of the representative of the United States of America, a roll-call vote was taken on the draft resolution, which was adopted by 32 votes<sup>304</sup> to 15<sup>305</sup>, with 6 abstentions<sup>306</sup>.

In the last resolution on this topic presented before the CHR in 2005<sup>307</sup>, the human rights approach to the right of peoples to peace was again elaborated. In particular, the resolution stressed that “peace is a vital requirement for the promotion and protection of all human rights for

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300 Algeria, Armenia, Bahrain, Brazil, Burkina Faso, Cameroon, China, Cuba, Democratic Republic of the Congo, Gabon, Guatemala, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Pakistan, Peru, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, Thailand, Togo, Uganda, Uruguay, Venezuela, Viet Nam, Zimbabwe.

301 Australia, Austria, Belgium, Canada, Croatia, France, Germany, Ireland, Japan, Paraguay, Poland, Republic of Korea, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

302 Argentina, Chile, Costa Rica, India.

303 Doc. E/CN.4/2004/SR.57, Summary record of the 57<sup>th</sup> session, 27 April 2004, p. 34-39

304 Armenia, Bahrain, Bhutan, Brazil, Burkina Faso, China, Congo, Cuba, Dominican Republic, Egypt, Eritrea, Ethiopia, Gabon, Guatemala, Indonesia, Mauritania, Nepal, Nigeria, Pakistan, Paraguay, Peru, Qatar, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Uganda, Zimbabwe.

305 Australia, Austria, Croatia, France, Germany, Hungary, Ireland, Italy, Japan, Netherlands, Republic of Korea, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

306 Argentina, Chile, Costa Rica, Honduras, India, Mexico.

307 Doc. E/CN.4/2004/SR.57, *op. cit.*, note 303, p. 34-39

all”<sup>308</sup> and also invited “States and relevant United Nations human rights mechanisms and procedures to continue to pay attention to the importance of mutual cooperation, understanding and dialogue in ensuring the promotion and protection of all human rights”<sup>309</sup>. Finally, it “calls upon the United Nations High Commissioner for Human Rights to carry out a constructive dialogue and consultations with Member States, specialized agencies and intergovernmental organizations on how the CHR could work for the promotion of an international environment conducive to the full realization of the right of peoples to peace, and encourages non-governmental organizations to contribute actively to this endeavour”.

At the request of the representative of the United States of America, a roll-call vote was taken on the draft resolution, which was adopted by 32 votes<sup>310</sup> to 15<sup>311</sup>, with 6 abstentions<sup>312</sup>. The explanation of Member States before the vote was again the same<sup>313</sup>.

The CHR was a functional commission within the overall framework of the United Nations from 1946 until it was replaced by the HRC in 2006. It was the UN’s principal mechanism and international forum concerned with the promotion and protection of human rights. On 15 March 2006, the UNGA voted overwhelmingly to replace the Commission with the HRC.

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308 paragraph 1, resolution 2005/56, 20 April 2005

309 paragraph 10, resolution 2005/56, 20 April 2005

310 Bhutan, Brazil, Burkina Faso, China, Congo, Cuba, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, Gabon, Guatemala, Guinea, Indonesia, Kenya, Malaysia, Mauritania, Nepal, Nigeria, Pakistan, Paraguay, Peru, Qatar, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Zimbabwe.

311 Australia, Canada, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Netherlands, Republic of Korea, Romania, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

312 Argentina, Armenia, Costa Rica, Honduras, India, Mexico.

313 Doc. E/CN.4/2005/SR.57, Summary record of the 57<sup>th</sup> session, 27 March 2006, p. 36-40

## 2.3. Human Rights Council

### 2.3.1. Progress

Since 2008 the HRC has been working on the “Promotion of the right of peoples to peace” inspired by previous resolutions on this issue approved by the UNGA and the former CHR, particularly the GA resolution 39/11 of 12 November 1984, entitled *Declaration on the Right of Peoples to Peace* and the *United Nations Millennium Declaration*. The Group of Eastern and Western European and Others States continued with its traditional position showed at the Commission on Human Rights.

In 2008, the HRC reiterated the traditional position, according to which “peoples of our planet have a sacred right to peace”<sup>314</sup>, and that preservation and protection of this right constitutes a fundamental obligation of each State (paragraph 2). Therefore, States should direct their policies towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use or threat of use of force in international relations and the settlement of international disputes by peaceful means on the basis of the *Charter of the United Nations* (paragraph 5).

The resolution also stresses that peace is a vital requirement for the promotion and protection of all human rights for all (paragraph 3) and that the cleavage that divides human society, between the rich and the poor, and the ever-increasing gap between the developed and developing worlds pose a major threat to global prosperity, peace, security and stability (paragraph 4).

Additionally, the HRC reiterated the OHCHR to convene a workshop on the right of peoples to peace, which was finally held on 15-16 December 2009 in Geneva. In this workshop the current deep division about the existence of the right to peace could be seen even at the academic level. In fact, some well-known legal practitioners who participated at the *Workshop on the right of peoples to peace* held on 9-10 December 2009 in Geneva stated that the right to peace had never been explicitly formalized into a treaty, including the UN

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314 Para.1 of the operative part of HR Council res. 8/9, adopted on 18 June 2008 by 32 votes in favor, 13 against and 2 abstentions (India and Mexico)

Charter, and that the UN human rights instruments had not given proper expression to this enabling right<sup>315</sup>.

The opening statement of the workshop was delivered by Ms. Kyung-Wha Kang (Deputy High Commissioner for Human Rights). She recalled that peace and human rights were intricately related and that the Charter of the United Nations provided that strengthening universal peace and promoting and encouraging respect for human rights without discrimination were among the main purposes of the organization. She also pointed out that human rights treaties also contained references to the importance of peace as a precondition for the full enjoyment of fundamental human rights, as well as to the impact of respect for human rights on the creation of a peaceful society. She concluded by recalling that “respect for human rights was often more critical in times of conflict, noting that many of the worst human rights violations ... occurred in situations of armed conflict and other forms of violent situations. Accountability for gross human rights violations was a crucial component of human rights and could often be conducive to peace”<sup>316</sup>.

Some civil society organizations and academics took advantage of the process already initiated by the Commission in 2001 and afterwards, driven by the HRC in cooperation with them<sup>317</sup>.

Unlike the *Declaration on the Right of Peoples to Peace* of 1984, all resolutions on the right to peace adopted by the Human Right Council were more linked to international human rights law. In particular, these resolutions expressively recalled in its Preamble Art. 1.3 of the UN Charter, which states that the purposes of the United Nations is “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

315 A/HRC/14/38 of 17 March 2010

316 *Ibidem* n. 315, par. 3-8

317 Fernández Puyana, David, “International Campaign on the Human Right to peace”, in Villán Durán, Carlos and Pérez Faleh, Carmelo, *Regional Contributions for a Universal Declaration on the Human Right to Peace*, SSIHRL with the sponsorship of the Asturian Agency for Development Cooperation of the Government of the Principality of Asturias, 2010, p. 43-60 (Spanish version) and p. 61-80 (English version).

In addition, the Council resolutions on the right of peoples to peace progressively elaborated human rights elements. In particular, all resolutions included the following human rights components: firstly, the elimination of war as a prerequisite for the realization of human rights, and in particular the right to life<sup>318</sup>; secondly, the importance of construction of peace and the strengthening of human rights<sup>319</sup>; thirdly, international cooperation in the field of human rights as a means to create an environment of peace and stability<sup>320</sup> and fourthly, the obligation of all States to promote peace and human rights<sup>321</sup>.

In accordance with the resolution 60/251, the HRC is exclusively focused on those who truly suffer in a conflict: human beings and peoples. It is a forum for dialogue, not confrontation, which always works by and for the victims. In accordance to its Preamble, development, peace and security and human rights are interlinked and mutually reinforcing. However, the UNGA clearly decided that the Council should address situations of gross and systematic violations of human rights and also contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies. Additionally, in accordance with the operative section of the resolution, the mandate of the HRC is to promote and protect human rights, but not directly peace.

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318 Preamble: "... life without war is the primary international prerequisite for the material well-being, development and progress of countries and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations"

319 Preamble: "... human rights include social, economic and cultural rights and the right to peace, a healthy environment and development, and that development is, in fact, the realization of these rights". Operative section: "... the importance of peace for the promotion and protection of all human rights for all" and "... peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being".

320 Preamble: "... commitment to peace, security and justice, respect for human rights and the continuing development of friendly relations and cooperation among States". Operative section: "... international cooperation in the field of human rights contributes to the creation of an international environment of peace and stability" and "...encourages States to settle their disputes as early as possible as an important contribution to the promotion and protection of all human rights of everyone and all peoples".

321 Operative section: "...all States should promote an...international system based on respect for the principles enshrined in the Charter and the promotion of all human rights and fundamental freedoms, including the right to development and the right of peoples to self-determination"

### 2.3.2. Impact

The right to peace has been used more by Member States in the context of Art. 2 of the UN Charter, which is exclusively devoted to the main principles governing the relationship among States.

In particular, the disregard of the principle of territorial integrity as a violation of the right to peace can be found in the Note verbale dated 3 February 2014 from the Permanent Mission of the State of Eritrea in Geneva addressed to the Office of the President of the HRC<sup>322</sup>, which states:

“... While Ethiopia’s defiance to international law and occupation of Eritrean territories should be dealt with by international law, but its occupation of Eritrean territories is also a violation of the right to peace and development, and thus requires proper actions under Item 7 of the Human Right Council”

In addition, a reference to the condemnation of aggression as a core element of the right to peace was elaborated by the Foreign Minister of Venezuela at the High Level Segment of the HRC held in its twenty-fifth session on 6 March 2014 as follows:

“Given the international campaign of lies and falsehoods, which presents today to our country in a state of chaos and civil war, I am obligated to speak on behalf of the right to peace and dignity, which has a free people as the Venezuelan”

Afterwards, the vice-Minister of Foreign Affairs of Cuba recalled in his oral statement delivered at the same forum that the Community of the Latin American and Caribbean States (hereinafter: CELAC) presented its first resolution before a UN body about the right to peace. Additionally, he highlighted that CELAC adopted in January 2014 the Proclamation of Latin America and Caribbean as a “Zone of Peace” by which Member States pledged to “... banish war, threat and use of force in our context and ensure that disputes between our

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<sup>322</sup> Note verbale dated 3 February 2014 from the Permanent Mission of the State of Eritrea to the United Nations Office at Geneva and other international organizations in Switzerland addressed to the Office of the President of the Human Rights Council, Doc. A/HRC/25/G/7, 13 February 2014

countries are resolved by peaceful means and in accordance with the principles of international law”.

On 22 March 2013, the HRC adopted resolution A/HRC/22/22 on prevention of genocide by which it requested the OHCHR to organize a high level panel discussion dedicated to the sixty-fifth anniversary of the *Convention on the Prevention and Punishment of the Crime of Genocide* during its twenty-fifth session.

During the course of negotiation a group of countries<sup>323</sup> tabled at the last minute different amendments immediately before the tabling deadline in order to avoid the inclusion in the resolution of a reference to the concept of responsibility to protect as enshrined in the 2005 *World Summit Outcome Document*. In accordance with the EU these aggressive attempts and tactics demonstrate disrespect for the Council’s processes and working methods because the amendments were not discussed during the informal consultations<sup>324</sup>.

In the negotiation process of the above resolution, this group of countries proposed inserting a new paragraph 7 *bis* on the right of peoples to peace in the following terms:

“Emphasizes that ensuring the exercise of the right of people to peace and its promotion demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use or threat of use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations”<sup>325</sup>.

In addition, they proposed to add a new paragraph 2 *bis* which reaffirms that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of all States that contribute to the prevention of genocide.

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323 Belarus, China, Cuba, Djibouti, Egypt, Iran (Islamic Republic of), Nicaragua, Pakistan, Russian Federation, Venezuela.

324 See the explanation of vote by the European Union on the draft resolution L.30 on the Prevention of Genocide

325 Belarus, China, Saudi Arabia, Cuba, Uganda, Viet Nam, Sri Lanka, Myanmar, United Arab Emirates, Egypt, Nicaragua, Pakistan, Russian Federation, Venezuela and Democratic People’s Republic of Korea.

In the context of the High-level panel discussion dedicated to the sixty-fifth anniversary of the *Convention on the Prevention and Punishment of the Crime of Genocide*, held on 7 March 2014 in the HRC, a similar group of countries<sup>326</sup> delivered a statement reaffirming the importance of respecting the core elements of the right to peace. But in this time they did not refer expressly to this later concept in the statement. In particular, they recalled that “the right to life is one of the rights from which no derogation is permitted even in time of emergencies” and that “the best way to avoid genocide is to prevent wars and conflicts addressing the root causes of conflicts and social tensions”. Additionally, they referred to the main principles of the *Charter of the United Nations* as follows:

“Although the world has undergone complex and profound changes, the basic status of the purposes and principles of the UN Charter remains unchanged. There must not be any wavering over the principles of respecting State sovereignty, territorial integrity and non-interference on internal affairs”.

On the other side, the EU recalled in its statement that in the World Summit, held in 2005, all States unanimously recognized the responsibility to protect and also agreed to take collective action in a timely and decisive manner, through the SC, in accordance with the UN Charter, including Chapter VII.

Afterwards, the delegate of Venezuela stated that this High Level Panel should be a decisive step aimed at preventing future human rights violations. However, they also stressed that in this endeavor the international community should always act on the basis of the universal principles of impartiality and objectivity, respect of sovereignty and territorial integrity of States, avoiding consequently the obscure political selectivity and the double standards of the Powers.

In conclusion, in accordance with the latest state practices, the right of peoples to peace has been used as a means to reaffirm all main principles contained in Art. 2 of the Charter of the United Nations, namely: the prohibition of the use of force or aggression, respect of

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<sup>326</sup> Belarus, China, Cuba, Djibouti, Egypt, Iran (Islamic Republic of), Nicaragua, Pakistan, Russian Federation, Venezuela. Doc. A/HRC/22/L.36, 18 March 2013

sovereignty and territorial integrity and the non-interference on internal affairs of States. Furthermore, as previously indicated, these latter principles, together with the condemnation of war, were properly included in the *Declaration on the Right of Peoples to Peace* of 1984. However, the human rights approach on this topic has started to be elaborated by Member States at the HRC.

The Human Rights Council decided to convene on 27 February 2017 a panel focused on the theme “The contribution of human rights to peacebuilding through the enhancement of dialogue and international cooperation for the promotion of human rights”.

In this panel it was seen that the different approaches to peacebuilding still persists amongst States and regional groups. From the Geneva perspective some matters identified by UN dignitaries, Governments and NGO in these debates are still under discussion and consequently, create some difficult challenges, such as: the elaboration of the notions of responsibility to protect and the right to peace in the work of the HRC; the ongoing debate about the underlying causes of conflict - economic, social and cultural rights and/or with civil and political rights- and finally, the unfinished discussion among the protection of the principles of sovereignty and non-interference in the domestic affairs of States and the promotion and protection of human rights without restriction.

## **2.4. Human Rights Council Advisory Committee**

### **2.4.1. Progress**

On 17 June 2010, the HRC adopted resolution 14/3 on the right of peoples to peace, which explicitly requested “the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace, and to report on the progress thereon to the Council at its seventeenth session”<sup>327</sup>.

Furthermore, the resolution 14/3 explicitly recognizes the “... the important work being carried out by civil society organizations for the promotion of the right of peoples to peace and the codification of that right”<sup>328</sup>; recalls “the *United Nations Declaration and Programme*

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327 Doc. resolution A/HRC/14/3, par. 15

328 Last paragraph of the preamble of the res. 14/3 cit.

of *Action on Culture of Peace*, 1999, and the UNGA resolution 53/25 proclaiming 2001-10 as the *International Decade for a Culture of Peace and Non-Violence for the children's of the world*,<sup>329</sup> “calls upon States and relevant United Nations bodies to promote effective implementation of the *United Nations Declaration and Programme of Action on Culture of Peace*”<sup>330</sup>; and finally, “supports the need to further promote the realization of the right of peoples to peace” and in that regard requests “the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace, and to report on the progress thereon to the Council at its seventeenth session”<sup>331</sup>.

The AC adopted on 6 August 2010 the recommendation 5/2 on the promotion of the right of peoples to peace, establishing a drafting group chaired by Mona Zulficar (Egypt) and Mr. Wolfgang Stefan Heinz (Germany) to prepare a draft *Declaration on the Right of Peoples to Peace*. In light of this mandate, the drafting group initially prepared a progress report on the right to peace, which was submitted to the HRC in its 16 regular session (June 2011).

On 12 August 2011, the AC adopted recommendation 7/3 entitled “Drafting Group on the promotion of the right of peoples to peace”, by which it took note of the second progress report submitted by the drafting group (paragraph 1); it welcomed “the responses received to the questionnaire sent out in April 2011, and the discussions and statements made during its seventh session” (paragraph 2); and it welcomed “initiatives by civil society to organize discussions on progress reports of the Advisory Committee with Member States and academic experts” (paragraph 3).

In accordance with HRC resolution 17/16 of 17 June 2011 and AC recommendation 8/4 of 24 February 2012, the AC submitted to the HRC its (third) draft *Declaration on the Right to Peace*, which was really inspired by the different proposals of Declarations elaborated and advocated by some civil society organizations<sup>332</sup>.

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329 Doc. resolution A/HRC/14/3, par. 4 of Preamble

330 Doc. resolution A/HRC/14/3, par. 11

331 Doc. resolution A/HRC/14/3, par. 15

332 Luarca, Bilbao, Barcelona and Santiago Declaration on the Human Right to Peace

The AC's text identified, in cooperation with some civil society organizations, the main elements which should be part of the future Declaration (including issues such as migrants, refugees, conscientious objection to military service, disarmament, environment, rights of victims, development and human security).

The HRC's AC adopted on 16 April 2012 its *Declaration on the Right to Peace*, after two years of intensive work in close co-operation with civil society organizations led by the Spanish Society for International Human Rights Law. This Declaration accepted 85 per cent of the standards proposed by the *Santiago Declaration on the Human Rights to Peace*.

The great added value of the AC's text was its elaboration on all linkages between the notion on peace and human rights, its efforts to mobilize civil society organizations and also to create the notion of the human right to peace by putting together all these elements in the form of a Declaration. Afterwards, this enabled Member States to make a global assessment about this text and eventually accept or reject it as a good and useful basis to continue the work on this topic.

#### **2.4.2. Linkage between the Advisory Committee Declaration and the Vienna Declaration**

In light of the previous HRC resolution, it should be noted that all the main elements proposed by the AC in its Declaration were already included in the *Declaration and Programme of Action of Culture of Peace* (i.e. human security and poverty, disarmament, education, development, environment, vulnerable groups, refugees and migrants).

It should be also recalled that all the main elements proposed by in this AC Declaration were already discussed, elaborated on, and included in the Vienna Declaration and Programme of Action (VDPA), especially concerning such topics as human security and poverty, education, resistance and opposition to oppression, peacekeeping, development, environment, vulnerable groups, and refugees and migrants.

It follows that the international community should progressively elaborate on the notion of the right to peace in light of success of Declarations already adopted by the UNGA, such as the VDPA.

Because of this strong linkage between the Advisory Committee text and the *Vienna Declaration and Declaration on Culture of Peace*, the drafters of the 2016 *Declaration on the Right to Peace* decided to include a reference of these international instruments in its Preambular part.

Now it will thus now discuss the linkage between the notions proposed in the AC Declaration, and those included in the VDPA.

#### **2.4.2.1. Education**

The AC Declaration stresses in its standard on education that States should increase educational efforts to remove hate messages, update and revise educational and cultural policies to reflect a human rights-based approach, and revise national laws and policies that are discriminatory against women. In addition, the document recognizes that all peoples and individuals should have the right to a comprehensive peace and human rights education, the right to demand and obtain the competences needed to participate in the creative and non-violent resolution of conflicts throughout their life, and the right to have access to and receive information from diverse sources without censorship.<sup>333</sup>

##### **333 Article 4. Peace education and training**

1. All peoples and individuals have a right to a comprehensive peace and human rights education. Such education should be the basis of every educational system, generate social processes based on trust, solidarity and mutual respect, incorporate a gender perspective, facilitate the peaceful settlement of conflicts and lead to a new way of approaching human relationships within the framework of the Declaration and the Programme of Action on a Culture of Peace and dialogue among cultures.
2. Everyone has the right to demand and obtain the competences needed to participate in the creative and non-violent resolution of conflicts throughout their life. These competencies should be accessible through formal and informal education. Human rights and peace education is essential for the full development of the child, both as an individual and an active member of society. Education and socialization for peace is a condition sine qua non for unlearning war and building identities disentangled from violence.
3. Everyone has the right to have access to and receive information from diverse sources without censorship, in accordance with international human rights law, in order to be protected from manipulation in favour of warlike or aggressive objectives. War propaganda should be prohibited.
4. Everyone has the right to denounce any event that threatens or violates the right to peace, and to participate freely in peaceful political, social and cultural activities or initiatives for the defence and promotion of the right to peace, without interference by Governments or the private sector.
5. States undertake:

The VDPa meanwhile, emphasizes the obligation to facilitate access to education for people with disabilities,<sup>334</sup> vulnerable groups such as migrant workers,<sup>335</sup> and women.<sup>336</sup> The Declaration also discusses how human rights education should promote the values of peace, social justice, democracy, tolerance, and development.<sup>337</sup>

(a) To increase educational efforts to remove hate messages, distortions, prejudice and negative bias from textbooks and other educational media, to prohibit the glorification of violence and its justification, and to ensure the basic knowledge and understanding of the world's main cultures, civilizations and religions and to prevent xenophobia;

(b) To update and revise educational and cultural policies to reflect a human rights-based approach, cultural diversity, intercultural dialogue and sustainable development;

(c) To revise national laws and policies that are discriminatory against women, and to adopt legislation that addresses domestic violence, the trafficking of women and girls and gender-based violence.

334 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 63: "The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society...."

335 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 24: "Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments. States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems"

336 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 18: "...Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support....";

337 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 79: "States should strive to eradicate illiteracy and should direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The World Conference on Human Rights calls on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings"; art. 80: "Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve

### 2.4.2.2. Resistance and Opposition to Oppression

The AC Declaration highlights in its standard on resistance and opposition to oppression that all peoples and individuals have the right to resist and oppose oppressive colonial or foreign occupation, or dictatorial domination.<sup>338</sup>

Similarly, the VDPA recognizes that:

all peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development. Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the *World Conference on Human Rights* recognizes the right of peoples to take any legitimate action, in accordance with the *Charter of the United Nations*, to realize their inalienable right of self-determination. The *World Conference on Human Rights* considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.<sup>339</sup>

### 2.4.2.3. Human Security

The AC Declaration links the notion of human security with that of freedom from fear and want in Art. 1 by stating:

Everyone has the right to human security, which includes freedom from fear and from want, all constituting elements of positive peace, and also includes freedom of thought,

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common understanding and awareness with a view to strengthening universal commitment to human rights” and art. 82: “Governments, with the assistance of intergovernmental organizations, national institutions and non-governmental organizations, should promote an increased awareness of human rights and mutual tolerance....”

338 Article 7. Resistance and opposition to oppression

1. All peoples and individuals have the right to resist and oppose oppressive colonial, foreign occupation or dictatorial domination (domestic oppression).

2. Everyone has the right to oppose aggression, genocide, war crimes and crimes against humanity, violations of other universally recognized human rights, and any propaganda in favour of war or incitement to violence and violations of the right to peace.

339 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, art. 2

conscience, opinion, expression, belief and religion, in conformity with international human rights law. Freedom from want implies the enjoyment of the right to sustainable development and of economic, social and cultural rights.

The VDPA expresses:

[...]dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include[...]poverty, hunger and other denials of economic, social and cultural rights[...]<sup>340</sup>

#### 2.4.2.4. Peacekeeping

The AC Declaration highlights in its standard on peacekeeping that peacekeeping missions and peacekeepers should comply fully with United Nations rules and procedures regarding professional conduct.<sup>341</sup>

The VDPA recognizes:

[...]the important role of human rights components in specific arrangements concerning some peace-keeping operations by the United Nations, [and] recommends that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms, in conformity with the *Charter of the United Nations*.<sup>342</sup>

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340 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 30

341 Article 8. Peacekeeping

1. Peacekeeping missions and peacekeepers shall comply fully with United Nations rules and procedures regarding professional conduct, including the lifting of immunity in cases of criminal misconduct or the violation of international law, to allow the victims recourse to legal proceedings and redress.

2. Troop-contributing States shall take appropriate measures to investigate effectively and comprehensively complaints against members of their national contingents. Complainants should be informed about the outcome of such investigations.

342 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, art. 97

### 2.4.2.5. Right to Development

The AC Declaration stresses in its standard on development that all people are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, and that they have the right to the elimination of obstacles preventing the realization of their right to development.<sup>343</sup>

The VDPA states that:

[...]the right to development, as established in the *Declaration on the Right to Development*, [is] a universal and inalienable right and an integral part of fundamental human rights. As stated in the *Declaration on the Right to Development*, the human person is the central subject of development. While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. States should cooperate with each

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343 Article 9. Right to development

1. Every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. Everyone shall enjoy the right to development and economic, social and cultural rights and, in particular:

(a) The right to adequate food, drinking water, sanitation, housing, health care, clothing, education, social security and culture;

(b) The right to decent work and to enjoy fair conditions of employment and trade union association; the right to equal remuneration among persons who perform the same occupation or function; the right to have access to social services on equal terms; and the right to leisure;

(c) All States have an obligation to cooperate with each other to protect and promote the right to development and other human rights.

3. All peoples and individuals have the right to the elimination of obstacles to the realization of the right to development, such as the servicing of unjust or unsustainable foreign debt burdens and their conditionalities or the maintenance of an unfair international economic order that generates poverty and social exclusion. States and the United Nations system shall cooperate fully in order to remove such obstacles, both internationally and domestically.

4. States should pursue peace and security and development as interlinked and mutually reinforcing, and as serving as a basis for one another. The obligation to promote comprehensive and sustainable economic, social, cultural and political development implies the obligation to eliminate threats of war and, to that end, to strive to disarmament and the free and meaningful participation of the entire population in this process.

other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development. Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.<sup>344</sup>

Additionally, this document focuses the implementation of the right to development on the least developed countries,<sup>345</sup> and on particular groups of people such as women,<sup>346</sup> indigenous people,<sup>347</sup> minorities,<sup>348</sup> and children,<sup>349</sup>

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344 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 10

345 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 9: “The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development”

346 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 18: “...Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support...”

347 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 20: “The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development...”

348 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 27: “Measures to be taken, where appropriate, should include facilitation of their (minorities) full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country”

349 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 45: “The World Conference on Human Rights reiterates the principle of “First Call for Children” and, in this respect, underlines the importance of major national and international efforts, especially those of the United Nations Children’s Fund, for promoting respect for the rights of the child to survival, protection, development and participation”

### 2.4.2.6. Environment

The AC Declaration standard on the environment that everyone has the right to a safe, clean and peaceful environment, and that States are responsible for mitigating climate change and taking all the necessary measures to ensure development while protecting the environment.<sup>350</sup>

The VDMA recalled [...]the objectives established on global action for women towards sustainable and equitable development set forth in the Rio Declaration on Environment and Development and chapter 24 of Agenda 21, adopted by the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 3-14 June 1992),”<sup>351</sup> and highlighted that “the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The *World Conference on Human Rights* recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.”<sup>352</sup>

#### 350 Article 10. Environment

1. Everyone has the right to a safe, clean and peaceful environment, including an atmosphere that is free from dangerous man-made interference, to sustainable development and to international action to mitigate and adapt to environmental destruction, especially climate change. Everyone has the right to free and meaningful participation in the development and implementation of mitigation and adaptation policies. States have the responsibility to take action to guarantee these rights, including technology transfer in the field of climate change, in accordance with the principle of common but differentiated responsibility.

2. States have the responsibility of mitigating climate change based on the best available scientific evidence and their historical contribution to climate change in order to ensure that all people have the ability to adapt to the adverse effects of climate change, particularly those interfering with human rights, and in accordance with the principle of common but differentiated responsibility. States, in accordance with United Nations Framework Convention on Climate Change, with the resources to do so, have the responsibility for providing adequate financing to States with inadequate resources for adaptation to climate change.

3. States, international organizations, corporations and other actors in society are responsible for the environmental impact of the use of force, including environmental modifications, whether deliberate or unintentional, that result in any long-lasting or severe effects or cause lasting destruction, damage or injury to another State.

4. States shall take all the necessary measures to ensure development and protection of the environment, including disaster preparedness strategies, as their absence poses a threat to peace.

351 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 36

352 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 11

### 2.4.2.7. Rights of Victims and Vulnerable Groups

The AC Declaration standard on rights of victims and vulnerable groups highlights the fact that States should ensure that the specific impact obstacles to the enjoyment of the rights of vulnerable individuals. In addition, the document recognizes that all victims of human rights violation have the right to know the truth and to have their violated rights restored.<sup>353</sup>

The VDPA expressed

[...]grave concern about continuing human rights violations in all parts of the world in disregard of standards as contained in international human rights instruments and international humanitarian law and about the lack of sufficient and effective remedies for the victims. The *World Conference on Human Rights* is deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, especially women, children, the elderly and those with disabilities. The Conference therefore calls upon States and all parties to armed conflicts strictly to observe international humanitarian law, as set forth in the *Geneva Conventions of 1949* and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in

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353 Article 11. Rights of victims and vulnerable groups

1. Every victim of a human rights violation has the right, in accordance with international human rights law and not subject to statutory limitations, to know the truth, and to the restoration of the violated rights; to obtain the investigation of facts, as well as identification and punishment of those responsible; to obtain effective and full redress, including the right to rehabilitation and compensation; to measures of symbolic redress or reparation; and to guarantees that the violation will not be repeated.

2. Everyone subjected to aggression, genocide, foreign occupation, racism, racial discrimination, xenophobia and other related forms of intolerance or apartheid, colonialism and neo-colonialism deserve special attention as victims of violations of the right to peace.

3. States shall ensure that the specific effects of the different forms of violence on the enjoyment of the rights of persons belonging to groups in situations of vulnerability, such as indigenous peoples, women suffering from violence and individuals deprived of their liberty, are taken fully into account. They have the obligation to ensure that remedial measures are taken, including the recognition of the right of persons belonging to groups in situations of vulnerability to participate in the adoption of such measures.

international conventions. The *World Conference on Human Rights* reaffirms the right of the victims to be assisted by humanitarian organizations, as set forth in the *Geneva Conventions of 1949* and other relevant instruments of international humanitarian law, and calls for the safe and timely access for such assistance.”<sup>354</sup>

#### 2.4.2.8. Refugees and Migrants

The AC Declaration standard on refugees and migrants stresses that States should place migrants at the centre of migration policies and management. Furthermore, it stressed that all individuals have the right to seek and to enjoy refugee status without discrimination.<sup>355</sup>

The VDPA expanded the States’ obligation to develop strategies that address the root causes of the movement of refugees by stating that its body:

[...]recognizes that, in view of the complexities of the global refugee crisis and in accordance with the Charter of the United Nations, relevant international instruments and

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354 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 29

355 Article 12. Refugees and migrants

1. All individuals have the right to seek and to enjoy refugee status without discrimination, if there is a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of one’s nationality and is unable or, owing to such fear, unwilling to avail oneself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.

2. Refugee status should include, inter alia, the right to voluntary return to one’s country or place of origin or residence in dignity and with all due guarantees, once the causes of persecution have been removed and, in case of armed conflict, it has ended. Special consideration should be given to challenges, such as the situation of war refugees and of refugees fleeing hunger.

3. States should place migrants at the centre of migration policies and management, and pay particular attention to the situation of marginalized and disadvantaged groups of migrants. Such an approach will also ensure that migrants are included in relevant national plans of action and strategies, such as plans on the provision of public housing or national strategies to combat racism and xenophobia. Although countries have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect, protect and fulfil the human rights of all individuals under their jurisdiction, regardless of their nationality or origin and regardless of their immigration status.

international solidarity and in the spirit of burden-sharing, a comprehensive approach by the international community is needed in coordination and cooperation with the countries concerned and relevant organizations, bearing in mind the mandate of the United Nations High Commissioner for Refugees. This should include the development of strategies to address the root causes and effects of movements of refugees and other displaced persons, the strengthening of emergency preparedness and response mechanisms, the provision of effective protection and assistance, bearing in mind the special needs of women and children, as well as the achievement of durable solutions, primarily through the preferred solution of dignified and safe voluntary repatriation, including solutions such as those adopted by the international refugee conferences. The World Conference on Human Rights underlines the responsibilities of States, particularly as they relate to the countries of origin”<sup>356</sup>. It also urged “all States to guarantee the protection of the human rights of all migrant workers and their families” and considered “that the creation of conditions to foster greater harmony and tolerance between migrant workers and the rest of the society of the State in which they reside is of particular importance.”<sup>357</sup>

## **2.5. Open-Ended Working Group on the Right to Peace**

Pursuant resolution 20/15 of 5 July 2012, the HRC decided to “establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace, on the basis of the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views”.

### **2.5.1. TICO approach**

After Ambassador Christian Guillermet was honored with the task of guiding the work of the Working Group since 2013, all stakeholders

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356 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 23

357 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 33-34

have jointly made a progress through an open and transparent dialogue, which would be based on the so-called TICO approach: transparency, inclusive, consensual and objective. He also added to this approach the “R” from realism.

Thanks to this approach all stakeholders built an atmosphere of trust and mutual respect, which are a characteristic of a true culture of multilateral diplomacy. They created the basis to really begin a negotiation process in good faith and with a clear demonstration of political will in order to reach an agreement. The diverse civil society, which has strongly promoted this process from the beginning has seen a progress, even if the expectations of some were higher.

A brief analysis of the process in light of this TICO approach shows the following:

#### **2.5.1.1. Transparency and inclusiveness**

Since the transparency and inclusiveness are the pillars of the global governance, the Chairperson invited all possible international players to take part in the discussions in order to have their professional opinion. In particular, on 18-19 November 2013, the Chairperson-Rapporteur organized with the support of the Finn Church Aid and the World Council of Churches a closed meeting about the future Declaration at the Ecumenical Institute (Bossey, Canton of Vaud, Switzerland). Some 25 delegates representing the UN Secretariat (OHCHR<sup>358</sup>), funds and programmes (UNHCR<sup>359</sup>, UNEP<sup>360</sup>, UNDP<sup>361</sup>, UNICEF<sup>362</sup>, UNFPA<sup>363</sup>), specialized agencies (FAO<sup>364</sup>, ILO<sup>365</sup>, UNESCO<sup>366</sup>, WHO<sup>367</sup>), research and training institutes (UNIDIR<sup>368</sup>), inter-governmental organizations (IOM<sup>369</sup>), human rights treaty

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358 Office of the United Nations High Commissioner for Human Rights

359 United Nations High Commissioner for Refugees

360 United Nations Environment Programme

361 United Nations Development Programme

362 United Nations Children’s Fund

363 United Nations Population Fund

364 Food and Agriculture Organization of the United Nations

365 International Labour Organization

366 United Nations Educational, Scientific and Cultural Organization

367 World Health Organization

368 United Nations Institute for Disarmament Research

369 International Organization for Migration

bodies (HR Committee<sup>370</sup>), special procedures (Working Group on Mercenaries) and international humanitarian organizations (IFRC<sup>371</sup>) were invited to participate at the closed meeting to give inputs to the on-going process.

On 25 February 2015, in the context of an informal meeting, the Chair assured NGOs that he was listening very carefully to the proposals made by them and that he had identified some interesting points to be taken into consideration, such as the mention of the three Declarations (Right of Peoples to Peace, Preparation of Societies for Life in Peace and Principles on International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations). Other interesting elements proposed by them, which were finally included in his text, were the Preamble of the UNESCO constitution; the issue of the eradication of poverty; the concept of eradication of inequality; the respect for life and practice of non-violence linked to education, the new concept of peace structures; violence, and the inherent right to life in peace.

In the opening statement of the third session of the Working Group held on 20 April 2015, the Chairperson remembered how in the first session many governmental delegations refused to participate in negotiations because of the polarization that existed at that time. He recognised that we have jointly achieved to involve all parties with a clear common goal: to agree, from a human rights perspective about the concept of the right to peace. His job was to listen the different positions, to be inclusive and transparent, to understand the difficulties and obstacles, but especially to clarify concepts and encapsulate the debates within the mandate of the HRC.

### **2.5.1.2. Consensus**

On 21 September 2015, when the Chairperson-Rapporteur presented his new revised text, all delegations stressed that consensus was important and the text presented was the minimum denominator to reach an agreement. Although they would have preferred a stronger text, they were aware about the difficulties on this matter.

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370 Human Rights Committee

371 International Federation of Red Cross and Red Crescent Societies

Thanks to this consensual approach some delegations made an important effort to release those provisions objected at the third session of the Working Group and also agreed, with the exception of title and article 1, with the whole text.

### **2.5.1.3. Objective**

Like in previous occasions, on 21 September 2015, the Chairperson-Rapporteur stressed that he knew that some points are not accepted by everyone, in particular the title and some notions contained in article 1. He clearly said that the mandate which he received from the Council Resolution 20/15 is to “ ... progressively negotiating a draft United Nations declaration on the right to peace ... without prejudging relevant past, present and future views and proposals”.

Consequently, he is obliged in compliance with this resolution to present a text which responds to the mandate received by the HRC.

### **2.5.1.4. Realism**

The OEWG witnessed in its first session that the text presented by the Advisory Committee was not supported by Member States, even by those countries that actively support the process within the HRC. Cuba, Iran and Egypt pointed out that using undefined, ambiguous and un-grounded concepts that lack any consensus in international law is counter-productive and complicates the work entrusted with the working group. Controversial issues should be excluded from the text, such as human security, conscientious objection to military service, peacekeeping, refugees and migrants, among others. Some proposed sections should be discussed in other specialized forum (i.e. disarmament). Sri Lanka added that the draft Declaration has attempted to “re-invent the wheel” by formulating new concepts and definitions, whereas it should be guided by international law, basing itself on the UN Charter. Singapore also indicated that the thematic areas proposed seem to have been arbitrarily picked, as well as that the draft Declaration is philosophically and substantively problematic and is not conducive to a coherent and meaningful text. They added that a declaration should also be realistic, which contains common denominators that are acceptable to all.

One of the issues that the OEWG needed to consider in its second session was that during the drafting process within the Advisory Committee

all the main elements identified by this UN body had previously been elaborated by Member States, international organizations and Non-Governmental Organizations in the *Programmes of Action on Vienna and Culture of Peace*. There was nothing new in the Advisory Committee's text apart from making a useful compilation of those elements of international law linked to peace.

### **2.5.2. First Session**

The first session of the OEWG took place from 18 to 21 February 2013. In the first day of the session, Christian Guillermet-Fernández (Costa Rica) was elected by the Working Group as its Chairperson-Rapporteur, by acclamation. He was nominated by the delegation of Ecuador on behalf of the Group of Latin American and Caribbean Countries (GRULAC). This nomination was based on broad consultations with all regional groups and on agreement reached.

Throughout the general debate and reading of the draft declaration on the right to peace prepared by the AC, governmental delegations, representatives of international organizations and members of civil society raised the following doubts and points of concern (A/HRC/WG.13/1/2, 2013):

Firstly, some delegations stated that international community should make every effort to increase the international standards of protection in the field of human rights for the benefit of our own citizens. The full enjoyment of human rights is impossible if we do not live in peace. Other delegations also agreed that the preservation of peace is the founder, goal and main objective of our organization. They added that the promotion and protection of existing human rights can make a profound contribution to peace. It follows that the linkage between human rights and peace is pretty clear. Additionally, other delegations said that the right to peace is strongly inseparable from the most fundamental right, which is the right to life. They also stated that peace is a precondition or pre-requisite to protecting and promoting the enjoyment of all human rights. Other delegations re-phrased this latter concept by saying that “the United Nations, in its Charter, recognized that peace is both a prerequisite and a consequence of the full enjoyment of human rights by all.” Others added that peace should be seen as an enabling right which allows people enjoy their civil, political, economic, social or cultural rights.

Secondly, for many delegations, the concept of the right to peace was not new, but recognized in soft law instruments including in UNGA resolution 39/11 of 12 November 1984, whereby the international community had adopted the *Declaration on the Right of Peoples to Peace*, and most recently in the *Human Rights Declaration* adopted by the Association of Southeast Asian Nations (ASEAN) on 18 November 2012. On the other hand, several other delegations stated that a stand-alone “right to peace” did not exist under international law. In their view, peace was not a human right in and of itself: it was rather a goal that could be best realized through the enforcement of existing identifiable and distinguishable human rights.

Thirdly, some delegations stressed that the current initiative of the right to peace could become a great opportunity to stop wars and armed conflicts in the world and consequently, to avoid all human rights violations, crimes against humanity and genocides, which usually occur in these dreadful situations. Also they indicated that this initiative is not only a clear reaction against war and conflict, but also a mean to eliminate all kind of violence against people. Others added that there is no possibility to exercise fundamental rights in a context of war. No socioeconomic transformation may work under a conflict. As indicated also by the delegations, in order to ensure the promotion and exercise of the right to peace, international community should exhaust all necessary efforts to eliminate the threat of war, in particular nuclear war, to settle disputes peacefully and to end all ongoing conflicts, which are seriously affecting the lives of millions of people. Some delegations stated that the Declaration should reflect the preventive role of peace in regards to the human rights violations. Other delegations also stressed the complementarity and interdependence of the three main pillars of the United Nations (i.e. peace, development and human right).

Fourthly, in regards to the legal standards of the Declaration elaborated by the AC, some delegations said that the thematic areas selected seem to have been arbitrarily picked. In addition, they indicated that many concepts of human rights included in the Declaration are new and unclear, which generate that the current process can become an unproductive, futile and frivolous exercise. By introducing a broad concept of the right to peace, said some delegations, the drafters included many binding disparate issues to

peace. In addition, most of delegations added that the issues that the draft Declaration purports to address are already addressed in other, more appropriate forums, some under the HRC, and some not. They also added that the Declaration includes and subsumes a range of existing human rights and that it is inconsistent with relevant international norms, including the UN Charter. Furthermore, some of them said that the major misgiving is to use undefined, ambiguous and un-grounded concepts that lack any consensus in international law or to insert topics that do not have a slightest linkage to the purpose of the declaration. Several delegations called for the drafting of a brief, concise and balanced declaration that would be guided by international law as well as by the *Charter of the United Nations*, compliant with its Article 51. The declaration should avoid referring to controversial issues and unidentified and vague topics that did not presently enjoy international support and consensus.

Fifthly, as indicated by some delegation, “the draft declaration has attempted to re-invent the wheel by formulating new concepts and definitions, whereas it should be guided by international law, basing itself on the *Charter of the United Nations*.” In addition, others stressed that the essence of the next phrase in the resolution which indicates “and without prejudging relevant past, present and future views and proposals” is an open door to revise, to adjust or to change the text with new ideas and formulations.

### **2.5.3. Second Session**

#### **Preparation**

On 22 October 2013, the Office of the High Commissioner for Human Rights sent a Note Verbale to all Permanent Missions in Geneva and non-governmental organizations by informing them that pursuant to resolution A/HRC/RES/23/16, the Chairperson-Rapporteur of the Working Group on a Draft *United Nations Declaration on the Right to Peace* would like to conduct informal consultations with Governments, regional groups and relevant stakeholders before the second session of the working group.

In this connection, a Note prepared by the Chairperson-Rapporteur of the Working Group, was attached to this Note Verbale. In this note the Chairperson-Rapporteur addressed the following questions to

States and non-governmental organizations: 1. What are the main international human rights themes, which should be considered in the future text of the Draft Declaration to be presented by the Chairperson-Rapporteur?; 2. What is your opinion about the human rights themes proposed by the Chairperson-Rapporteur as set out below? Would they positively contribute to an open and constructive discussion on the text of a Declaration and eventually to agreement among all different stakeholders?.

The proposal of themes were the following: human security and enjoyment of economic, social and cultural rights, including the right to health and environment; racism, racial discrimination, xenophobia and related intolerance; education; freedom of expression, religion or belief and prohibition of propaganda of war; development; protection of victims, transitional justice and prevention of conflicts; peacekeeping, peacemaking and peacebuilding; disarmament; terrorism; measures aimed to increasing the awareness of the Declaration . This list was not exhaustive.

On 31 October and 1 November 2013, the Chairperson-Rapporteur of the open-ended intergovernmental Working Group convened informal consultations with Member States.

On 9 May 2014, the Chairperson-Rapporteur held an informal consultation with governments, regional groups and civil society organizations, in which he stated that a resolution adopted by consensus will necessarily carry more weight than one supported by a majority of States. In addition, a future Declaration will be a useful tool to generate widespread and consistent State practice and/or provide evidence of *opinio juris* of customary rule. Additionally, soft-law instruments can be vehicles for focusing consensus on rules and principles, and for mobilizing a general response on the part of States.

On 13 June 2013, the HRC adopted resolution 23/16 by which the HRC requested the Chairperson-Rapporteur of the working group to prepare a new text on the basis of the discussions held during the first session of the working group and on the basis of the inter-sessional informal consultations to be held, and to present it prior to the second session of the working group for consideration and further discussion thereat.

## Session

The second session took place from 30 June to 4 July 2014 in Geneva. The preliminary ideas of the Chairperson-Rapporteur were included in a letter addressed to the members of the working group, which circulated as an official document at the session (A/HRC/WG.13/2/2). In accordance with the above letter, the following points of concurrence among all delegations were highlighted by the Chairperson-Rapporteur:

1. The declaration should be short and concise and should provide an added value to the field of human rights on the basis of consensus and dialogue.
2. The declaration should be guided by international law, basing itself on the Charter of the United Nations and the promotion of human rights and fundamental freedoms.
3. The legal basis of the human rights legal system is the concept of human dignity.
4. Human rights and fundamental freedoms, in particular the right to life, are massively violated in the context of war and armed conflict. In addition, there is no possibility to exercise fundamental rights in a context of armed violence.
5. Cooperation, dialogue and the protection of all human rights are fundamental to the prevention of war and armed conflict.
6. The promotion, protection and prevention of violations of all human rights would make a profound contribution to peace.
7. Human rights, peace and development are interdependent and mutually reinforcing.
8. Many concepts of human rights included in the draft declaration elaborated by the Advisory Committee are new and unclear, which results in the risk that the current process will become an unproductive, futile and frivolous exercise. Many notions have already been addressed in other more appropriate forums, some under the HRC, and some not.

The approach by the Chairperson-Rapporteur as included in his text was welcomed by the OEWG, which is open to all States, civil society organizations and other stakeholders represented in the United Nations. This approach was accepted by the majority of participants and afterwards, adopted “ad referendum”. Delegations stated their appreciation for his efforts to prepare a new text carefully reflecting the various positions expressed in the first session of the working group and during the various inter-sessional consultations. Some cautiously appreciated the direction in which the drafting was heading on the basis of broad consultations. In particular, the approach is based on the following five ideas, which are a clear attempt to give an answer to the main points of concern raised at the first session:

Firstly, unlike the SC, the HRC is not the competent body to deal with those matters linked to the maintenance of international peace and security in the world. Pursuant to UNGA resolution 60/251 of 2006, the HRC is trusted to work in some of the purposes and principles contained in the *Charter of the United Nations* (i.e. friendly relations among nations, self-determination of peoples, international cooperation and promotion of human rights and fundamental freedoms for all), but never on matters related to breach of peace, the use or threat of force or the crime of aggression.

The HRC is exclusively focused on those who truly suffer in a conflict: human beings and peoples. It is a forum for dialogue, not confrontation, which always works by and for the victims. Since the mandate of the HRC is to promote and protect human rights, peace should be elaborated in light of some fundamental human right, which has already been recognised by the international community as a whole, such as the right to life.

Secondly, the added value of the new Declaration is to strengthen the linkage between peace, human rights and development. Therefore, the recognition of the right to life and the affirmation of the right to live in peace, human rights and development are intended to ensure that the authorities take measures to guarantee that life may be lived in a natural and dignified manner and that the individual has every possible means for this purpose.

Thirdly, the new Declaration should bear in mind two issues: the need to promote peaceful relations among countries and the condemnation

of war. In order to protect and promote the right of peoples to peace, States should implement and comply with all the principles contained in art. 2 of the *Charter of the United Nations*. Therefore, the essential content of this Declaration, and in particular the strong condemnation of war, should be a cornerstone of the future declaration in the line of the *Declaration on the Right of Peoples to Peace*.

Fourthly, in regard to the Declaration prepared by the AC, it should be stressed that all the main elements proposed by the AC were already included in the *Declaration and Program of Action of Culture of Peace* and the *Vienna Declaration and its Programme of Action*. In particular, the concepts proposed by the Advisory Committee have been elaborated by different stakeholders in the line of the *Programme of Action of Culture of Peace* and the *Vienna Declaration and its Programme of Action* (i.e. human security and poverty, disarmament, education, development, environment, vulnerable groups, refugees and migrants). It follows that in spite of including in the future Declaration concepts that are being currently dealt with by other competent bodies, the international community should progressively elaborate these notions in light of agreeable Declarations already adopted by the UNGA, such as the *Declaration and Programme of Action of Culture of Peace* and the *Vienna Declaration and its Programme of Action*.

Broad support was expressed for the new concise and focused text as a significant improvement over the previous AC draft (A/HRC/20/31) and as a basis for further discussion during the present session. Delegations welcomed that a number of ambiguous issues included in the AC draft that did not yet enjoy international consensus were no longer found in the new text and noted that it was not appropriate to include in this text controversial issues or concepts lacking in clarity still being discussed in other forums.

#### **2.5.4. Third Session**

On September 25, 2014, the HRC adopted resolution 27/17 as a continuation of the work done on this topic in recent years. The draft resolution requested to convene a third session of the OEWG on the right to peace with the purpose of finalizing the Declaration, which was held from 20 to 24 April 2015.

The resulting Resolution provided a path for progressively introducing the new approach, which had been proposed by the Chairperson-Rapporteur and was welcomed by all relevant stakeholders in the second session of the working group. A few points within this resolution are crucial for understanding this new approach.

First: “Recalling all previous resolutions on the promotion of the right of peoples to peace adopted by the General Assembly, the Commission on Human Rights and the HRC, in particular Council resolution 20/15 of 5 July 2012” (Preamble, paragraph 1).

This section shows how this new resolution no longer refers to the Advisory Committee’s draft declaration on the right to peace. The draft declaration had elaborated and built on several elements contained in the *Declaration and Program of Action of Culture of Peace* and the *Vienna Declaration and its Programme of Action*. However, many of the human rights concepts that it discussed were new and unclear, resulting in the risk that the process for protecting human rights that the document was attempting to lay out could become an unproductive, futile and frivolous exercise. Furthermore, many of its key points had already been addressed in other more appropriate forums—such as a letter from the Chairperson-Rapporteur, or A/HRC/WG.13/2/2—both under or outside of the HRC, and therefore made the draft declaration unnecessary.

Second: “Recalling also General Assembly Resolution 39/11 of 12 November 1984, entitled ‘Declaration of the Right of Peoples to Peace,’ and the United Nations Millennium Declaration, as well as other relevant international documents” (Preamble, paragraph 2).

This section shows that the resolution opens up the possibility of taking into consideration, not only the Declaration on the Right of Peoples to Peace, but also other relevant instruments in the field of peace. The Chairperson-Rapporteur explained that his draft also reflected points of convergence among delegations, as identified in the *Declaration and Programme of Action on a Culture of Peace* (GA Resolution 53/243 [1999]), the VDPA, and the *Declaration on the Preparation of Societies for Life in Peace* (GA Resolution 33/73 [1978]).

Third: “Welcoming the important work being carried out by civil society organizations, academia and other stakeholders for the promotion of

the right to peace and their contribution to the development of this issue” (Preamble, paragraph 3).

The resolution welcomes not only the work performed by civil society organizations, but also academia and other stakeholders (i.e. international organizations). This creation of this resolution involved consultations with prestigious professors of international law from several universities and research centers, and during both the opening session of the working group and the presentation of his report, the Chairperson-Rapporteur acknowledged the extensive cooperation with and valuable advice provided by the academia in the course of the year leading up to the resolution’s enactment.

Fourth: “Taking note of the report of the open-ended intergovernmental working group on its second session, held from 30 June to 4 July 2014, pursuant to HRC Resolution 20/15, in particular of the inputs from Governments, regional and political groups, civil society and relevant stakeholders, and the text presented by the Chairperson-Rapporteur of the working group, as requested by Council Resolution 23/16” (Preamble, paragraph 4).

Here, the resolution clearly stresses that the new stage of the process will be based on inputs received from Governments, regional and political groups, civil society, other relevant stakeholders, and texts presented by the Chairperson-Rapporteur. A summary of the discussion is included in the report of the working group’s second session, and should be read in conjunction with the compilations of the proposals made by States and other stakeholders. This compilation, contained in document A/HRC/WG.13/2/CRP.1, is available on the OHCHR website.

Fifth: “Decides that the working group shall hold its third session for five working days in 2015 with the objective of finalizing the declaration” (operative paragraph 1).

Following the discussions held during the meetings of the working group, the Chairperson-Rapporteur recommended to the HRC that another session of the Open-Ended Intergovernmental Working Group be held before the Council’s twenty-eighth session, in order to finalize the text of the declaration (paragraph 94 (a), A/HRC/27/63).

Sixth: “Requests the Chairperson-Rapporteur of the working group to conduct informal consultations with Governments, regional groups and relevant stakeholders before the third session of the working group” (operative paragraph 3).

Following the discussions held during the meetings of the working group, the Chairperson-Rapporteur recommended that the HRC that he be given permission to hold informal consultations with governments, regional groups and relevant stakeholders in the intersessional period (paragraph 94 (b), A/HRC/27/63).

Seventh: “Also requests the Chairperson-Rapporteur of the working group to prepare a revised text on the basis of the discussions held during the first and second sessions of the working group and on the basis of the intersessional informal consultations to be held, and to present it prior to the third session of the working group for consideration and further discussion thereat” (paragraph 94 (c), A/HRC/27/63).

This paragraph was proposed by the Chairperson-Rapporteur following the discussions held during the meetings of the working group.

During its first session, the working group concluded that some delegations and other stakeholders recognized the existence of the right to peace, but that several other delegations held that a right to peace did not exist under international law. This latter group argued that peace was therefore not a human right, but that peace was rather the consequence of the full implementation of all human rights.

During its second session, the working group noted that the added value from a new text from a draft Declaration stems not only its recalling the linkage between the right to life and peace, but also from its elaboration on the connection between the right to life and human rights and development.

Eighth: “Invites States, civil society and all relevant stakeholders to contribute actively and constructively to the work of the working group” (paragraph 89, A/HRC/27/63).

At the conclusions of the working group’s second session, non-governmental organizations and other stakeholders presented a joint

statement appealing all delegations to take a leap forward with the declaration by endorsing the right to life in peace, in line with Article 1 of the *Declaration on the Preparation of Societies for Life in Peace*.

In addition, during the HRC debate on the Chairperson-Rapporteur report, civil society organizations stressed that a draft declaration on the right to peace should act as a milestone for using the existing international legal framework to protect all inherent human rights—particularly the right to life, and the right to live in peace (joint oral statement by Associazione Comunità Papa Giovanni XXIII and other individual oral statements delivered by Japan Federation of Bar Associations, International Movement against All Forms of Discrimination and Racism and International Association of Democratic Lawyers).

At the conclusion of the third session, a number of delegations expressed their sincere gratitude for the leadership, flexibility and efforts demonstrated by the Chairperson-Rapporteur in working with all parties. Appreciation was also expressed for the contributions by non-governmental organizations and the support provided to the Chairperson-Rapporteur (Para. 79).

As conclusion of the Chairperson-Rapporteur, he acknowledged the respectful atmosphere and spirit of dialogue and cooperation that reigned during the third session of the working group while moving towards a consensual outcome (Para. 80).

On 24 April in the afternoon the Chairperson-Rapporteur presented a new revised text, which would be based on the following agreeable points and ideas raised by some States and civil society organizations during the third session of the Working group:

Firstly, the international community is absolutely ripe to advance in the progressive elaboration of the right of peoples to peace through the development of those elements that compose it. Despite the different positions about the existence of this right, all member States, even those which do not recognize it, agreed to recall the 1984 *Declaration on the Right of Peoples to Peace* in the preambular paragraph 4 of the new text.

Secondly, the revised new text is the result of the work done by everyone during the week of the third session. It has taken into

account comments and recommendations proposed by all stakeholders, including some civil society organizations. In the text there is no preambular paragraph or provision, which has not previously been discussed within the Group and has not been included in the compilation of the second session of the Working Group.

Thirdly, the Preamble of the new revised text, which is composed of 37 paragraphs, includes all the specific measures aimed at preserving the right of peoples to peace identified by the HRC since 2008 – Res. 11/4 of 2009, 14/3 of 2010 and 17/16 of 2011: (1) the principles of the *Charter of the United Nations*, such as the peaceful settlement of disputes, international cooperation and the self-determination of peoples; (2) the elimination of the threat of war; (3) the three pillars of the United Nations (i.e. peace, human rights and development); (4) the eradication of poverty and promotion of sustained economic growth, sustainable development and global prosperity for all; (5) the wide diffusion and promotion of education on peace and (6) the strengthening of the *Declaration and Programme of Action on a Culture of Peace*.

Fourthly, the three UN pillars have been recognised by the HRC as a fundamental element aimed to promoting the right of peoples to peace. In particular, Council resolutions on the right of peoples to peace have constantly stressed in its operative sections that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being. Therefore, it follows that the three UN pillars are strongly linked to content of the right of peoples to peace.

Fifthly, the new revised text invites solemnly in the last preambular paragraph all stakeholders to guide themselves in their activities by recognizing the high importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace. To that end, the present generations should ensure that both, they and future generations, learn to live together in peace with the highest aspiration of sparing future generations the scourge of war. The linkage between the right to life and peace is again reaffirmed in this paragraph.

Sixth, the first provision of the new revised text proclaims that “Everyone has the right to enjoy peace such that security is maintained,

all human rights are promoted and protected and development is fully realized.” This proposal of language, inspired in Article 38 of the *ASEAN Human Rights Declaration*, was made by Indonesia during the third session and obtained the support from Malaysia, India, Venezuela, Pakistan and Philippines, and some civil society organizations (i.e. Associazione Comunità Papa Giovanni XXIII and United Network of Young Peacebuilders). Additionally, on 25 June 2015, Vietnam on behalf of ASEAN<sup>372</sup> delivered a statement in which they recalled art. 38 of the 2012 *ASEAN Human Rights Declaration* which states “every person and the peoples of ASEAN have the right to enjoy peace ....”.

This proposal also received the support from some civil society organizations. On 22 September 2015, an important NGO network called “...on Member States to take a step forward in the promotion of peace by adopting a declaration that proclaims the human right to peace, or at least the “right to enjoy peace”...”<sup>373</sup>.

Seventh, the second new provision proclaimed that “States should respect, implement and promote equality and non-discrimination, justice and the rule of law and guarantee the security of their people, fulfil their needs and ensure the protection and promotion of their universally recognized human rights and fundamental freedoms as a means to build peace.” This second article was jointly drafted by United States of America (USA), Australia, EU, Malaysia, Indonesia, Morocco, Tunisia, Iran and Egypt.

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372 Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand and Vietnam

373 On 22 September 2015, Associazione Comunità Papa Giovanni XXIII delivered a joint oral statement in item 5 on behalf of the Resource Center for Palestinian Residency and Refugee Rights (BADIL), Center for Global Nonkilling, Commission Africaine des Promoteurs de la Santé et des Droits de l’homme (CAPSDH), Institute for Planetary Synthesis, Institute of Global Education, International Association of Democratic Lawyers (IADL), International Network for the prevention of elder Abuse (INPEA), International Peace Bureau, International Society for Human Rights, Istituto Internazionale delle figlie di Maria Ausiliatrice (IIMA), Mothers Legacy Project, Organisation pour la Communication en Afrique et de Promotion de la Coopération Economique Internationale (OCAPROCE), International Pan Pacific Southeast Asia Women’s Association International (PPSEAWA), Pax Romana, United Network of Young Peacebuilders, Volontariato Internazionale Donna Educazione Sviluppo (VIDES) and Women’s World Summit Foundation.

Eighth, in accordance with Article 3 of the new text, the main actors on which rest the responsibility to make reality this highest and noble aspiration of humankind are human beings, States, United Nations, specialized agencies, international organizations and civil society. They are the main competent actors to promote peace and dialogue in the world.

### **2.5.5. Process of releasing provisions of the Declaration**

#### **Debate**

On 18 September 2015, the Secretariat of the HRC presented its compliments to the Permanent Missions of the United Nations Office at Geneva and had the honour to transmit a new text of a Draft United Nations *Declaration on the Right to Peace* prepared by the Chair-Rapporteur of the third session of the Open-ended intergovernmental working group on a draft United Nations declaration on the right to peace.

On 21 September, the Permanent Mission of Cuba convened an informal consultation open to all permanent missions, civil society and other stakeholders, in which the Chairperson- Rapporteur was invited to participate. He began his statement by deeply thanking the mission of Cuba for convening this informal consultation on the right to peace.

The Chairperson-Rapporteur recalled that on the afternoon of 24 April he had presented a new revised text, which was based on some agreeable points and ideas raised by some States and civil society organizations during the third session of the Working group. In his report he acknowledged the respectful atmosphere and spirit of dialogue and cooperation that reigned during the session while moving towards a consensual outcome. However, we could not achieve this desirable agreement because 16 preambular paragraphs and the operative section appeared in square brackets, revealing the objections of the States.

He indicated that now that we have walked a long way, his role of mediator was almost over presenting this new version of the text, which responds to work in these months. The ball is now in the hands of States: you can accept this text as a consensual text or you have the

option to reject it entirely, he said. The negotiation process ended in the third session. Now is the time to advance and to take action on this topic.

The new revised text presented on 21 September 2015 was the result of the bilateral meetings held from June to September 2015 with those missions which had objected some of the preambular paragraphs on 24 April 2014, last day of the OEWG on the right to peace. Those delegations which objected to some of the 16 provisions of the text finally released these paragraphs by proposing a new language or deleting some notions, which is a demonstration of real engagement of many missions from South and North in the process.

He indicated that now that we have walked a long way, his role of mediator is almost over presenting this new version of the text, which responds to work in these months. The ball is now in the hands of States: you can accept this text as a consensual text or you have the option to reject it entirely, he said. The negotiation process ended in the third session. Now it is the time to advance and to take action on this topic.

After the Chair's presentation, the **Russian Federation** welcomed the new draft declaration and remembered the long way walked by everyone since the first session of the OEWG on the right to peace, taking into account that all delegations now are really engaged in the process. They confirmed their disposal to accept the text presented by the Chair. Additionally, they suggested that those delegations which had some problem with the text should use the existing mechanism to express their concerns, such as explanation of vote, reservations and therefore, they requested them not to break the consensus.

The **United States of America, European Union, Australia, United Kingdom** and **South Korea** stressed that all the work should be based on consensus. They also added that working on the consensual basis is difficult because they do not recognize the right to peace. However, they could be in a position to join consensus and accept the text as a whole, with the exception of two issues: the title and the notion of «entitlement» in article 1. The new PP1 could be acceptable for them and they could also propose several titles for the text: “Acknowledging that the elements contained herein are

characterized as a right to peace in some legal systems or by some countries”.

**Uruguay** and **India** said that the momentum should not be lost. The consensus was important and the text presented was the minimum denominator to reach an agreement. Although they would have preferred a stronger text, they are aware about the difficulties on this matter.

**Egypt** stated that consensus was possible. They commented on the Chair’s text on the basis of three parameters: firstly, the definition of the right to peace through elements has been increasingly progressed and therefore, they could accept the text as a package; secondly, the notions of disarmament and peacekeeping are difficult to be included at this stage ; and thirdly, the right to peace should be recognised in the text and they would be in a position to accept the ASEAN approach to this notion, which recognises the «right to enjoy peace». They have some problem with the current PP1, because this new paragraph breaks the principle of universality of human rights. **Indonesia** shared the same opinion about PP1 and also expressed its willingness to follow Cuba. They also stated that could accept the text presented by the Chair, because in their view, this text is the best compromise to be reached.

**Iran** expressed its concerns because of the current preambular paragraph 13, which makes reference to some instruments regarding the terrorism, such as the *International Convention for the Suppression of Terrorist Bombings*, the *International Convention for the Suppression of the Financing of Terrorism*, the *International Convention for the Suppression of Acts of Nuclear Terrorism* and the *Amendment to the Convention on the Physical Protection of Nuclear Material*. They said that they cannot join consensus with this paragraph, because according to them, we don’t need to be exhaustive by naming several instruments on terrorism.

**Associazione Comunità Papa Giovanni XXIII (APG23)** said that they would have preferred to have a stronger text and insisted on the need to adopt a text by consensus and not to lose the momentum. According to them, the title and article 1 are closely linked to the mandate of the Working Group. **International Fellowship of**

**Reconciliation** recommended to include a reference of the right to life in article 1.

Finally, **Cuba** said that they would have preferred to include in the text topics, such as nuclear disarmament, international solidarity or the promotion of democratic and equitable order. Although they can show significant flexibility, we need to solve the issue of title and article 1. According to them, we have two different options at the level of procedure: firstly, we can reach a consensus, then Cuba will present a resolution annexing the text of the Declaration; secondly, we do not find an agreement, then Cuba will present a resolution in which the HRC will request to have a fourth session of the Working Group.

### **Bilateral meetings**

Below it is the result of the bilateral meetings held with those missions which had objected some of the preambular paragraphs on 24 April 2014, last day of the OEWG on the right to peace. Those delegations which objected to some of the 16 provisions of the text finally released these paragraphs by proposing new language or deleting some notions, which is a demonstration of real engagement of many missions from South and North in the process.

**Firstly**, “Recalling also that the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* solemnly proclaimed the following principles (PP7) »:

that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered, the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the *Charter*, the duty of States to co-operate with one another in accordance with the *Charter*, the principle of equal rights and self-determination of peoples, the principle of sovereign equality of States, the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter

Egypt, Iran and Algeria objected to this preambular paragraph, because they wanted to amend it for expansion. During the bilaterals, the Chairperson-Rapporteur proposed to expand this paragraph, by including the main principles enshrined in the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation* of 1970, which was accepted by them. It permitted to release this preambular paragraph.

**Secondly**, “Acknowledging that the fuller development of a culture of peace is integrally linked to the realization of the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination enshrined in the *Charter of the United Nations* and embodied in the *International Covenants on Human Rights*, as well as in the *Declaration on the Granting of Independence to Colonial Countries and Peoples* contained in UNGA resolution 1514 (XV) of 14 December 1960 » (PP9)

Originally, this preambular paragraph was proposed by the State of Palestine at the third session of the Working Group as follows:

“*Reaffirming* that the full realization of the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination, as enshrined in the *Charter* and embodied in the *International Covenants on Human Rights*, as well as in the *Declaration on the Granting of Independence to Colonial Countries and Peoples*, is integrally linked to the fuller development of a culture of peace”

Canada, Australia and the United States of America objected to this paragraph and proposed to keep it in square brackets. The Chairperson-Rapporteur approached them to show that the legal sources of this paragraph can be found in Article 3.n of the *Declaration on Culture of Peace* and also proposed to them to start the paragraph with a clear reference to culture of peace. It was accepted and therefore, the paragraph was released. The USA proposed to end the paragraph, making a reference to the UNGA resolution 1514 (XV) of 14 December 1960, such as is indicated in Article 3.n of the *Declaration on Culture of Peace*.

**Thirdly**, « Deeply deploring all acts of terrorism, recalling that the *Declaration on Measures to Eliminate International Terrorism*

recognizes that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations and may pose a threat to international peace and security, jeopardize friendly relations among States, threaten the territorial integrity and security of States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society, and reaffirming that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed » (PP11),

This preambular paragraph on terrorism was released by the United States of America and Algeria with the condition that it should be expanded in the line of the PP13 and PP14, which happened.

**Fourthly**, «Stressing that all measures taken in the fight against terrorism must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law, as well as those enshrined in the Charter » (PP12),

During the bilaterals Algeria decided to release this preambular paragraph, taking into account that the legal sources proposed by the Chairperson-Rapporteur, in particular UNGA Resolution A/RES/60/288 of 2006 and SC resolution 2178 of 2014 were meaningful and correct.

**Fifthly**, «Urging all States that have not yet done so to consider, as a matter of priority and in accordance with SC resolution 1373 (2001) and Council resolution 1566 (2004) of 8 October 2004, becoming parties to the relevant conventions and protocols as referred to in paragraph 6 of UNGA resolution 51/210, as well as the *International Convention for the Suppression of Terrorist Bombings*, the *International Convention for the Suppression of the Financing of Terrorism*, the *International Convention for the Suppression of Acts of Nuclear Terrorism* and the *Amendment to the Convention on the Physical Protection of Nuclear Material*» (PP13),

Both Algeria and the United States of America objected to preambular paragraph 11 by indicating that this provision should be expanded. During bilaterals both of them agreed to make a reference to the general call that States become parties to the relevant instruments on terrorism. Additionally, United States of America proposed in the

bilaterals to name some of these international instruments in line of paragraph 10 of the UNGA resolution 60/43 on measures to eliminate international terrorism of 6 January 2006.

On 21 September 2015, Iran objected to this preambular paragraph, in particular the reference to nuclear terrorism, in the informal consultation organised by Cuba and also said that they could not join consensus with the present language.

**Sixthly**, «Reaffirming that the promotion and protection of human rights for all and the rule of law are essential to the fight against terrorism, and recognizing that effective counterterrorism measures and the protection of human rights are not conflicting goals but are complementary and mutually reinforcing» (PP14),

The United States of America objected to preambular paragraph 11 by indicating that this provision should be expanded. During bilaterals the United States of America proposed to include a new preambular paragraph, which is directly selected from the «United Nations action to counter terrorism: Implementing the Global Counter-Terrorism Strategy».

The UN Global Counter-Terrorism Strategy was adopted by Member States on 8 September 2006. The strategy, in form of a resolution and an annexed Plan of Action (A/RES/60/288), is a unique global instrument that will enhance national, regional and international efforts to counter terrorism.

**Seventhly**, «Recognizing that peace is not only the absence of conflict, but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, as well as socio-economic development is ensured» (PP17)

Indonesia objected to preambular paragraph 17 by indicating that this provision should be expanded. During bilaterals Indonesia proposed to include a new sentence at the end of this provision, as follows: «as well as socio-economic development is ensured». It was accepted and therefore, the paragraph was released.

**Eighthly**, «Recalling that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human

family is the foundation of freedom, justice and peace in the world, and recognizing that peace is promoted through the full enjoyment of all inalienable rights derived from the inherent dignity of all human beings » (PP18),

The United States of America objected to the notion of “is critically enhanced for” as was originally included in this paragraph and proposed to keep this notion in square brackets. The Chairperson-Rapporteur approached them to propose the deletion from the text of this notion. It was accepted and therefore, the paragraph was released.

**Ninth**, «Recognizing the importance of the prevention of armed conflict, in which multilateralism and diplomacy plays a critical role, in accordance with the purposes and principles of the *Charter*, and of the commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world, bearing in mind the human and material costs of armed conflicts » (PP21),

The United States of America objected to the definition used for the multilateralism and diplomacy and notion of “culture of prevention of armed conflict” as were originally included in this paragraph and proposed to keep both notions in square brackets. The Chairperson-Rapporteur approached them to propose the alternative language of «multilateralism and diplomacy plays a critical role» and «culture of peace». It was accepted and therefore, the paragraph was released.

**Tenth**, «Reaffirming that since wars begin in the minds of human beings, it is in the minds of human beings that the defences of peace must be constructed and recalling the importance of the settlement of disputes or conflicts through peaceful means” (PP23)

Indonesia released preambular paragraph 17 by indicating that this provision should be expanded. During bilaterals Indonesia wanted to make a reference to the settlement of disputes or conflicts through peaceful means, such as included in this paragraph.

**Eleventh**, «Recalling also the importance of promoting actions aimed at eliminating the contributing factors of conflict, while taking into consideration, inter alia, political, social and economic factors» (PP25),

The United States of America objected to the notion of “eliminating the root causes” as was originally included in this paragraph and proposed to keep this notion in square brackets. The Chairperson-Rapporteur approached them to propose the deletion of this notion from the text. It was accepted and therefore, the paragraph was released.

**Twelfth**, «Recalling further that development assistance and capacity-building based on the principle of national ownership in post-conflict situations should restore peace through rehabilitation, reintegration and reconciliation processes involving all those engaged, and recognizing the importance of peacemaking, peacekeeping and peacebuilding activities of the United Nations for the global pursuit of peace and security» (PP26),

Australia and the United States objected to this paragraph and proposed to keep it in square brackets. The Chairperson-Rapporteur approached them to show that the legal sources of the alternative paragraph can be found in SC Resolution 2086 (2013) on UN peacekeeping operations. It was accepted and therefore, the paragraph was released.

**Thirteenth**, «Recalling that the culture of peace and the education of humanity for justice and liberty and peace are indispensable to the dignity of human beings and constitute a duty that all nations must fulfil in a spirit of mutual assistance and concern » (PP27)

Brazil objected to the notion of “culture” and “sacred” as was originally included in this paragraph and proposed to keep both notions in square brackets. The Chairperson-Rapporteur approached them to propose the notion of “culture of peace” and to delete from the text the notion of “sacred”. It was accepted and therefore, the paragraph was released.

**Fourteenth**, «Stressing the need for States, the United Nations system and other relevant international organizations to allocate resources to programmes aimed at strengthening the culture of peace and upholding human rights awareness through training, teaching and education » (PP31),

The United States of America objected to the notion of “substantial” as was originally included in this paragraph and proposed to keep this

notion in square brackets. The Chairperson-Rapporteur approached them to propose the deletion from the text of this notion. It was accepted and therefore, the paragraph was released.

**Fifteenth**, «Recalling the need to design, promote and implement at the national, regional and international levels strategies, programmes and policies, and adequate legislation, which may include special and positive measures, for furthering equal social development and the realization of the civil and political, economic, social and cultural rights of all victims of racism, racial discrimination, xenophobia and related intolerance» (PP36),

Originally, this preambular paragraph was proposed by South Africa at the third session of the Working Group as follows:

«Recalling the primary responsibility of States to promote measures to eliminate all forms of racism, racial discrimination, xenophobia and related intolerance, as well as all forms of intolerance and discrimination based on religion or belief»

Australia objected to this paragraph and proposed to keep it in square brackets. The Chairperson-Rapporteur approached them to show that the legal sources of the alternative paragraph can be found in Art. 107 of the *Declaration on the World Conference against racism, racial discrimination, xenophobia and related intolerance* (2001). It was accepted and therefore, the paragraph was released.

**Sixteenth**, “Recognizing that racism, racial discrimination, xenophobia and related intolerance, where they amount to racism and racial discrimination are an obstacle to friendly and peaceful relations among peoples and nations, and are among the root causes of many internal and international conflicts, including armed conflicts » (PP37)

Originally, this preambular paragraph was proposed by South Africa at the third session of the Working Group as follows:

“Recognizing that racism, racial discrimination, xenophobia and related intolerance are among the root causes of armed conflict and very often one of its consequences, and recalling that non-discrimination is a fundamental principle of international law”

Australia objected to this paragraph and proposed to keep it in square brackets. The Chairperson-Rapporteur approached them to show that the legal sources of the alternative paragraph can be found in Preamble of the *Declaration on the World Conference against racism, racial discrimination, xenophobia and related intolerance* (2001). It was accepted and therefore, the paragraph was released.

**Seventeenth**, “Inviting solemnly all stakeholders to guide themselves in their activities by recognizing the high importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace; to that end, present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war” (PP38),

Costa Rica objected to the sentence “to that end, present generations should ensure that both they and future generations learn to live together in peace” and proposed to keep it in square brackets. The Chairperson-Rapporteur approached them to show that the legal sources of the alternative paragraph can be found in Art. 9.1 and 9.2 of the *Declaration on the Responsibilities of the Present Generations Towards Future Generations of UNESCO*. It was accepted and therefore, the paragraph was released.

## **2.6. Adoption of the Declaration on the Right to Peace**

### **2.6.1. Human Rights Council**

In the presentation of the resolution, **Cuba** emphasized that the adoption of this Declaration is framed in the context of the bilateral ceasefire and cessation of hostilities signed in Havana, between the Government of Colombia and the Revolutionary Armed forces of Colombia-People’s Army (FARC-EP) on 23 June 2016.

In the explanation of vote before the vote, the **United Kingdom of Great Britain and Northern Ireland** recognised that although there were times when it seemed, both during the Working Group’s sessions and subsequent informal discussions hosted by Costa Rica, that consensus might just be possible, this was not achieved because of two difficult key issues contained in the text. Additionally, the **United States of America** thanked the delegation of Costa Rica for

its constructive, consensus seeking approach while leading the HRC's working group for three years on this difficult issue. Despite the best efforts of many participants over the years, they have not been able to reach agreement on a shared outcome. Finally, the **European Union** stated that after the 3rd session of the Working Group and subsequent informal consultations by the Chair, consensus seemed within reach. The EU was ready to display flexibility to build on that momentum and to accept a draft Declaration, despite several difficulties, provided their 2 main concerns in the draft were addressed – namely the title and Article 1 -. They regretted that a consensus outcome was not possible. Also they expressed their thanks to Ambassador Christian Guillermet from Costa Rica for his very open and transparent Chairmanship of the Working Group, and to his team for all the work done on this issue.

In the elaboration of the *Declaration on the Right to Peace*, the mobilization and strong voice of some civil society organizations were not properly heard in the September session held in 2015, when they openly called on Member States to take a step forward by adopting a declaration that can be meaningful for generations to come<sup>374</sup>.

However, thanks to this strong and resounding message, on 1 July 2016 the HRC of the United Nations in Geneva adopted a *Declaration on the Right to Peace* by a majority of its Member States<sup>375</sup>. This

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374 On 22 September 2015, Associazione Comunità Papa Giovanni XXIII delivered a joint oral statement in item 5 on behalf of the Resource Center for Palestinian Residency and Refugee Rights (BADIL), Center for Global Nonkilling, Commission Africaine des Promoteurs de la Santé et des Droits de l'homme (CAPSDH), Institute for Planetary Synthesis, Institute of Global Education, International Association of Democratic Lawyers (IADL), International Network for the prevention of elder Abuse (INPEA), International Peace Bureau, International Society for Human Rights, Istituto Internazionale delle figlie di Maria Ausiliatrice (IIMA), Mothers Legacy Project, Organisation pour la Communication en Afrique et de Promotion de la Coopération Economique Internationale (OCAPROCE), International Pan Pacific Southeast Asia Women's Association International (PPSEAWA), Pax Romana, United Network of Young Peacebuilders, Volontariato Internazionale Donna Educazione Sviluppo (VIDES) and Women's World Summit Foundation.

375 **Favour:** Africa: Algeria, Botswana, Burundi, Congo, Côte d'Ivoire, Ethiopia, Ghana, Kenya, Morocco, Namibia, Nigeria, South Africa, Togo; Latin American and Caribbean States: Bolivia, Cuba, Ecuador, El Salvador, Mexico, Panama, Paraguay, Venezuela; Asia Pacific States: Bangladesh, China, India, Indonesia, Kyrgyzstan, Maldives, Mongolia, Philippines, Qatar, Republic of Korea, Saudi

Declaration is the clear result of three years of work with all stakeholders, including civil society, led by Ambassador Christian Guillermet-Fernández of Costa Rica, the secretariat and his team, and jointly promoted with Cuba.

On 13 June 2016, Paz sin Fronteras (PSF)<sup>376</sup>, created by Miguel Bosé and Juanes, began the campaign called #RightToPeaceNow by which well-known personalities urged Member States of the HRC to adopt a Declaration on the Right to Peace at the end of the 32nd regular session. Thanks to its social mobilization, the HRC finally decided to adopt a Declaration on the Right to Peace. During this campaign, several personalities<sup>377</sup> of the world of culture and art raised their voices to demand a *Declaration on the Right to Peace* through their media and social networks.

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Arabia, United Arab Emirates, Viet Na; Eastern European States: Russian Federation

**Against:** Belgium, Republic of Korea, France, Germany, Netherlands, United Kingdom and Northern Ireland, Slovenia, Latvia and Macedonia.

**Abstentions:** Albania, Georgia, Portugal and Switzerland.

**Co-sponsors:**

**Council Members:** Algeria, Bolivia, China, Cuba, Ecuador, El Salvador, Venezuela, Viet Nam, Indonesia, Qatar (on behalf of the States Members of the Group of Arab States) and South Africa,

**Council Observers:** Angola, Belarus, Cabo Verde, Costa Rica, Democratic People's Republic of Korea, Egypt, Eritrea Malaysia, Nicaragua, Pakistan, Syrian Arab Republic, Sudan, State of Palestine and Tunisia

376 See at <http://pazsinfronteras.org/en>

377 Miguel Bose, Juanes, Alejandro Sanz, Pablo Alboran, Bulli, Sasha Sokol, Benny Ibarra de Llano, Ximena Sariñana, Fonseca, Patricia Cantu, Edgar Ramirez, Laura Pausini or the north American actress Jessica Chastain

## 2.6.2. General Assembly

### 2.6.2.1. Adoption

On 19 December 2016, the plenary of the UNGA in New York ratified the *Declaration on the Right to Peace* by a majority of its Member States<sup>378</sup>, as previously adopted by the Third Committee of UNGA on 18 November 2016<sup>379</sup> and the HRC on 1 July 2016<sup>380</sup> in Geneva.

378 **For 131:** Afghanistan, Algeria, Angola, Antigua and Barbados, Argentina, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Cuba, Democratic People's Republic of Korea, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad-Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia and Zimbabwe.

**Against 34:** Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Japan, Latvia, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherland, New Zealand, Republic of Korea, Romania, Slovakia, Slovenia, Spain, Sweden, the Former Yugoslav Republic of Macedonia, United Kingdom and United States of America.

**Abstentions 19:** Albania, Andorra, Armenia, Cyprus, Fiji, Greece, Iceland, Italy, Liechtenstein, Norway, Palau, Republic of Moldova, Poland, Portugal, San Marino, Serbia, South Sudan, Switzerland and Turkey

379 A/C.3/71/L.29, 18 November 2016. The resolution was presented by the following States: Algeria, Bolivia (Plurinational State of), Cuba, the Democratic People's Republic of Korea, Eritrea, Namibia, Nicaragua, the Syrian Arab Republic, Venezuela (Bolivarian Republic of) and Viet Nam. Subsequently, Belarus, Cameroon, the Central African Republic, China, the Lao People's Democratic Republic, Myanmar, South Africa, Togo and Zimbabwe joined in sponsoring the draft resolution.

At the same meeting, Benin, Colombia, Costa Rica, Ecuador, Egypt, El Salvador, Ghana, Indonesia, Nigeria, Paraguay, Senegal, the Sudan and Uganda joined in sponsoring the draft resolution, as orally revised.

380 A/HRC/32/28, 1 July 2016

In the adoption of the *Declaration on the Right to Peace* by the UNGA Third Committee, the mobilization and strong voice of some civil society organizations was properly heard in its 71<sup>st</sup> session, when they openly called on Member States to take a step forward by adopting a declaration that can be meaningful for generations to come.

The resolution A/C.3/71/L.29 of the UNGA Third Committee, in which the Declaration was annexed, includes in its operative part as a new element a general reference to the previous resolutions adopted by the UNGA on “the promotion of peace as a vital requirement for the full enjoyment of all human rights by all”. The last resolution on this topic (A/RES/69/176, 2015) not only reaffirms that the peoples of our planet have a sacred right to peace, but also welcomes the decision of the HRC, in its resolution 20/15, to establish an OEWG with the mandate of progressively negotiating a draft United Nations declaration on the right to peace.

Although most of the States supported the on-going process on the right to peace within the HRC in Geneva, some of them did not recognize the existence of the right to peace under international law. However, they were very open to the approach and procedure proposed by the Chairperson-Rapporteur Ambassador Christian Guillermet-Fernández of Costa Rica and consequently, actively participated in the three consecutive sessions of the OEWG in Geneva.

Thanks to this approach, a majority of Member States supported the *Declaration on the Right to Peace* and an important number of Western States abstained for the first time ever on this topic at the Third Committee. In fact, this Declaration is the clear result of three years of work with all stakeholders, including civil society. This positive approach was elaborated in light of the following elements: firstly, international law and human rights law; secondly, the mandate of the HRC in the field of human rights and thirdly, the human rights elements elaborated by the resolutions on the right of peoples to peace adopted by the HRC in the past years.

An agreement among States and regional groups could not finally be achieved within the HRC and the Third Committee, exclusively because of the lack of agreement on the title and Article 1 of the text as presented by the Chairperson-Rapporteur on 21st September

2015. However, as indicated by a Group of States<sup>381</sup> within the Third Committee, the Declaration has some value because it develops the *New Agenda 2030* and also reinforces the three UN pillars - peace and security, development and human rights-. Also they pointed out that the Preamble of the Declaration additionally contains many elements that will benefit the clarity and greater balance in order to ensure and to represent the full range of views among memberships.

### **2.6.2.2. Role played by civil society organizations**

After the adoption of the *Declaration on the Right to Peace* by the HRC on 1 July 2016, the Foundation Culture of Peace delivered a statement in which they stressed that in order to promote the right to peace, it is imperative to implement the *Declaration and Programme of Action on a Culture of Peace*. They also stressed in their statement that “the UNESCO initiative in which in 1997 Member States were invited to discuss a draft Declaration on the Human Right to Peace soon will be realized within the General Assembly”.

The UNESCO Chair on Human Rights, Democracy and Peace at the University of Padova (Italy) in a legal study about the Declaration adopted by the HRC concluded in November 2016 that “the conjunction of Article 1 with the very title of the Declaration presupposes that a human right to peace does already exist as implicitly proclaimed by Article 28 of the UDHR: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.

As suggested by the Foundation Culture of Peace, on 18 November 2016 the UNGA Third Committee adopted a Declaration on the Right to Peace. This Declaration will pass to the UN history for being the first peace Declaration adopted by the UNGA in this new Millennium.

Consequently, the mobilization and strong voice of some civil society organizations was properly heard in its 71<sup>st</sup> session. In particular, on 2 September 2016 the International Association of Peace Messenger Cities adopted the Wielun Declaration in Poland by which they welcomed the adoption by the HRC of the *Declaration on the Right to Peace* contained in the annex to its resolution 32/28 and called upon the UNGA to adopt this Declaration by consensus.

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Additionally, the Human Rights Centre and the UNESCO Chair at the Padova University informed that they had promoted and carried out, with the collaboration of the National Coordination of Local Authorities for Peace and Human Rights, a large campaign in Italy, to support the work of the United Nations. They added that more than 300 City Councils and 5 Regional Councils had adopted a petitionary motion in this regard.

An important group of civil society organizations stressed in an Open Letter of November 2016 addressed to the diplomatic community that: “in today’s world, devastated by armed conflicts, hate and poverty, the recognition and declaration by an overwhelming majority of states that “Everyone has the right to enjoy peace”, would send to Humanity, and in particular to young and future generations, a very much needed message of peace and hope .... The adoption of the UN Declaration on the Right to Peace will represent a little step forward toward the fulfilment of the solemn promises we made in 1945”<sup>382</sup>.

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382 This letter was prepared by the International Association of Democratic Lawyers (IADL), Comunità Papa Giovanni XXIII (APG23), UN Network of United Network of Young Peacebuilders (UNOY) and Japanese Committee for the Human Right to Peace (JCHRP) and it was supported by: Foundation Culture of Peace, International Society for Human Rights (ISHR), Finn Church Aid (FCA), International Federation of Settlements and Neighbourhood Centers (IFS), Commission Africaine des Promoteurs de la Santé et des droits de l’homme (CAPSDH), Cultura de Solidaridad Afro-Indígena, International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Universal Esperanto Association (UEA), Mother’s Legacy Project, International Federation of Women in Legal Careers (IFWLC), International Federation of Women Lawyers (IFWL), 3HO Foundation, Institute for Planetary Synthesis (IPS), Institute of Global Education, Lama Gangchen World Peace Foundation, Federation of Family Associations of Missing Persons from Armed Conflicts (*IF-FAMPAC*), Pax Christi International, Foundation for GAIA (GAIA), Planetary Association for Clean Energy (PACE), Global Eco-village Network (GEN), Institute of International Social Development at the United Nations (IISD), International Association of Peace Messenger Cities (IAPMC), International Peace Bureau (IPB), World For World Organization (WFWO), United Religions Initiative (URI), Lucis Trust-World Good Will Bangwe and Dialogue, Dzeno, Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco (IIMA), Foundation for the Refugee Education Trust (RET International), Graines de Paix, International Volunteerism Organisation for Women Education Development (V.I.D.E.S.), US Federation for Middle East Peace, ONG Hope International, World Association for Education as an Instrument of Peace, Commission Colombian of Jurist, General Arab Women Federation (GAWF), International Organization for Victim Assistance (IOVA), International Society for Traumatic Stress Studies (ISTSS), International Women’s Year Liaison Group, Association Points-Coeur, Nonviolent Peaceforce, Association Centre Europe- Tiers Monde Cetim.

In parallel, the Chairperson of the Drafting Group on the right to peace at the AC of the HRC, Ms. Mona Zulficar, and the Chairperson-Rapporteur of the OEWG at the HRC, Ambassador Christian Guillermet-Fernández, published in the Arab newspaper Elaph in December 2016 a reflection in which they stressed that the OEWG witnessed that the text presented by the AC was not properly supported by Member States. For this reason, the Chairperson-Rapporteur decided to promote the effective implementation of the *Declaration and Programme of Action on a Culture of Peace*, taking into account that all the main elements on the right to peace identified by the AC had been elaborated in the Programmes of Action on Vienna and Culture of Peace.

Finally, on 22 October 2016, Paz sin Fronteras (PSF), created by Mr. Miguel Bosé and Mr. Juanes, began the campaign called #RightToPeaceNow by which well-known personalities urged Member States of the Third Committee of the UNGA to adopt a *Declaration on the Right to Peace* at the end of the 71th regular session. During this campaign, several personalities of the world of culture and art raised their voices to demand a *Declaration on the Right to Peace* through their media and social networks. They expressed their support so that the process was definitively closed in New York with the adoption of a Declaration on the Right to Peace, such as occurred in this case.

### 2.6.2.3. Member States

The resolution A/C.3/71/L.29, in which the Declaration was annexed, was presented by the delegation of **Cuba**. In its presentation, they said that the adoption of this text is a moral imperative and that they are encouraged by the willingness to contribute to raise awareness among people and governments about the different elements which compose the right to peace at a time when world peace is the desire of millions of people. By adopting this declaration, they said, we aspire to send a clear message of commitment and protection of the right to peace and the lives of millions of people.

The **United States of America** pointed out that they do not agree with the attempts to develop the collective right to peace because it modifies the circle of the exercise of the existing human rights. Consequently, they decided to call the vote and vote against this resolution. **Japan**

considered premature to recognise peace as a human right principle since it has not been established under international law. They said that the adoption of this resolution at the third committee without reaching consensus among Member States, following the same case as in Geneva, is regrettable. **Iran** indicated that the maintenance and global realization of the right to peace needs a holistic approach. Unfortunately, they added, some important requirements for the realization of the right to peace, such as the challenges posed by the arms of mass destruction to the international peace and security was totally overlooked in the Declaration.

The **European Union** said since the establishment of the OEWG on the right to peace, three years ago, they have consistently expressed their willingness to engage in the discussion between the linkage of peace and the enjoyment of human rights, with a view to reach a consensus on the draft declaration. According to them, the WG has been a model of cooperation and open dialogue. All sides proved their willingness to have a possible consensus on a declaration acceptable to all. However, in spite of all efforts, consensus was not possible. There is neither an agreed upon definition of peace nor agreement as to who will be the right-bearers and duty-bearers of such right. In addition, the proposed declaration could be contrary to some provisions of the UN Charter. Finally, the absence of peace cannot justify the failure to respect human rights. Under these circumstances, they reaffirmed that they are not in the position to support this draft resolution.

**Iceland**, on behalf of a Group of States<sup>383</sup>, recalled that it is clear that sustainable development cannot be realized without peace and security, and peace and security will be at risk without sustainable development. The *New Agenda 2030* recognise the need to build peaceful just and inclusive societies and provide equal justice, the protection and respect of human rights, the effective rule of law and governance in all levels and in transparency and effective and accountable institutions. Consequently, they added that they are all committed to the *Global Agenda 2030* and to goal 16 on the promotion of peaceful and inclusive societies for sustainable development for all. The *2030 Agenda* states that we are determined to foster peaceful, just and inclusive societies which are free from fear and violence. There can be no sustainable development without peace and no

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peace without sustainable development. However, they also indicated that they are not in the position to support in this point this draft resolution, because there is not a common legal understanding for the specific right to peace and is also unclear who will be the right-bearers or duty holders of such right.

Finally, **Liechtenstein**, on behalf of another Group of States<sup>384</sup>, indicated that the *Charter of the United Nations* rests on principles of the United Nations, which are, inter alia, to maintain peace and security and to that end to take effective and collective measures for the prevention and removal of threats to peace and for the suppression of acts of aggression or other breaches against peace.

They added that the step was taken when States parties to the International Criminal Court (ICC) adopted by consensus provisions on the crimes of aggression, which were included in the Kampala Review Conference in 2010. The activation of the Kampala process in 2017 will constitute a historic step in order to stop illegal wars and for them, this is a main contribution to the cause of peace.

### 2.6.3. Advancements throughout the process

Since the end of the third session of the Open-Ended Working Group on 24 April 2014, there were important and positives advancements in the process, such as:

**Firstly**, the Western and European countries accepted with «reservations» the resolution 20/15, which creates the Working Group on the right to peace. It does not mean that they support the right to peace, only that they are engaged in the process. It should be recalled that this regional group had always been opposed to the existence of this Working Group since the beginning.

On 2 July 2015, the United States of America and European Union drafted a proposal of presidential decision, which was absolutely supported by the Russian Federation, which “requests the Chairperson-Rapporteur to continue consultations on the text contained in the report on its third session of the Working Group created in accordance with *Human Rights Council resolution 20/15* and authorizes the Working Group to hold a final meeting for two days before the 30th

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session of the HRC in order to complete its work by determining the title and content of its draft declaration, on a consensus basis”.

Although it was neither presented nor eventually adopted by the HRC because of lack of time, the relevance of this draft decision was the reference herein to the resolution 20/15. Also this text showed the real engagement of some Western countries in the pursuit of a solution which can satisfy everyone.

**Secondly**, States and some civil society organizations have always demanded that the Chairperson-Rapporteur should present a short and concise text. The revision of the last version of the text presented on 21 September 2015 by the Chairperson-Rapporteur was accepted by all missions, with the exception of title and the notion of «entitlement» in article 1.

All States and some civil society organizations have recognised that this text was the best compromise to reach an agreement on this topic. It means that the process of releasing square brackets in the text, carried out by the Chairperson-Rapporteur in the latest months, was a useful and successful experience.

Even the European Union affirmed at the HRC on 1 October 2015 that they were ready to display flexibility to accept a draft Declaration, despite several difficulties. It should be recalled that most of the controversial provisions proposed by some missions were finally accepted by the Western and European countries, such as terrorism, the list of principles contained in the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States*, the reference to the colonial or other forms of alien domination or foreign occupation or the fight against racism and xenophobia or intolerance.

Additionally, we should take into consideration that the Western and European countries have actively participated in a process, in which they do not believe, which demonstrate the good faith of everyone in the negotiation process. Therefore, despite their long-term position about the lack of legal basis for the ‘right to peace’ in international law, they have consistently expressed their willingness to be engaged in the discussion.

In its resolution 27/17 of 2014, the HRC decided the OEWG would hold its third. These previous resolutions are not explicitly referring to the draft declaration on the right to peace elaborated by the AC, because this text was categorically rejected by Member States in the first session of the OEWG. These resolutions are a clear example of the decision taken by the HRC by not accepting the AC's text as a basis for future negotiations. The community of States and an increasing number of civil society organizations had realized about the close linkage, even sometimes the repetition, between the elements proposed by the AC and the *Programmes of Action on Vienna and a Culture of Peace*. For this reason, none State claimed in the 27th and 30th sessions of the HRC to go back to the Advisory Committee's text in order to avoid duplications.

**Thirdly**, many regional groups and all civil society organizations have rightly and consistently demanded that the right to peace should be expressly recognised in the text. It is important to recall that all Western and European countries accepted to include a reference in PP5 of the *Declaration on the Right of Peoples to Peace*, a reference which has been always object to by all of them since the beginning of the process.

Additionally, they were ready to accept for the first time the existence of the right to peace in the line of the proposal formulated by Costa Rica in the third session of the Open-Ended Working Group, which was included in PP1, as follows:

«*Acknowledging* that the elements contained herein are characterized as a right to peace in some legal systems or by some countries»

On 21 September 2015, some missions objected to this first Preambular paragraph, because in accordance with them it negatively affects the principle of universality of human rights. This matter is strongly linked to the old debate on universalism vs. cultural relativism, which has existed in legal scholarship for decades, and is increasingly entering public discourse on international law and human rights, including the United Nations. The supporters of the universalism on this matter advocates that the right to peace is universal and consequently, it should apply to every human being. On the other hand, those whose support the other theory argue that the right to

peace is culturally dependent, and that the right to peace cannot apply in all legal systems.

At this point of the debate, it should be recalled that as of today the right to peace has been only elaborated in the *African Charter on Peoples and Human Rights* (Art. 23) and the *ASEAN Human Rights Declaration* (Art. 38). In 1984 the UNGA adopted the *Declaration of the Right of Peoples to Peace* by 92 to none and 34 abstentions. Twenty-nine States were absent from the vote and two countries did not participate, because both of them disagreed with the initiative. Consequently, the right to peace does not exist in all legal systems of the world. This does not mean that the parliaments or governments of the Western countries cannot pass some decree or law recognizing the right to peace one day in the future, only that today there is not a common agreement at the universal level to recognize this enabling right.

Article 38.1 of the Statute of the ICJ describes the law to be applied by the ICJ when deciding cases within its jurisdiction. It is generally considered to be the most authoritative enumeration of the sources of International Law. The Court recognizes three main legal sources: firstly, international conventions, whether general or particular, establishing rules expressly recognized by the contesting States; secondly, international custom, as evidence of a general practice accepted as law and thirdly, the general principles of law recognized by civilized nations.

Since 1984, the Western and European countries have strongly opposed the right to peace in both the UNGA and the UN human rights bodies – Commission on Human Rights and HRC-, which has impeded to create a positive *opinio iuris* about the existence of this right at the universal level. Therefore, we can affirm that there is not a universal custom among all States exhibited both by widespread conduct and a discernible sense of obligation which recognises the right to peace by all. In these cases, all that is needed to have an international custom is that the State, group of States or regional groups have not objected to the law, which is not the case with the right to peace.

Since the creation of the League of Nations and the subsequent United Nations, all States without exception have tried to use the

international organizations to extend their sovereignty through the prevalence of their ideas and conceptions on human rights or international law. This general phenomenon is common within the community of States and consequently, to reach this aim they join with other States and regional groups so that their conceptions can prevail over the others. However, this principle is always limited to other principles developed by the *Charter of the United Nations*, such as the principle of international cooperation and friendly relations among nations.

In accordance with the resolution 1815 (XVII) on the *Consideration of principles of international law* adopted by the Sixth Committee of the UNGA on 18 December 1962, the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States should be elaborated through the promotion of international cooperation in economic, social and related fields and the realization of human rights and fundamental freedoms.

On several occasions, the UNGA has stated that the codification of the rules of international law and their progressive development would assist in promoting the “purposes and principles” of the Charter of the United Nations. In particular, the UNGA resolution 1505 (XV) on the *Future work in the field of the codification and progressive development of international law* stated that: “the conditions prevailing in the world today give increased importance to the role of international law ... in strengthening international peace, developing friendly and cooperative relations among the nations, settling disputes by peaceful means and advancing economic and social progress throughout the world”.

Consequently, the progressive elaboration of the right to peace should be done on the basis of the principle of international cooperation and friendly relations among nations. The progressive elaboration of international law, including the right to peace, constitute one of the foundation stones of the rule of law and a clear means to also establish a just and lasting peace all over the world. To reach this aim and without diminishing the real objective of this process, the community of States should find common ways in which all ideas can peacefully coexist.



## Second Part

### Section I

#### Analysis of the 2016 Declaration on the Right to Peace

##### 1. Comparative analysis between the Council resolutions on the right of peoples to peace and the Chairperson-Rapporteur's text

As previously indicated, on 17 July 2012 the HRC adopted resolution 20/15 on the promotion of the right to peace, by which decided "... to establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace, on the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views and proposal".

The resolution which created the OEWG recalled in its first Preambular paragraph "all previous resolutions on the promotion of the right of peoples to peace adopted by ... the Human Rights Council, in particular Council resolutions 14/3 of 17 June 2010 and 17/16 of 17 June 2011, in which the Council requested the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace".

Pursuant to the resolutions 14/3<sup>385</sup> and 17/16<sup>386</sup>, the HRC calls upon all stakeholders not only to apply some specific measures aimed at preserving the right of peoples to peace, but also to promote other matters which are not directly linked to current mandate on the right to peace trusted to the HRC. In particular, the other topics in which Member States could work without disregarding the current Council mandate on this topic in the line of the previous resolutions are the following:

1. The importance of peace for the promotion and protection of all human rights for all (Art. 3);

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385 Promotion of the right of peoples to peace, Doc. A/HRC/RES/14/3, 23 June 2010

386 Promotion of the right of peoples to peace, Doc. A/HRC/RES/17/16, 15 July 2011

2. The deep fault line that divides human society between the rich and the poor and the ever-increasing gap between the developed world and the developing world, which pose a major threat to global prosperity, peace, human rights, security and stability (Art. 4);
3. Peace and security, development and human rights as the pillars of the United Nations system and the foundations for collective security and well-being (Art. 5);
4. The elimination of the threat of war, particularly nuclear war, the renunciation of the use or threat of use of force in international relations and the settlement of international disputes by peaceful means on the basis of the *Charter of the United Nations* (Art. 6);
5. The establishment, maintenance and strengthening of international peace and security and an international system based on respect for the principles enshrined in the Charter and the promotion of all human rights and fundamental freedoms, including the right to development and the right of peoples to self-determination (Art. 7);
6. The principles and purposes of the *Charter* in their relations with all other States, irrespective of their political, economic or social systems or of their size, geographical location or level of economic development (Art. 8);
7. The duty of all States, in accordance with the principles of the *Charter*, to use peaceful means to settle any dispute to which they are parties and the continuance of which is likely to endanger the maintenance of international peace and security, and to settle their disputes as early as possible as an important contribution to the promotion and protection of all human rights of everyone and all peoples (Art. 9);
8. The vital importance of education for peace (Art. 10);
9. The promotion and effective implementation of the *Declaration and Programme of Action on a Culture of Peace* (Art. 11);
10. The importance of mutual cooperation, understanding and dialogue in ensuring the promotion and protection of all human rights (Art. 12);

On 24 June 2013, the HRC adopted resolution 23/16 on the promotion of the right to peace, by which requested the Chairperson-Rapporteur of the working group “... to conduct informal consultations with Governments, regional groups and relevant stakeholders before the second session of the working group” (paragraph 3) and “... to prepare a new text on the basis of the discussions held during the first session of the working group and on the basis of the intersessional informal consultations to be held” (paragraph 4).

The text prepared by the Chairperson-Rapporteur is based on, among others, the following instruments and principles, namely: the *Charter of the United Nations* and the UDHR; the content of the Council resolutions on the right of peoples to peace and international human rights law. In particular, the Chairperson-Rapporteur included in his text all those principles of international law and human rights elaborated by the HRC in its resolutions on the right of peoples to peace, such as : firstly, the elimination of war as a prerequisite for the realization of human rights, and in particular the right to life<sup>387</sup>; secondly, the importance of construction of peace and the strengthening of human rights<sup>388</sup>; thirdly, international cooperation in the field of human rights as a means to create an environment of peace and stability<sup>389</sup> and fourthly, the obligation of all States to

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387 Preamble, paragraph 25: “... life without war is the primary international prerequisite for the material well-being, development and progress of countries and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations”. Resolutions 14/3 and 17/16 on the right of peoples to peace.

388 Preamble, paragraph 21: “... human rights include social, economic and cultural rights and the right to peace, a healthy environment and development, and that development is, in fact, the realization of these rights”. Art. 3 and 5: “... the importance of peace for the promotion and protection of all human rights for all” and “... peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being”. Resolutions 14/3 and 17/16 on the right of peoples to peace.

389 Preamble, paragraph 14: “... commitment to peace, security and justice, respect for human rights and the continuing development of friendly relations and cooperation among States”. Art. 9: “... international cooperation in the field of human rights contributes to the creation of an international environment of peace and stability” and “...encourages States to settle their disputes as early as possible as an important contribution to the promotion and protection of all human rights of everyone and all peoples”. Resolutions 14/3 and 17/16 on the right of peoples to peace.

promote peace and human rights<sup>390</sup>.

Additionally, the Chairperson-Rapporteur's text echoed those other important matters, in which the HRC is absolutely trusted to work in accordance with the resolutions on the right of peoples to peace. In particular, the text makes a clear reference to the following other competent issues trusted to the HRC:

1. The principles of the *Charter of the United Nations*, such as the peaceful settlement of disputes, international cooperation and the self-determination of peoples<sup>391</sup>,
2. The elimination of the threat of war<sup>392</sup>,
3. The three pillars of the United Nations (i.e. peace, human rights and development)<sup>393</sup>,
4. The eradication of poverty and promotion of sustained economic growth, sustainable development and global prosperity for all<sup>394</sup>,

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390 Art. 7: "...all States should promote an...international system based on respect for the principles enshrined in the Charter and the promotion of all human rights and fundamental freedoms, including the right to development and the right of peoples to self-determination". Resolutions 14/3 and 17/16 on the right of peoples to peace.

391 Preamble, paragraph 4 "*Recalling* that the friendly relations among nations are based on respect for the principle of equal rights and self-determination of peoples, and international cooperation to solve international problems of an economic, social, cultural or humanitarian character and to promote and encourage respect for human rights and fundamental freedoms for all". Chairperson-Rapporteur's text.

392 Preamble, paragraph 16 "*Inviting solemnly* all stakeholders to guide themselves in their activities by recognizing the supreme importance of practicing tolerance, dialogue, cooperation and solidarity among all stakeholders as a means to promote world peace through human rights and to end, reduce and prevent progressively war and armed violence". Chairperson-Rapporteur's text.

393 Preamble, paragraph 9: "*Recalling* that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing". Chairperson-Rapporteur's text.

394 Preamble, paragraph 10 "*Recalling* the world commitment to eradicate poverty and promote sustained economic growth, sustainable development and global prosperity for all". Chairperson-Rapporteur's text.

5. The wide diffusion and promotion of education on peace<sup>395</sup>,
6. The strengthening of the *Declaration and Programme of Action on a Culture of Peace* in the field of human rights and fundamental freedoms<sup>396</sup>.

However, the text introduced some new topics, which were not originally laid down in the Council resolutions on the right of peoples to peace. In particular, the Chairperson-Rapporteur wanted to stress the notion of human dignity as foundation of peace<sup>397</sup>, the role played by women in the construction of peace<sup>398</sup> and the importance of prevention of armed conflict in accordance with the purposes and principles of the Charter<sup>399</sup>.

In conclusion, the Chairperson-Rapporteur's text not only takes into consideration Art. 2 of the UN Charter, but also condemns openly war and armed conflict in the line of the 1984 Declaration as follows:

*“Inviting solemnly all stakeholders to guide themselves in their activities by recognizing the supreme importance of practicing tolerance, dialogue, cooperation and solidarity among all stakeholders as a means to promote world peace through human rights and to end, reduce and prevent progressively war and armed violence...”*

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395 Preamble, paragraph 14: “Recalling also that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern”. Chairperson-Rapporteur's text.

396 Preamble, paragraph 15: “Recalling the Declaration and Programme of Action on a Culture of Peace, which recognized that culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on, among others, the full respect for and promotion of all human rights and fundamental freedoms”. Chairperson-Rapporteur's text.

397 Preamble, paragraph 5: “Recalling also that the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Chairperson-Rapporteur's text.

398 Preamble, paragraph 11: “Recalling that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields”. Chairperson-Rapporteur's text.

399 Preamble, paragraph 12: “Recalling the importance of prevention of armed conflict in accordance with the purposes and principles of the Charter and the commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world”. Chairperson-Rapporteur's text.

## 2. Traditional approach to the right of peoples to peace

With the exception of the reference to the elimination of nuclear weapons, the rest of elements elaborated in the 1984 Declaration were properly included in the *2016 Declaration on the Right to Peace*. For this reason, all Member States agreed to refer to this international instrument in the Preambular section of the *Declaration on the Right to Peace* along with the *Declaration on Preparation of Societies for Life in Peace* of 1978 and the *Declaration and Programme of Action on a Culture of Peace* of 1999.

Since the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* captures the main elements of the *1984 Declaration on the Right of Peoples to Peace*, Member States agreed to include the following elements as a part of the right to peace:

- The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,
- The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,
- The duty not to intervene in matters within the domestic jurisdiction of any State,
- The duty of States to cooperate with one another in accordance with the *Charter*,
- The principle of equal rights and self-determination of peoples, including those living under colonial or other forms of alien domination or foreign occupation
- The principle of the sovereign equality of States,
- The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the *Charter*,

- The Declaration also proclaimed that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the *Charter*, as stated in the UNGA resolution 2625 (XXV) of 24 October 1970.

The *1984 Declaration on the Right of Peoples to Peace* is not linked to international human rights law. In particular, this instrument does refer neither to the UDHR nor other human rights instruments in its Preamble. There is only a general reference to human rights by affirming that "...life without war serves as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations".

Consequently, in order to protect and promote this 1984 Declaration, Member States have traditionally understood that this right should be linked to principles contained in Art. 2 of the *Charter of the United Nations*. In addition, they stressed that the respect of these principles should help to eliminate the scourge of war. This 1984 Declaration is principally devoted to the relationship among countries and the condemnation of war.

### **3. Human rights approach to the right to peace**

During the *International Year of Culture of Peace* proclaimed for 2000, the Commission on Human Rights adopted its resolution 2000/66 by which it requested the OHCHR to organize a panel/forum on a culture of peace focusing on the contribution of the promotion, protection and realization of all human rights to the further development of a culture of peace. The *Expert Seminar on Human Rights and Peace* was held in Geneva on 8 and 9 December 2000. The report prepared by the OHCHR concluded that "human rights should become the fundamental guiding principle for sound economic and social development and for the anticipation and prevention of conflict and for the reconstruction and rehabilitation of post-conflict societies".

In the context of the 2014 International Day of Peace, which is commemorated every year on 21 September all over the world, the Secretary General of the United Nations calls upon international

community to enhance all human rights and fundamental freedoms as preventive measure to avoid wars and conflicts as follows:

“The theme for the Day this year acknowledges the 30th anniversary of the UNGA *Declaration on the Right of Peoples to Peace*, with its central message that humanity’s sustainable progress and the realization of fundamental rights and freedoms depend on peace and security. It is central to the Rights up Front approach, which calls upon the international community to act earlier and more concertedly in the face of human rights violations, which are often the precursors of worse to come”.

Although originally the *Declaration on the Right of Peoples to Peace* lacks a human rights perspective, the HRC has elaborated this perspective since 2008. The elements of human rights and international law included in the resolutions 14/3 (2010) and 17/16 (2011) on the right of peoples to peace were positively elaborated by Member States within the HRC. Additionally, the notion of peace was traditionally developed in connection to the right to life.

Along the inclusive and transparent negotiation process of the Declaration, conducted by the Chairperson-Rapporteur of the OEWG on the right to peace, Ambassador Christian Guillermet-Fernández of Costa Rica, all delegations and some civil society organizations actively participated in the three consecutive sessions of the OEWG in Geneva (2013-2015).

A majority of Member States and important sectors of civil society supported the *Declaration on the Right to Peace*, which is the clear result of a complex and difficult negotiation process. This positive approach was elaborated in light of the following elements: firstly, international law and human rights law; secondly, the mandate of the HRC in the field of human rights and thirdly, the human rights elements elaborated by the resolutions on the right of peoples to peace adopted by the HRC in the past years.

The new elements included in the 2016 *Declaration on the Right to Peace*, which had been not originally enshrined in neither resolutions 14/3 (2010) nor 17/16 (2011) on the right of peoples to peace, were the following:

Firstly, the phenomenon of terrorism and the obligation to promote and protect human rights and the rule of law in the fight against this scourge. There is a reference to the *Declaration on Measures to Eliminate International Terrorism* and in particular to the provision which states that «acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations and may pose a threat to international peace and security, jeopardize friendly relations among States, threaten the territorial integrity and security of States...».

Secondly, the recognition that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities is an integral part of the development of a society as a whole and within a democratic framework based on the rule of law,

Thirdly, the recognition of that racism, racial discrimination, xenophobia and related intolerance, where they amount to racism and racial discrimination, are an obstacle to friendly and peaceful relations among peoples and nations, and are among the root causes of many internal and international conflicts, including armed conflicts.

For this reason, the *Declaration on the Right to Peace* recalls the need to design, promote and implement, at the national, regional and international levels, strategies, programmes and policies, and adequate legislation, which may include special and positive measures, for furthering equal social development and the realization of the civil and political, economic, social and cultural rights of all victims of racism, racial discrimination, xenophobia and related intolerance,

The *Declaration on the Right to Peace* makes a balance between the principles of international law enshrined in the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* and the protection of all human rights by all. The Declaration has a clear victim orientated approach. Therefore, this instrument is exclusively focused on those who truly suffer in a conflict: human beings and peoples.

In the definition of the right to peace, the legislator desired to stress in its article 1 the idea that everyone has the right and is entitled

to enjoy and access the benefits stemmed from peace, human rights and development, founding pillars of the whole UN system. Denying the access of human beings to the enjoyment of the three pillars has a consequence the failure of the United Nations after its creation 70 years ago.

As indicated by a Group of States<sup>400</sup> within the Third Committee, the Declaration has some value because it develops the New Agenda 2030 and also reinforces the three UN pillars - peace and security, development and human rights-. Also they pointed out that the Preamble of the Declaration additionally contains many elements that will benefit for the clarity and greater balance in order to ensure and to represent the full range of views among memberships.

Consequently, the *Declaration on the Right to Peace* adopted by the UNGA on 19 December 2016 will pass to the history for having elaborated the human rights approach to a notion, which was traditionally devoted to the relations among States without referring to the importance of protecting the fundamental freedoms of victims of war and conflict.

#### **4. Study of the Declaration**

In this section, the different components of the text adopted by the UNGA, in particular its Preamble and Operative Part, will be deeply analysed in light of the following elements: firstly, international law and human rights law; secondly, the points of concurrences among all delegations and thirdly, outcome of the consultations held in the context of the on-going process.

##### **4.1. Title**

###### *Declaration on the Right to Peace*

In this discussion it would be important to recall that the SC Resolution 1860 of 2009 reaffirms in its last Preambular paragraph “the right of all States in the region to live in peace within secure and internationally recognized borders”. This Council Resolution is based on resolution 242, which was unanimously adopted under Chapter VI in 1967. The resolution was sponsored by the British ambassador Lord Caradon and was one of five drafts under consideration.

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400 Australia, Liechtenstein, New Zealand, Norway, Switzerland and Iceland

During the debate of this resolution the representative of India stated that “there was considerable agreement on the principle that every State has the right to live in peace and complete security free from threats or acts of war and consequently all States in the area should terminate the state or claim of belligerency and settle their international disputes by peaceful means”.

Additionally, the representative of France and Argentina added that they were glad to see that the resolution stresses the second principle, the right to live in peace within its own boundaries.

In this case, the “right to live in peace” is principally devoted to the relationship among countries without referring properly to international human rights law. This notion is principally referred to the principles included in Art. 2 of the Charter<sup>401</sup>.

However, the UNGA also recognized the human rights approach of the right to live in peace in 1996 (res. 48/126). In particular, art. 1.4 of the *UNESCO Declaration of the Principles of Tolerance* states that “human beings, naturally diverse in their appearance, situation, speech, behaviour and values, have the right to live in peace and to be as they are”.

In order to advance positively on this first challenge, those regional groups which do not accept the notion of the right to peace in the title of the Declaration could carefully study with the other political groups how they could link this latter notion to three pillars of the United Nations –peace and security, human rights and development-. They could always deliver an explanation of position on this specific point. In fact, the Russian Federation clearly stated on 1 July 2016 that the right to peace is closely connected to peace, human rights and development.

The three UN pillars have been recognized by the HRC as a fundamental element aimed at promoting the right of peoples to peace. In particular, resolutions 11/4 of 2009, 14/3 of 2010 and 17/16 of 2011 have constantly stressed these pillars in operative sections. They

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401 Prohibition of the threat or use of force against the territorial integrity or political independence of any State; settlement of international disputes by peaceful means; prohibition to intervene in matters within the domestic jurisdiction; cooperation among States; self-determination of peoples and sovereign equality of States.

emphasize that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being. Therefore, it follows that the three UN pillars are strongly linked to the issue of the right of peoples to peace.

The resolution 60/251 of the HRC adopted by the UNGA on 15 March 2006 recognized in its Preambular paragraph 6 that “peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing.”

On 21 August 2014, the UNGA adopted the resolution 2171 by which it expressed its deepest concern about the high human cost and suffering caused by armed conflicts and also recognized that peace, security and development are mutually reinforcing, including in the prevention of armed conflict (Preambular paragraph 12).

Seventy years ago, the UN Charter established the three founding pillars of the United Nations: peace and security, human rights and development. Since 1945 these pillars have provided the framework for the United Nations to tackle important challenges. We cannot pick and choose which pillar the United Nations should support, nor can we focus on one to the detriment of the others. To do so would be to ignore the lessons of the past 70 years, and to invite future conflicts.

## **4.2. Preamble**

### **4.2.1. Charter of the United Nations**

*Guided by the purposes and principles of the Charter of the United Nations,*

Sources: Art. 1 and 2 of the Charter

The *United Nations Conference on International Organization* (UNCIO) had as its purpose to review and rewrite the *Dumbarton Oaks agreements* of 1944, in which international leaders formulated and negotiated the future architecture of the United Nations<sup>402</sup>.

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<sup>402</sup> Conclusions of the Washington Conversations on International Peace and Security Organization. 7 October 1944. See in <http://www.ibiblio.org/pha/policy/1944/441007a.html>

The formulation of the *Dumbarton Oaks agreements* was the first important step taken to carry out the *Moscow Declaration* of 1943, which recognized the necessity of ensuring a rapid and orderly transition from war to peace<sup>403</sup> and the need for a postwar international organization to succeed the League of Nations<sup>404</sup>.

For the first time the linkage between economic and social matters, human rights and peace, was recognized in Art. IX of the *Dumbarton Oaks agreements*: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms....”<sup>405</sup>.

Ever since, the United Nations has been always guided by a conception of peace understood in a wider and more positive way, in which the well-being of individuals and societies, including economic welfare, social security and human rights, has a clear prevalence over a conception of peace related exclusively to use of violence or force<sup>406</sup>.

On 26 June 1945, the *Charter of the United Nations* was signed at the San Francisco War Memorial and Performing Arts Center in San Francisco (United States of North-America) by 50 of the original member countries<sup>407</sup>. It entered into force on 24 October 1945, after

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403 Paragraph 3 of the Preamble: “Recognizing the necessity of insuring a rapid and orderly transition from war to peace and of establishing and maintaining international peace and security with the least diversion of the world’s human and economic resources for armaments”. See in <http://avalon.law.yale.edu/wwii/moscow.asp>

404 Paragraph 3 of the dispositive section: “That they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security”. See in <http://avalon.law.yale.edu/wwii/moscow.asp>

405 See in <http://www.ibiblio.org/pha/policy/1944/441007a.html>

406 LIVA TEHINDRAZANARIVELO, D. and KOLB, R., “Peace, Right to, International Protection”, *Max Planck Encyclopedia of Public International Law*, December 2006, p. 12

407 Argentina, Australia, Belarus, Belgium, Bolivia (Plurinational State of), Brazil, Canada Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, India, Iran (Islamic Republic of), Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Russian Federation, Saudi Arabia, South Africa, Syrian

being ratified by the five permanent members of the SC - the Republic of China<sup>408</sup>, France, the Union of Soviet Socialist Republics<sup>409</sup>, the United Kingdom, and the United States- and a majority of the other signatories. Today, the 193 member States of the United Nations<sup>410</sup> have undertaken “...to save succeeding generations from the scourge of war...”<sup>411</sup>.

The United Nations’ purposes, spelled out in article 1 of the Charter, and the principles as set out in article 2 express the ideas which will guide the States parties when ratifying the *Charter*. Certain elements of article 1 (1) and 1 (2) are considered principles binding under customary international law (i.e. prohibition of aggression, the prohibition of other breaches of peace, an obligation to settle disputes by peaceful means and respect for human rights)<sup>412</sup>.

The ICJ stated in the Advisory Opinion on *certain expenses*<sup>413</sup> that

“The purposes of the United Nations are set forth in Article of the Charter. The first two purposes as stated in paragraphs 1 and 2, maybe summarily described as pointing to the goal of international peace and security and friendly relations. The third purpose is the achievement of economic, social, cultural and humanitarian goals and respect for human rights.... The primary placed ascribed to international peace and security is natural, since the fulfillment of the other purposes will be dependent upon the attainment of that basic condition...”

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Arab Republic, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela (Bolivarian Republic of). See in [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=I-1&chapter=1&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-1&chapter=1&lang=en)

408 Currently by the People’s Republic of China

409 Later replaced by the Russian Federation

410 See in <http://www.un.org/en/members/index.shtml>

411 Preamble, para. 1

412 SIMA, B., KHAN, D.E. and PAULUS, A., *The Charter of the United Nations, A commentary*, Oxford Commentaries on international law, third edition, Volume II, November 2012, p. 108-109

413 Case *Certain expenses of the United Nations* (1962, rep. 167-168) of the International Court of Justice. See in <http://www.icj-cij.org/docket/files/49/5259.pdf>

#### 4.2.2. Universal Declaration of Human Rights and Other Instruments

*Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Vienna Declaration and Programme of Action,*

Sources: Resolution 217 A (III), resolution 2200 A (XXI) and A/CONF.157/24 (Part I), chap. III.

The UDHR is a declaration adopted by the UNGA on 10 December 1948 at Palais de Chaillot, Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled.

It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws. The “International Bill of Human Rights” consists of the UDHR, the ICESCR, and the ICCPR. As of 2013, they have been ratified by 160 and 167 States, respectively<sup>414</sup>.

As indicated by Prof. Eide, “the package of rights contained in the Declaration was not simply the historical product of real-life legal evolution in the positivistic sense, but a set of normative aspirations elaborated in 1948 with the hope that they would, over time, become real rights and, as such, effectively recognized and enjoyed .... The rights in the UDHR were formulated in highly general and abstract terms. This was delivery done in order to maintain a degree of flexibility for States during the required transformation of their internal systems”<sup>415</sup>.

As studied in the past section, all the main elements proposed by in this draft *Declaration on the Right to Peace* were already discussed, elaborated on, and included in the VDPA, especially concerning such topics as human security and poverty, education, resistance and opposition to oppression, peacekeeping, development, environment, vulnerable groups, and refugees and migrants.

414 See at <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

415 EIDE, A., “Article 28”, in ALFREDSSON, G. and A. EIDE, A., *The Universal Declaration of Human Rights: a common standard of achievement*, Martinus Nijhoff Publishers, The Hague/Boston/London, 1999, p. 606-607

It follows that the international community should progressively elaborate on the notion of the right to peace in light of success of Declarations already adopted by the UNGA, such as the VDPA.

### 4.2.3. Notion of universal peace

*Recalling also the Declaration on the Right to Development, the United Nations Millennium Declaration, the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals, and the 2005 World Summit Outcome,*

Sources: Resolution 41/128 (annex), Resolution 55/2, Resolution 70/1 and Resolution 60/1.

At the opening session of the *United Nations Conference on International Organization* (UNCIO), which took place in San Francisco (United States) on 25 April 1945, President Truman stated in his inaugural speech that “if we do not want to die together in war, we must learn to live together in peace”<sup>416</sup>.

Life has traditionally been linked to peace and security matters. However, the linkage between the concept of life and peace was included for the first time in a speech delivered by President Roosevelt on 4 March 1933 before the United States Capitol in Washington<sup>417</sup>. This elaboration was later inserted in both the Preamble of the *Charter of the United Nations*<sup>418</sup> without being discussed in substance in the San Francisco Conference and the North Atlantic Treaty<sup>419</sup>. The UNGA has quite often referred to this commitment<sup>420</sup>. However,

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416 See in <http://www.ibiblio.org/pha/policy/1945/450425a.html>

417 “In the field of world policy I would dedicate this Nation to the policy of the good neighbor — the neighbor who resolutely respects himself and, because he does so, respects the rights of others — the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbours”. Statement delivered in the First inaugural Address on 3 March 1933. See in [http://en.wikisource.org/wiki/Franklin\\_Roosevelt%27s\\_First\\_Inaugural\\_Address](http://en.wikisource.org/wiki/Franklin_Roosevelt%27s_First_Inaugural_Address)

418 Preamble, paragraph 5: “...to practice tolerance and live together in peace with one another as good neighbours...”

419 Preamble, paragraph 1: “The Parties to this Treaty reaffirm their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all governments...” Signed in Washington on 4 April 1949.

See in [http://www.nato.int/cps/en/natolive/official\\_texts\\_17120.htm](http://www.nato.int/cps/en/natolive/official_texts_17120.htm)

420 Doc. UNGA Res. entitled “Peaceful and neighbourly relations among States”, A/RES/1236(XII) (14 December 1957); UNGA Res. entitled “Measures aimed at

some resolutions use the term “neighbours” in a narrow geographical sense<sup>421</sup>, while others have a more far-reaching meaning<sup>422</sup>.

The United Nations is a response to the two world wars and the intention of the member States to suppress war<sup>423</sup>. The maintenance of international peace and security is the most important goal of the United Nations in accordance with Art. 1.1<sup>424</sup>. Chapter VII grants the SC extensive powers in this field. The conditions to use these powers remain very vague, mainly due to the very broad notions used in Art. 39<sup>425</sup>. The SC enjoys considerable discretion in the determination whether a threat to the peace, a breach of peace, or an act of discretion exists<sup>426</sup>. Although the International Criminal Tribunal for the former Yugoslavia has recognized the Council’s broad discretion, it has also emphasized that it is not unlimited<sup>427</sup>.

The *Charter of the United Nations* recognizes that peace is more than the absence of war and therefore, it includes outstanding legal provisions of international human rights law to be applied by the international community as a whole, which should be aimed to eliminating progressively those issues likely to cause war. The analysis of international human rights instruments confirms the conviction that respect for human rights is at the basis of peace<sup>428</sup>.

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the implementation and promotion of peaceful and neighbourly relations among States”, A/RES/1301 (XIII) (10 December 1958) and UNGA Res. entitled “Development and strengthening of good neighbourliness between States”, A/RES/34/99 (14 December 1979)

421 Doc. UNGA Res entitled “Development and strengthening of good neighbourliness between States: 34/99 (14 December 1979); 36/101 (9 December 1981) and 37/117 (16 December 1982)

422 Doc. UNGA Res 2625 (XXV) of 24 October 1970

423 SIMA, B., KHAN, D.E. and PAULUS, *op.cit.*, note 415, p. 102

424 Art. 1.1: “To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.

425 Art. 39: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”.

426 SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 415, p. 1.275

427 Prosecutor v. Dusko Tadic, para. 28

428 SYMONIDES, J., “Towards the Universal Recognition of the human right to

After a lively debate during the negotiation process of the *Charter*<sup>429</sup>, a consensus was reached among all States that the efforts should no longer be limited to stopping direct threats of war, but should also include to fight against its roots causes, including “poverty, disease, ignorance, insecurity, unemployment, inequality and not least lawless tyranny and lack of human dignity”<sup>430</sup>.

Recent practice has stressed the strong linkage and interdependence of peace and security with broader conditions of social development. As indicated by the SC declaration, adopted at the level of Head of State and Government in 1992, “peace and prosperity are indivisible and lasting peace and security require effective cooperation for the eradication of poverty and the promotion of a better life for all in larger freedom”<sup>431</sup>.

Although the Preamble is an integral part of the *Charter*, it does not set forth any basic obligation of the member States<sup>432</sup>. It only serves as an interpretative guideline for the provisions of the *Charter*<sup>433</sup>. The first part of the Preamble contains basically two ideas: maintenance of peace and international security<sup>434</sup> and respect for human rights<sup>435</sup>. Additionally, it refers to some but not all of the purposes of the organization (i.e. equal rights of nations or peoples<sup>436</sup>, enhancement

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peace”, *International Affairs Review*, 2006, No. 1 (153), p. 6

429 The Soviet Union initially supported the position that the “primary and indeed the only task of the international organization should be the maintenance of peace and security and for the economic and social matters a separate organization should be created” , in HILDEBRAND, R., *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security*, University of North Carolina Press, 1990, p. 87-88

430 MACLAURIN, J., *The United Nations and Power Politics*, George Allen and Unwin Ltd, 1951, p. 10

431 UNSC Presidential Note (31 January 1992), UN Doc. S/23500, 5

432 SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit*, note 415, p. 105

433 Report of the Rapporteur of the Commission 1/1 UNCIO VI, Doc. 944 1/1/34 (1), 446-47. As to the legal function of the Preambles see art. 31.2 of the Vienna Convention on the Law of Treaties (1969): “The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes”. In addition, it should be recalled the following cases of the International Court of Justice: Asylum (1950, rep. 282) and Rights of Nationals of the United States of America in Morocco (1952, rep. 196).

434 Art. 2.2: “... to unite our strength to maintain international peace and security...”

435 Art. 1.2: “... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...”

436 Art. 1.2: “...to reaffirm faith ... in the equal rights ... of nations large and small...”

of the friendly relations among States<sup>437</sup> and the limitation of the use of force<sup>438</sup>). In the second part, it declares that governments of these peoples have agreed to the *Charter*, which addresses the contractual element of the *Charter*<sup>439</sup>.

Article 1 (2) of the *Charter of the United Nations* proclaims that the purpose of the United Nations is to "... take other appropriate measures to strengthen universal peace". In this provision peace or universal peace can be found separately from security. The degree of overlapping between peace and security depends very much upon whether the term peace is narrowly or broadly defined. If peace is narrowly defined as the mere absence of a threat or use of force against the territorial integrity or political independence of any State (Art. 2. 2 (4)), the term security will contain parts of what is usually referred to as notion of positive peace.

This latter notion is understood as encompassing the activity which is necessary for maintaining the conditions of peace<sup>440</sup>. Therefore, Art. 1 (2) is often considered key in including the positive notion of peace, which goes beyond the negative absence of the use of force by establishing the linkage between peace and human rights.

The positive approach of peace goes in the line of the wide notion of peace supported by the former Secretary-General Kofi Annan in his report "In larger freedom": "The threats to peace and security in the twenty-first century include not just international war and conflict but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease and environmental degradation..."<sup>441</sup>.

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437 Art. 2.1: "...to practice tolerance and live together in peace with one another as good neighbours..."

438 Art. 2.3: "... to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest..."

439 "Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

440 SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 415, p. 109-110

441 In *Larger Freedom - Towards Development, Security and Human Rights for All, Report of the Secretary-General of the United Nations for decision by Heads of State and Government in September 2005*. Doc. A/59/2005 of 21 March 2005, para. 78. See in <http://www.un.org/largerfreedom/>

Taking into account that peace and human rights are a cornerstone of the further elaboration of the human security framework and that this concept is inseparable from conditions of peace<sup>442</sup>, it could safely be concluded that the broader meaning of peace deals with the generic causes of conflict<sup>443</sup>. As one human right expert highlighted, “real peace is much more than stability, order or absence of war: peace is transformative, about individual and societal progress and fulfillment; and peace within and between societies is as much about justice as anything else”<sup>444</sup>. Thus, an integrated approach to human security would be related to the deepest causes of war, such as economic despair, social injustice and political oppression<sup>445</sup>.

Among the key structural causes of instability and conflict are poverty, inequality and lack of economic opportunity. Although diplomacy might be useful in the short-term effort to maintain peace, long-term solutions require economic development and greater social justice<sup>446</sup>. As the *Declaration and Programme of Action on Culture of Peace* indicates, the anti-poverty strategies, the assurance of equity in development and the pursuit of food security are elements of peacebuilding.

As to the protection of human rights, Art. 1 (3) of the *Charter* states that “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

This provision has been textually invoked with respect to the improvement of the effective enjoyment of human rights and

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442 HAYDEN, P., “Constraining war: human security and the human right to peace”, *Human Rights Review*, 6(1) Oct./Dec. 2004, p. 46

443 LINARELLI, J., “Peace-building”, *Denver Journal of International Law and Policy*, Vol. 24, 1996, p. 253-83

444 CORNISH, P., “Terrorism, Insecurity and Underdevelopment”, *Journal of Conflict, Security and Development*, Vol. 30, 2001, p. 147-52

445 Report of the Secretary-General: *An agenda for peace. Preventive diplomacy, peacemaking and peace-keeping*. Doc. A/47/277 - S/24111 of 17 June 1992, paragraphs 43-44

446 MCFARLANE, H. and FOONG KHONG, Y., *Human security and the UN: A critical history*. Bloomington, Ind. : Indiana University Press, 2006, p. 151

fundamental freedoms within the United Nations system<sup>447</sup>, the political rights of women<sup>448</sup>, the question of racial conflict in South Africa resulting from apartheid<sup>449</sup>, the elimination of racial discrimination<sup>450</sup>, the elimination of all forms of intolerance and discrimination based on religion and beliefs<sup>451</sup>, enhancement of international cooperation in the field of human rights<sup>452</sup>, and the strengthening of the rule of law<sup>453</sup>.

In terms of the progressive elaboration of human rights, one of the main achievements reached at the San Francisco Conference was the inclusion in Art. 1 of the provision, which highlights that “the peaceful and friendly relations among nations” is based on two fundamental principles, namely: “... respect for the principle of equal rights and self-determination of peoples”<sup>454</sup> and the “... respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”<sup>455</sup>.

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447 UNGA Resolutions entitled *Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms*: Res. 34/46, 23 November 1979; Res. 36/133 (14 December 1981); Res. 38/124 (16 December 1983); Res. 339/145 (14 December 1984); Res. 40/124 (13 December 1985)

448 UNGA Resolutions entitled *Political rights of women*: Res. 56 (1) (11 December 1946); Res. 36/2263 (XXII) (7 November 1967); Res. 34/180 (18 December 1979); Res. 36/131 (14 December 1984); Res. 40/124 (13 December 1985)

449 UNGA Resolutions entitled *The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa*: Res. 616 A (VII) (5 December 1952); Res. 820 (14 December 1954); Res. 1016 (XI) (30 January 1957); Res. 1248 (XIII) (30 October 1958); Res. 1375 (XIV) (17 November 1959)

450 UNGA Res. 1904 (XVIII) (20 November 1963) (Declaration on the Elimination of All Forms of Racial Discrimination) and Res. 2647 (XXV) (17 December 1970)

451 UNGA Res. 36/55 (25 November 1981)

452 UNGA Resolutions entitled *Enhancement of international cooperation in the field of human rights*: Res. 51/100 (12 December 1996); Res. 53/154 (9 December 1998); Res. 54/181 (17 December 1999); Res. 55/109 (4 December 2000); Res. 56/149 (8 February 2002); Res. 57/224 (18 February 2002); Res. 58/170 (22 December 2003); Res. 59/187 (20 December 2004); Res. 60/156 (23 November 2005); Res. 61/168 (19 December 2006); Res. 62/160 (18 December 2007); Res. 63/180 (18 December 2008)

453 UNGA Res 48/132 (20 December 1993)

454 Art. 1 (2)

455 Art. 1 (3)

Arts. 55<sup>456</sup> and 56<sup>457</sup> of the *Charter* affirm that the United Nations is built on the understanding that peace needs to be secured by economic and social welfare and by the realization of human rights and that the Organization and its members should cooperate to this end<sup>458</sup>. Furthermore, Art. 55 reaffirm the program of cooperation in the field of human rights as set out in the Preamble and Art. 1 (3) of the *Charter*.

Art. 55 is also considered key in reflecting the positive notion of peace, which describes “a state of peaceful and friendly relations among nations and the necessary preconditions which may prevent conflicts from arising or allow for their peaceful settlement”<sup>459</sup>.

The inclusion of peace as a Sustainable Development Goal (SDG) is an important milestone and achievement. *Transforming our World: The 2030 Agenda for Sustainable Development (Agenda)* is a plan of action for people, planet and prosperity.<sup>460</sup> It also seeks to strengthen universal peace within a larger freedom. SDG 16 calls for humanity to “*Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.*”<sup>461</sup> The establishment of this goal makes clear that peace is a critical condition for human development. The goal and its targets address important conditions for peace such as inclusion, participatory decision-making and protection of children.

The potential for this goal to advance peace can more fully be appreciated within the context of the *Agenda*. The text articulates

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456 Art. 55 (c): “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: .... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”

457 Art. 56: “All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”.

458 SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 415, p. 1537

459 SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 415, p. 1540

460 Transforming Our World: the 2030 Agenda for Sustainable Development -Finalised Text for Adoption (1August), available at: <https://sustainabledevelopment.un.org/content/documents/7891Transforming%20Our%20World.pdf>

461 *ibid*, p. 12

that the goals are interrelated and indivisible. The goals and targets will stimulate action over the next 15 years in areas of critical importance for humanity and the planet. Aims such as ending poverty, reducing inequality, ensuring health and protecting ecosystems are interrelated with the advancement of peace. In accordance with the *Agenda*, “sustainable development cannot be realized without peace and security; and peace and security will be at risk without sustainable development”.<sup>462</sup>

#### 4.2.4. Peace instruments linked to the right to peace

*Recalling further the Declaration on the Preparation of Societies for Life in Peace, the Declaration on the Right of Peoples to Peace and the Declaration and Programme of Action on a Culture of Peace, and other international instruments relevant to the subject of the present Declaration,*

*Sources:* Resolution 33/73, Resolution 39/11 (annex) and Resolutions 53/243 A and B.

Both the *Declaration on the Preparation of Societies for Life in Peace* and the *Declaration on the Right of Peoples to Peace* have been extensively studied in previous sections of this book. As indicated, these instruments are really linked to the process which ends with the adoption by the UNGA of the *Declaration on the Right to Peace*.

On the other hand, the *Declaration on a Culture of Peace* clearly defines a culture of peace as a set of values, attitudes, traditions and modes of behaviour and ways of life, which is based on some elements<sup>463</sup>, and

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<sup>462</sup> *ibid*, para 34

<sup>463</sup> Art. 1: “(a) Respect for life, ending of violence and promotion and practice of non-violence through education, dialogue and cooperation;(b) Full respect for the principles of sovereignty, territorial integrity and political independence of States and non-intervention in matters which are essentially within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations and international law;(c) Full respect for and promotion of all human rights and fundamental freedoms;(d) Commitment to peaceful settlement of conflicts;(e) Efforts to meet the developmental and environmental needs of present and future generations;(f) Respect for and promotion of the right to development;(g) Respect for and promotion of equal rights and opportunities for women and men;(h) Respect for and promotion of the right of everyone to freedom of expression, opinion and information;(i) Adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations;

also indicates that its full development is integrally linked to several important fields<sup>464</sup>. Moreover, it identifies the main actors responsible to implement the Declaration<sup>465</sup> and the role played by education in the construction of a culture of peace<sup>466</sup>.

Pursuant to UNGA resolution 56/5 on the International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001-2010), proclaimed in Assembly resolution 53/2, the Secretary-General transmitted in July a report of the UNESCO Director-General covering implementation of the Programme of Action.

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and fostered by an enabling national and international environment conducive to peace”. Art. 2: “Progress in the fuller development of a culture of peace comes about through values, attitudes, modes of behaviour and ways of life conducive to the promotion of peace among individuals, groups and nations”

464 Art. 3: “(a) Promoting peaceful settlement of conflicts, mutual respect and understanding and international cooperation; (b) Complying with international obligations under the Charter of the United Nations and international law;(c) Promoting democracy, development and universal respect for and observance of all human rights and fundamental freedoms;(d) Enabling people at all levels to develop skills of dialogue, negotiation, consensus-building and peaceful resolution of differences;(e) Strengthening democratic institutions and ensuring full participation in the development process;(f) Eradicating poverty and illiteracy and reducing inequalities within and among nations;(g) Promoting sustainable economic and social development;(h) Eliminating all forms of discrimination against women through their empowerment and equal representation at all levels of decision-making;(i) Ensuring respect for and promotion and protection of the rights of children;(j) Ensuring free flow of information at all levels and enhancing access thereto;(k) Increasing transparency and accountability in governance;(l) Eliminating all forms of racism, racial discrimination, xenophobia and related intolerance;(m) Advancing understanding, tolerance and solidarity among all civilizations, peoples and cultures, including towards ethnic, religious and linguistic minorities; (n) Realizing fully the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination enshrined in the Charter of the United Nations and embodied in the International Covenants on Human Rights, as well as in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960”

465 Art. 5: “Governments have an essential role in promoting and strengthening a culture of peace. Article 6 Civil society needs to be fully engaged in fuller development of a culture of peace”; Art. 8: “A key role in the promotion of a culture of peace belongs to parents, teachers, politicians, journalists, religious bodies and groups, intellectuals, those engaged in scientific, philosophical and creative and artistic activities, health and humanitarian workers, social workers, managers at various levels as well as to non-governmental organizations” and Art. 9: “The United Nations should continue to play a critical role in the promotion and strengthening of a culture of peace worldwide”

466 Art. 4: “Education at all levels is one of the principal means to build a culture of peace. In this context, human rights education is of particular importance”

The report identified the eight areas of the *Programme of Action*: fostering a culture of peace through education<sup>467</sup>; promotion of sustainable economic and social development<sup>468</sup>; respect for all

467 Art. 9: "(a) Reinvigorate national efforts and international cooperation to promote the goals of education for all with a view to achieving human, social and economic development and for promoting a culture of peace; (b) Ensure that children, from an early age, benefit from education on the values, attitudes, modes of behaviour and ways of life to enable them to resolve any dispute peacefully and in a spirit of respect for human dignity and of tolerance and non-discrimination;(c) Involve children in activities designed to instill in them the values and goals of a culture of peace;(d) Ensure equality of access to education for women, especially girls; (e) Encourage revision of educational curricula, including textbooks, bearing in mind the 1995 Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy for which technical cooperation should be provided by the United Nations Educational, Scientific and Cultural Organization upon request; (f) Encourage and strengthen efforts by actors as identified in the Declaration, in particular the United Nations Educational, Scientific and Cultural Organization, aimed at developing values and skills conducive to a culture of peace, including education and training in promoting dialogue and consensus building; (g) Strengthen the ongoing efforts of the relevant entities of the United Nations system aimed at training and education, where appropriate, in the areas of conflict prevention and crisis management, peaceful settlement of disputes, as well as in post-conflict peace-building;(h) Expand initiatives to promote a culture of peace undertaken by institutions of higher education in various parts of the world, including the United Nations University, the University for Peace and the project for twinning universities and the United Nations Educational, Scientific and Cultural Organization Chairs Programme".

468 Art. 10: "(a) Undertake comprehensive actions on the basis of appropriate strategies and agreed targets to eradicate poverty through national and international efforts, including through international cooperation;(b) Strengthen the national capacity for implementation of policies and programmes designed to reduce economic and social inequalities within nations through, inter alia, international cooperation;(c) Promote effective and equitable development-oriented and durable solutions to the external debt and debt-servicing problems of developing countries through, inter alia, debt relief;(d) Reinforce actions at all levels to implement national strategies for sustainable food security, including the development of actions to mobilize and optimize the allocation and utilization of resources from all sources, including through international cooperation, such as resources coming from debt relief;(e) Undertake further efforts to ensure that the development process is participatory and that development projects involve the full participation of all;(f) Include a gender perspective and empowerment of women and girls as an integral part of the development process;(g) Include in development strategies special measures focusing on needs of women and children as well as groups with special needs; (h) Strengthen, through development assistance in post-conflict situations, rehabilitation, reintegration and reconciliation processes involving all engaged in conflicts;(i) Incorporate capacity-building in development strategies and projects to ensure environmental sustainability, including preservation and regeneration of the natural resource base;(j) Remove obstacles to the realization of the right of peoples to self-determination, in particular of peoples living under colonial or other forms of alien domination or foreign occupation, which adversely affect their social and economic development".

human rights<sup>469</sup>; equality between men and women<sup>470</sup>; democratic participation<sup>471</sup>; understanding, tolerance and solidarity<sup>472</sup>;

469 Art. 11: “(a) Full implementation of the Vienna Declaration and Programme of Action;(b) Encouragement of development of national plans of action for the promotion and protection of all human rights; (c) Strengthening of national institutions and capacities in the field of human rights, including through national human rights institutions;(d) Realization and implementation of the right to development, as established in the Declaration on the Right to Development<sup>5</sup> and the Vienna Declaration and Programme of Action;(e) Achievement of the goals of the United Nations Decade for Human Rights Education (1995–2004);(f) Dissemination and promotion of the Universal Declaration of Human Rights at all levels;(g) Further support to the activities of the United Nations High Commissioner for Human Rights in the fulfilment of her or his mandate as established in General Assembly resolution 48/141 of 20 December 1993, as well as the responsibilities set by subsequent resolutions and decisions”.

470 Art. 12: “(a) Integration of a gender perspective into the implementation of all relevant international instruments;(b) Further implementation of international instruments that promote equality between women and men;(c) Implementation of the Beijing Platform for Action adopted at the Fourth World Conference on Women, with adequate resources and political will, and through, inter alia, the elaboration, implementation and follow-up of the national plans of action;(d) Promotion of equality between women and men in economic, social and political decision making;(e) Further strengthening of efforts by the relevant entities of the United Nations system for the elimination of all forms of discrimination and violence against women; (f) Provision of support and assistance to women who have become victims of any forms of violence, including in the home, workplace and during armed conflicts”

471 Art. 13: “(a) Reinforcement of the full range of actions to promote democratic principles and practices; (b) Special emphasis on democratic principles and practices at all levels of formal, informal and non formal education;(c) Establishment and strengthening of national institutions and processes that promote and sustain democracy through, inter alia, training and capacity-building of public officials;(d) Strengthening of democratic participation through, inter alia, the provision of electoral assistance upon the request of States concerned and based on relevant United Nations guidelines;(e) Combating of terrorism, organized crime, corruption as well as production, trafficking and consumption of illicit drugs and money laundering, as they undermine democracies and impede the fuller development of a culture of peace”

472 Art. 14: “(a) Implement the Declaration of Principles on Tolerance and the Follow-up Plan of Action for the United Nations Year for Tolerance<sup>8</sup> (1995);(b) Support activities in the context of the United Nations Year of Dialogue among Civilizations in the year 2001;(c) Study further the local or indigenous practices and traditions of dispute settlement and promotion of tolerance with the objective of learning from them;(d) Support actions that foster understanding, tolerance and solidarity throughout society, in particular with vulnerable groups;(e) Further support the attainment of the goals of the International Decade of the World’s Indigenous People;(f) Support actions that foster tolerance and solidarity with refugees and displaced persons, bearing in mind the objective of facilitating their voluntary return and social integration;(g) Support actions that foster tolerance and solidarity with migrants;(h) Promote increased understanding, tolerance and cooperation among all peoples through, inter alia, appropriate use of new technol-

participatory communication and the free flow of information and knowledge<sup>473</sup>; and international peace and security<sup>474</sup>. Regarding formal and non-formal education for a culture of peace, the report

- ogies and dissemination of information;(i) Support actions that foster understanding, tolerance, solidarity and cooperation among peoples and within and among nations”
- 473 Art. 15: “(a) Support the important role of the media in the promotion of a culture of peace; (b) Ensure freedom of the press and freedom of information and communication;(c) Make effective use of the media for advocacy and dissemination of information on a culture of peace involving, as appropriate, the United Nations and relevant regional, national and local mechanisms;(d) Promote mass communication that enables communities to express their needs and participate in decision-making; (e) Take measures to address the issue of violence in the media, including new communication technologies, inter alia, the Internet;(f) Increase efforts to promote the sharing of information on new information technologies, including the Internet”
- 474 Art. 16: “(a) Promote general and complete disarmament under strict and effective international control, taking into account the priorities established by the United Nations in the field of disarmament;(b) Draw, where appropriate, on lessons conducive to a culture of peace learned from “military conversion” efforts as evidenced in some countries of the world;(c) Emphasize the inadmissibility of acquisition of territory by war and the need to work for a just and lasting peace in all parts of the world;(d) Encourage confidence-building measures and efforts for negotiating peaceful settlements;(e) Take measures to eliminate illicit production and traffic of small arms and light weapons;(f) Support initiatives, at the national, regional and international levels, to address concrete problems arising from post-conflict situations, such as demobilization, reintegration of former combatants into society, as well as refugees and displaced persons, weapon collection programmes, exchange of information and confidence-building; (g) Discourage the adoption of and refrain from any unilateral measure, not in accordance with international law and the Charter of the United Nations, that impedes the full achievement of economic and social development by the population of the affected countries, in particular women and children, that hinders their well-being, that creates obstacles to the full enjoyment of their human rights, including the right of everyone to a standard of living adequate for their health and well-being and their right to food, medical care and the necessary social services, while reaffirming that food and medicine must not be used as a tool for political pressure;(h) Refrain from military, political, economic or any other form of coercion, not in accordance with international law and the Charter, aimed against the political independence or territorial integrity of any State;(i) Recommend proper consideration for the issue of the humanitarian impact of sanctions, in particular on women and children, with a view to minimizing the humanitarian effects of sanctions;(j) Promote greater involvement of women in prevention and resolution of conflicts and, in particular, in activities promoting a culture of peace in post-conflict situations;(k) Promote initiatives in conflict situations such as days of tranquillity to carry out immunization and medicine distribution campaigns, corridors of peace to ensure delivery of humanitarian supplies and sanctuaries of peace to respect the central role of health and medical institutions such as hospitals and clinics;(l) Encourage training in techniques for the understanding, prevention and resolution of conflict for the concerned staff of the United Nations, relevant regional organizations and Member States, upon request, where appropriate”

recommended a coordinated effort by specialized agencies and UN funds and programmes, with a view to developing a comprehensive strategy for the Decade. It proposed inviting civil society to adopt a distinct programme of activities along the same lines as those undertaken by NGOs in consultative status with UNESCO, which had adopted a Plan of Action for the Decade and invited their members to implement it through national and local branches<sup>475</sup>.

#### **4.2.5. Independence of Colonial Countries and Peoples**

*Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples,*

*Acknowledging that the fuller development of a culture of peace is integrally linked to the realization of the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination as enshrined in the Charter and embodied in the International Covenants on Human Rights, as well as in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960,*

Sources: Resolution 1514 (XV) and Resolution 53/243 (A and B)

The end of the Second World War saw a decisive shift in colonial policies. Decolonisation was on the rise and the UN was eager to assist in these efforts. Indeed, the UN saw the process of decolonisation as linked to the principles set out in the UN *Charter*, namely those of “equal rights and self-determination of peoples”. Moreover, three specific chapters in the UN *Charter* were devoted to the interests of dependent peoples; the Declaration regarding Non-Self-Governing Territories (Chapter XI), the International Trusteeship System (Chapter XII) and the Trusteeship Council (Chapter XIII).

It was in this context, that the *Declaration on the Granting of Independence to Colonial Countries and Peoples* was adopted through UN Resolution 1514 by the UNGA on 14 December 1960. The Declaration underscored in its Preamble that the increasing conflicts resulting from denial and impediments to the freedom of such peoples, constituted a serious threat to world peace. As such, it was understood that the continued existence of colonialism prevented

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475 Doc. Yearbook of the United Nations, 2002, p. 651

the development of international economic co-operation, impeded the social, cultural and economic development of dependent peoples and militated against the UN ideal of universal peace.

#### **4.2.6. Principles of international law**

*Recalling also that the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations solemnly proclaimed the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations....*

*Reaffirming the obligations of all Member States, as enshrined in the Charter, to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,*

Sources: Resolution 2625 (XXV), annex "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations"

The principles codified in Art. 2 of the Charter<sup>476</sup> constitute the basic foundational principles of the whole body of international law. The *Dumbarton Oaks Proposals* already listed most of the principles, with the exception of the principle that protects matters essentially within the domestic matters<sup>477</sup>.

476 In accordance with the Resolution 1815 (XVII) the principles are as follows: 1. States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State; 2. States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; 3. The duty not to intervene in matters within the domestic jurisdiction of any State; 4. The duty of States to co-operate with one another; 5. The equal rights and self-determination of peoples; 6. The sovereign equality of States and 7. States shall fulfill in good faith the obligations assumed by them in accordance with the Charter

477 Art. 2: "In pursuit of the purposes mentioned in Chapter I the Organization and its members should act in accordance with the following principles:  
1. The Organization is based on the principle of the sovereign equality of all peace-loving states.  
2. All members of the Organization undertake, in order to ensure to all of them the rights and benefits resulting from membership in the Organization, to fulfil the obligations assumed by them in accordance with the Charter.

The seven principles of international law recognised by the *Charter of the United Nations* in its Art. 2 are the following: 1. Prohibition of the threat or use of force against the territorial integrity or political independence of any State; 2. Settlement of international disputes by peaceful means; 3. Prohibition to intervene in matters within the domestic jurisdiction of any State; 4. Cooperation among States; 5. Self-determination of peoples; 6. Sovereign equality of States and 7. The fulfillment in good faith of international obligations.

In the resolution 2625 (XXV) of 1970 on *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, the UNGA emphasized that "... the paramount importance of the *Charter of the United Nations* for the maintenance of international peace and security and that... the adoption of the Declaration... would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States..."<sup>478</sup>.

The relationship between the full respect of principles enshrined in Art. 2 of the *Charter* and the maintenance of peace and security as a purpose was reaffirmed in the Draft *Declaration on Rights and Duties of States* of 1949 elaborated by the International Law Commission as follows: "... primary purpose of the United Nations is to maintain international peace and security, and the reign of law and justice is essential to the realization of this purpose"<sup>479</sup>.

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3. All members of the Organization shall settle their disputes by peaceful means in such a manner that international peace and security are not endangered.

4. All members of the Organization shall refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the Organization.

5. All members of the Organization shall give every assistance to the Organization in any action undertaken by it in accordance with the provisions of the Charter.

6. All members of the Organization shall refrain from giving assistance to any state against which preventive or enforcement action is being undertaken by the Organization"

478 Doc. A/RES/25/2625, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, para. 3

479 Full text appears in the annex to General Assembly resolution 375 (IV) of 6 December 1949.

Additionally, the promotion of human rights<sup>480</sup> and peace<sup>481</sup> are considered as essential purposes, whose realization should be jointly promoted by Member States of the United Nations in conjunction with the full respect of those principles included in the UN Charter. Therefore, the Charter is considered as the constitution of the international community<sup>482</sup>. It follows that all countries have included this perspective in both national constitutions and regional instruments.

#### 4.2.7. Peaceful settlement of disputes

*Recognizing the importance of the settlement of disputes or conflicts through peaceful means*

Sources: Chapter VI of the UN Charter.

Chapter VI of the *Charter*, which is devoted to the pacific settlement of disputes, states in its article 33 that the parties to any dispute shall seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

Parties involved in a conflict are explicitly obligated to deploy active efforts with a view to settling the dispute existing between them. The responsibility of the parties to a dispute continues to exist even after armed activities have begun. It is precisely in situations of armed conflict that endeavours for a peaceful solution must continue. All parties involved in an armed conflict are repeatedly called to work for the urgent achievement of a solution.

In the 2005 *World Summit Outcome*, Member States emphasized the obligation of States to settle their disputes by peaceful means in accordance with Chapter VI of the Charter, the use of the ICJ and the *Declaration on Principles of International Law concerning Friendly*

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480 Art. 1.3 of the UN Charter: “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

481 Art. 1.2 of the UN Charter: “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”

482 FASSBENDER, *The UN Charter as Constitution of the International Community*, Leiden/Boston: Martinus Nijhoff Publishers/Koninklijke Brill NV, 2009

*Relations and Cooperation among States in accordance with the Charter.*

As set out by the UNGA a responsible and credible mediation requires, inter alia, national ownership, the consent of parties to a particular dispute or conflict, the impartiality of the mediators, their compliance with agreed mandates, respect for national sovereignty, compliance with obligations of States and other relevant actors under international law, the operational preparedness of the mediators, and coherence, coordination and complementarity of mediation efforts.

However, the SC clearly stressed in its Presidential Statement of 2009 that the principal responsibility for the peaceful settlement of disputes rests with the parties to the conflict and that it is only through their full participation and genuine commitment to resolve the conflict including its underlying causes, that peace can be achieved and sustained.

In September 2010, Finland and Turkey took the initiative to create a group of Friends of Mediation at the United Nations to bring together various actors involved in mediation and to push for enhanced use of this pacific settlement of dispute.

After long and intensive negotiations, the Group presented its first resolution entitled “Strengthening the role of mediation in peaceful settlement of disputes, conflict prevention and resolution” before the UNGA in June 2011. The UN Secretary General described the resolution, which was adopted by consensus, as “a groundbreaking development that positions the Organization as a standard setter of mediation”. To surprise of many, it was the first-ever resolution on mediation adopted by the United Nations.

In 2014, the UNGA reiterated in its resolution 68/303 that all Member States should strictly adhere to their obligations as laid down in the *Charter of the United Nations*, including in the peaceful settlement of disputes, conflict prevention and resolution; welcomed the contributions of Member States, as well as of the United Nations and of regional and subregional organizations, to mediation efforts and invited Member States, as well as the United Nations and regional and subregional organizations to continue to optimize the use of mediation and other tools mentioned in Chapter VI of the *Charter*.

#### 4.2.8. Struggle against terrorism

*Deeply deploring all acts of terrorism, recalling that the Declaration on Measures to Eliminate International Terrorism declared that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations and may pose a threat to international peace and security, jeopardize friendly relations among States, threaten the territorial integrity and security of States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society, and reaffirming that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed,*

*Stressing that all measures taken in the fight against terrorism must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law, as well as those enshrined in the Charter,*

*Urging all States that have not yet done so to consider, as a matter of priority, becoming parties to international instruments related to terrorism,*

*Reaffirming that the promotion and protection of human rights for all and the rule of law are essential to the fight against terrorism, and recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but are complementary and mutually reinforcing,*

Sources: Resolution 49/60

On 28 September 2001, acting under Chapter VII of the *Charter*, the SC adopted unanimously resolution 1373, which created the Counter-Terrorism Committee (CTC) and calls upon Member States to implement a number of measures intended to enhance their legal and institutional ability to counter terrorist activities.

Prior to the adoption of resolution 1373 (2001) and the establishment of the Counter-Terrorism Committee, the international community had already promulgated 12 of the current 16 international counter-terrorism legal instruments. However, the rate of adherence to these conventions and protocols by United Nations Member States was low.

As a result of the attention focused on countering terrorism since the events of 11 September 2001 and the adoption of SC resolution 1373 (2001), which calls on States to become parties to these international instruments, the rate of adherence has increased: some two-thirds of UN Member States have either ratified or acceded to at least 10 of the 16 instruments, and there is no longer any country that has neither signed nor become a party to at least one of them.

In 2004, the Council created the Counter-Terrorism Committee Directorate (CTED) to strengthen and coordinate the monitoring process. CTED is headed by an Executive Director, at the level of Assistant Secretary-General. SC resolution 2129, adopted in December 2013, extended CTED's mandate until 31 December 2017.

The relationship between counter-terrorism and human rights has attracted considerable interest since the establishment of the Counter-Terrorism Committee (CTC) in 2001 within the SC. In this regard, resolution 1373 (2001) calls upon States to take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts.

In its resolution 1456 (2003) and subsequent resolutions, the Council also affirms that States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.

Among all human rights, the SC emphasized in its resolution 1624 (2005) that all States and the United Nations should take all necessary and appropriate measures in accordance with international law at the national and international level to protect the right to life.

However, the CTC began moving toward a proactive policy on human rights when the Council decided to establish the CTED in 2004. Pursuant to resolution 1624 (2005), the Executive Directorate is mandated to take into account the relevant human rights obligations in the course of its activities. Consequently, the CTC and CTED always

integrate the relevant human rights obligations in all their activities, including in the preparation of country assessment, country visits, the facilitation of technical assistance, and other interactions with Member States.

Apart from embracing international law and upholding rule of law in countering terrorism, the SC emphasized in its resolution 1624 (2005) that continuing international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures will contribute to strengthening the international fight against terrorism.

The international practice has demonstrated that there is a close link between human rights law, rule of law, the promotion of tolerance and international peace and security. A demonstrated commitment to human rights, the promotion of dialogue among civilizations and the rule of law help to promote more effective cooperation at the political level. In several States, the CTED has strongly recommended that counter-terrorism legislation be reviewed in order to ensure its conformity with human rights standards. Additionally, in several occasions, the CTED has suggested that strengthening the human rights framework could help alleviate certain conditions conducive to terrorism.

On 24 December 2015, the “Secretary-General Plan of Action to Prevent Violent Extremism” came out, by which he appeals for concerted action in order to save succeeding generations from the scourge of war. According to him, the Plan constitutes the inaugural basis for a comprehensive approach to this fast evolving, multidimensional challenge.

The Secretary-General also wanted to stress that specific initiatives for the prevention of violent have been carried out through the Counter-Terrorism Implementation Task Force and the United Nations Counter-Terrorism Centre, such as a Task Force Working Group on the prevention of violent extremism and the conditions conducive to the spread of terrorism.

In order to apply the Plan of Action, the Secretary-General instructed UN entities to redouble their efforts in coordinating and developing activities and announced his attempt to adopt an All-of-UN approach

to supporting national, regional and global efforts to prevent violent extremism through the United Nations Chief Executives Board for Coordination, as well as through existing United Nations inter-agency bodies.

This proposal made by the Secretary-General goes in the line of the “United Nations Global Counter-Terrorism Strategy Review” adopted by the UNGA in 2014, which underlined the importance of enhancing counter-terrorism efforts undertaken by all relevant United Nations agencies and bodies in accordance with the existing mandates.

#### **4.2.9. Respect of human rights and social progress**

*Reaffirming also the determination of the peoples of the United Nations, as expressed in the Preamble to the Charter, to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, to promote social progress and better standards of life in larger freedom, and to practice tolerance and live together in peace with one another as good neighbours*

Sources: Preamble of the UN Charter

The second recital of the Preamble of the UDHR stated that “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind...” The experience of the Holocaust and the Second World War shocked the drafters in the elaboration of the whole Declaration, and in particular the drafting of this recital.

The ECOSOC held its first meeting in February 1946. It decided to begin to fulfill its human rights mandate by authorizing a preparatory group to be called the Nuclear Commission on Human Rights (hereinafter: CHR). That Commission met in April/May 1946. Mrs. Roosevelt was elected Chairman by acclamation<sup>483</sup>.

Since the beginning of the Nuclear Commission, all governmental delegates recognized that the violation of human rights is one of the main causes of war. Mr. **Henri Laugier**, Assistant Secretary-General of Social Affairs, opened the first meeting as follows: “Ladies

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483 JOHNSON, G. AND SYMONIDES, J., “The Universal Declaration of Human Rights: a history of its creation and implementation”, *Human Rights in Perspective*, UNESCO Publishing, May 1998, p. 33

and gentlemen, it is a new thing and it is a great thing in the history of humanity that the international community organized after a war which destroyed material wealth and spiritual wealth accumulated by human effort during centuries has constituted an international mechanism to defend the human rights in the world”.

Furthermore, he stated that “it is difficult to define the violation of human rights within a nation, which would constitute a menace to the security and peace of the world and the existence of which is sufficient to put in movement the mechanism of the United Nations for the maintenance of peace and security. However, if this machinery had existed a few years ago, if it had been powerful and if the universal support of the public opinion had give it authority, international action would have been mobilized against the first authors and supporters of fascism and Nazism”<sup>484</sup>.

After, Mr. **Laugier** delivered other opening remarks, in which he stated that “the task of the Human Rights Commission amounted to following up in the field of peace the fight which free humanity had waged in the field of war, defending against all offensive attacks the rights and dignity of man, and establishing, upon the principles of the United Nations Charter a powerful international recognition of rights”<sup>485</sup>.

In accordance with the Representative of the United Kingdom at the CHR “the establishment of human rights and fundamental freedoms as part of international law, with obligations on each state to observe and maintain them, is an essential safeguard against the danger of war”<sup>486</sup>.

As to the relationship between war, human rights and peace, Mr. **Malik** (Lebanon) stated that the promotion of respect for human rights was closely linked to the maintenance of peace and security. It follows that “the violation of human rights was one of the causes of

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484 Doc. E/HR/6, 1 May 1946 - 1st Meeting held on Monday, 29 April 1946, p. 1-3

485 Doc. E/CN.4/SR.1, 28 January 1947, Summary Record of the 1st Meeting, held at Lake Success, New York, on Monday, 27 January 1947, p. 1-2

486 Doc. E/CN.4/38, 25 November 1947, Statement Regarding the Possible Ways In Which the Recommendations of the Human Rights Commission Might Be Presented to the General Assembly, submitted by the Representative of the United Kingdom on the Commission on Human Rights, p. 2

war, and, if the first aim of the United Nations was to be attained, the observance of human rights must be guaranteed”<sup>487</sup>.

#### **4.2.10. Pillars of the United Nations system**

*Recalling that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,*

Sources: Art. 72, World Summit Outcome Document, Doc. 60/1, UNGA, 24 October 2005

The resolution which created the HRC acknowledged in its Preamble that “... peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing”<sup>488</sup>.

As indicated by the Human Rights Committee, the strengthening of international peace constitutes the most important condition and guarantee for the safeguarding of the right to life. It follows that as stated by the CHR, the safeguarding of this foremost right is an essential condition for the enjoyment of the entire range of economic, social and cultural, as well as civil and political rights. In addition, it should be noted that the right to life requires that the three main pillars of the United Nations (i.e. peace, human rights and development) are fully respected in order to achieve better conditions of life.

The linkage between life and the three pillars of the United Nations as a preventive measure to avoid war and armed conflict was elaborated in the Constitutions of the UN Specialized Agencies (i.e.

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487 Doc. E/CN.4/SR.50, 4 June 1948, 50th Meeting, Held on Thursday, 27 May 1948, p. 4

488 Preamble, para. 6, UNGA Res. 60/251, 3 April 2006, Human Rights Council

ILO<sup>489</sup>, FAO<sup>490</sup>, WHO<sup>491</sup> and UNESCO<sup>492</sup>); the 2000 *UN Millennium Declaration*<sup>493</sup> and the 2005 *World Summit Outcome Document*; the SC resolutions 1325 (2000), 1820 (2008), 1888 and 1889 (2009) on women, peace and security. Additionally, this linkage was included in several peace movements and ideas that have marked over the history of humankind (i.e. the 1999 *Hague Agenda for Peace and Justice for the Twenty-first Century*; the 2000 *Earth Charter*; and the 2010 *Universal Declaration of the Rights of Mother Earth*).

The final outcome document of the International Conference on the Relationship between disarmament and development<sup>494</sup> concluded that true and lasting peace and security in this interdependent world demand rapid progress in both disarmament and development, since they are the most urgent challenges facing the world today and the

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489 The Constitution of International Labour Organisation (ILO) says that “lasting peace can be established only if it is based on social justice”. It also states in its Preamble that “Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries; The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world”.

490 The Constitution of the Food and Agriculture Organization (FAO) states that it is aimed to the improvement of the levels of life and nutrition of all peoples, as well as to the eradication of hunger.

491 The Constitution of the World Health Organization (WHO) states that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”; “the health of all peoples is fundamental to the attainment of peace and security” and “healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development”.

492 The Preamble to the Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO) states that “since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed”. In addition, it states that “For these reasons, the States Parties to this Constitution, believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other’s lives”

493 Para. 32 states that the United Nations is the common house of the entire human family, where it should realize its universal aspirations for peace, cooperation and development.

494 Report of the International Conference on the Relationship between disarmament and development, New York, 24 August-11 September 1987, A/CONF.130/39, of 22 September 1987

pillars on which should be built enduring international peace and security.

#### **4.2.11. Human dignity as foundation of freedom, justice and peace**

*Recalling that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and recognizing that peace is promoted through the full enjoyment of all inalienable rights derived from the inherent dignity of all human beings*

Sources: Preamble, paragraph 1, Universal Declaration of Human Rights

In accordance with the first recital of the Preamble of the UDHR<sup>495</sup>, those who want a world with freedom, peace and justice must recognize that all members of the human family have inherent dignity. The wanting of this peace does not make for or create these inherent rights, but that these rights are inherent and inalienable and that therefore, our recognition will help humankind bring the desired freedom, justice and peace in the world<sup>496</sup>.

The first recital speaks of “inherent dignity” and of “inalienable rights”, both of which phrases are closely linked to Enlightenment ways of thinking<sup>497</sup>. The drafters of the Declaration had an Enlightenment view of human rights “as somehow located in human beings simply by virtue of their own humanity and for no other extraneous reason”<sup>498</sup>. As indicated by René Cassin, the French representative, before the UNGA, “in common with the 1789 Declaration, (the Universal Declaration) was founded upon the great principles of liberty, equality and fraternity”.

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495 Preamble, first paragraph: “Peace in the world, together with freedom and justice, are founded on the recognition of the inherent dignity and inalienable rights of all members of the human family, as enshrined in the Universal”

496 MORSINK, J., *The Universal Declaration of Human Rights: origins, drafting and intent*, University of Pennsylvania, Philadelphia, 1999, p. 313

497 Virginia Declaration of Rights of 1776, section 1: “That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society...”; Declaration of Independence of USA of 1776: “... that all men are created equal...” and Declaration of the Rights of Man of 1789, article 1: “Men are born and remain free and equal in rights...”

498 MORSINK, J., *op.cit.* 496, note 144, p. 281

The UDHR proclaimed in its article 1 that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. The drafters wanted to stress that all members of the human family have inherent dignity because they are born with equal and inalienable rights. No person or political body gave these rights to human beings, because they were born with them. In addition, reason and conscience are the vehicles by which human beings should treat one another in brotherhood.

Article 1 was approved by the UNGA with 45 favorable votes and 9 abstentions. It affirms the existence of three main principles in international law, namely: liberty, equality and brotherhood. As stated by René Cassin, the Declaration had to incorporate the following principles: firstly, unity of the human race or of the human family; secondly, the idea that every human being has the right to be treated as every other human being and thirdly, the concept of solidarity or brotherhood among peoples<sup>499</sup>.

In its judgment in *Furundzija*, the International Criminal Tribunal for the former Yugoslavia had recourse to the general principle of human dignity when providing a definition of rape as a crime against humanity. It held that 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. This principle is intended to shield human beings from outrages upon their personal dignity”<sup>500</sup>

Human dignity has become a ubiquitous idea and central concern of international law<sup>501</sup>. As a foundational norm within the United Nations, “human dignity served to signify that moral consensus, indeed universality, was a necessary response to the war’s atrocities”<sup>502</sup>. The

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499 Doc. E/CN4/AC1/SR.2, p. 2

500 *Furundzija*, ICTY, Trial Chamber II, Judgment of 10 December 1998, at §185.

501 RABKIN, J., “What we can learn about human dignity from international law”, *Harvard Journal of Law and Public Policy*, Fall 2003, n. 27, p. 145-147

502 RILEY, S., “Human dignity: comparative and conceptual debates”, *International Journal of Law in context*, 2010, n. 6, p. 119

inclusion of human dignity in the contemporary international law is a response to the widespread revulsion of the horrors of the Second World War<sup>503</sup>. Therefore, it prohibits the worst excesses possible in war<sup>504</sup> and claims the observance of minimal standards of civil, political and social recognition<sup>505</sup>. Consequently, human dignity is a basic norm which “can be read as a reaction against pre-war sovereigntist conceptions of legality which allowed positive law to become the tool of crimes against humanity apparently without contradiction”<sup>506</sup>.

Human dignity and human rights are closely connected, like the two sides of a coin. It is part of the core content of fundamental rights and the foundation for all truly fundamental rights. It also possesses a universalist ambition, representing the fabric that binds together the human family.

The *Vienna Declaration and Programme of Action* of 1993 recognised and affirmed that all human rights derive from dignity in the following terms:

“Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms”<sup>507</sup>

Human dignity has played an important role in several social and political movements that occurred in the 20<sup>th</sup> century. It has been shaped by the reaction against Nazi ideology and dictatorships<sup>508</sup>. Therefore, it was not surprising that three of the main responsables of the Second World War incorporated this concept in their national constitutions<sup>509</sup>, or that it came to the fore with the fall of several

503 WICKS, E., “The meaning of life: dignity and the right to life in international human rights treaties”, *Human Rights Law Review*, 2012, Vol. 12:2, p. 206

504 International humanitarian law

505 Human Rights law

506 RILEY, S., *op.cit.*, note 505, p. 123-124

507 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, para. 2

508 MCCRUDDEN, C., “Human dignity and judicial interpretation of human rights”, *The European Journal of International Law*, 2008, Vol. 19, n. 4, p. 662

509 **Japan**, art. 24: “... laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes”; **Italy**, art. 3: “All citizens have equal social dignity and are equal before the law, without distinction of sex, race, lan-

dictatorships in Europe<sup>510</sup>. This latter country also played a major role in the drafting of the new South African constitution post-apartheid<sup>511</sup>.

In addition, the term is featured in a wide range of declarations and treaties<sup>512</sup>. Human dignity has become a central and recurrent concept in the reasoning of supreme courts and constitutional courts throughout the world<sup>513</sup> and many domestic constitutions. All of them stated that “human dignity is not as an autonomous right, but instead as a legal principle with constitutional status”<sup>514</sup>.

The *Declaration and Programme of Action on a Culture of Peace* adopted by the UNGA in 1999 recognised the importance of human dignity in the education process as follows: “Ensure that children, from an early age, benefit from education on the values, attitudes, modes of behaviour and ways of life to enable them to resolve any

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guage, religion, political opinions, personal and social conditions....”; art. 27: “... Punishment cannot consist in treatments contrary to human dignity and must aim at rehabilitating the convicted...” and art. 41: “There is freedom of private economic initiative. It cannot be conducted in conflict with social utility or in a manner that could damage safety, liberty, and human dignity”; **Germany**, art. 1.1: “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority”

- 510 **Greece**, art. 7.2: “Torture, any bodily maltreatment, impairment of health or the use of psychological violence, as well as any other offence against human dignity are prohibited and punished as provided by law”; **Spain**, art. 10.1: “The human dignity, the inviolable and inherent rights, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace”; **Portugal**, art. 1: “Portugal shall be a sovereign Republic, based on the dignity of the human person and the will of the people and committed to building a free, just and solidary society”, art. 26.2: “The law shall lay down effective guarantees against the procurement and misuse of information concerning persons and families and its use contrary to human dignity”
- 511 The Republic of South Africa is one, sovereign, democratic state founded on the following values: a. “Human dignity, the achievement of equality and the advancement of human rights and freedoms”
- 512 UN Charter, Charter of Fundamental Rights of European Union, Convention on the rights of the Child, Convention against Torture, African Charter on Human and Peoples’ Rights, International Convention on the Elimination of All Forms of Discrimination against Women, American Convention on Human Rights, International Covenant on Civil and Political, and Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination
- 513 Germany, India, USA, South Africa, France, Colombia, Israel, and Canada
- 514 BARROSO, L.R., “Here, there and everywhere: human dignity in contemporary and in the transitional discourse”, *International and Comparative Law Review*, 2012, n. 331, p. 354

dispute peacefully and in a spirit of respect for human dignity and of tolerance and non-discrimination”<sup>515</sup>.

In accordance with report *In Larger Freedom* prepared by Kofi Annan “All human beings have the right to be treated with dignity and respect... No security agenda and no drive for development will be successful unless they are based on the sure foundation of respect for human dignity”<sup>516</sup>.

#### 4.2.12. Social and international order

*Recalling in particular that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized,*

Sources: Art. 28, Universal Declaration of Human Rights

While articles 3 to 27 enumerate the catalogues of rights contained in the UDHR, article 1 provides its foundation in connection implicitly with the right to life<sup>517</sup> and article 28 its ultimate or utopian aspiration<sup>518</sup>. Art. 28 requires that “social and international conditions be so structured as to make possible the equal enjoyment throughout the world of all the rights listed”<sup>519</sup>. This provision refers to the transformation of ideals into normative standards. Therefore, the rights contained in the Declaration constitute an integrated, interdependent, and to a large extent, indivisible normative system of rights<sup>520</sup>.

The conception of human rights and freedoms contained in article 28 was firstly presented by the then President of the United States,

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515 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc.A/RES/53/243, 6 October 1999, art. 9.b

516 Report of the Secretary-General: *In Larger Freedom: Towards Development, Security and Freedom for All*, UN Doc. A/59/2005, 21 March 2005, paragraph 127-128

517 Art. 1 of the UDHR: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”

518 Art. 28 of the UDHR: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.

519 G. ALFREDSSON, G. and EIDE, A. (eds), *The Universal Declaration of Human Rights: a common standard of achievement*, Martinus Nijhoff Publishers, Hague, 2004, p. 597

520 G. ALFREDSSON, G. and EIDE, A. (eds), *op.cit.*, note 519, p. 606

Franklin D. Roosevelt in his “Four Freedoms”<sup>521</sup> speech delivered before the Congress on 6 January 1941: “In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms...”.

Art. 28 corresponds to the vision of peace, freedom and human rights underlying the creation of the United Nations. In particular, Art. 55 of the *Charter of the United Nations* states that “... to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and/or fundamental freedoms for all without distinction as to race, sex, language, or religion”.

In addition, to move forward a social and international order in which the rights and freedoms contained in the Declaration can be fully realized, it is necessary to advance in an increasingly peaceful and cooperative world. This requires a link between the three main purposes of the organization as set out in article 1 of the Charter, namely: maintenance and advancement of peace, international co-operation in the solution of economic, social, humanitarian and cultural problems, and the promotion of human rights for all<sup>522</sup>.

As indicated by Prof. Eide, “some might say that article 28 is a utopian aspiration. It is preferable, however, to see it as a vision to be pursued with determination, while taking into account that it will only gradually and partially be achieved in practice ... Art. 28 deals with the process of realization. To clarify this concept, some words may be required on the three stages which human rights concerns traverse: idealization, positivization and realization”<sup>523</sup>.

On several occasions, the UNGA has stated that the codification of the rules of international law and their progressive development would assist in promoting the “purposes and principles” of the *Charter of the United Nations*. In particular, the UNGA resolution 1505 (XV) on the *Future work in the field of the codification and progressive development of international law* stated that: “the conditions prevailing in the

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521 Four Freedoms: speech, worship, fear and want.

See in <http://americanrhetoric.com/speeches/fdrthefourfreedoms.htm>

522 G. ALFREDSSON, G. and EIDE, A. (eds), *op.cit.*, note 523, p. 614

523 EIDE, A., *op.cit.*, note 523, p. 597-604

world today give increased importance to the role of international law ... in strengthening international peace, developing friendly and cooperative relations among the nations, settling disputes by peaceful means and advancing economic and social progress throughout the world”<sup>524</sup>.

The UNGA reaffirmed in its resolution 54/27 of 19 January 2000<sup>525</sup> on the *outcome of the action dedicated to the 1999 centennial of the first International Peace Conference*, the commitment of the United Nations and its Member States to the adherence to, and the development of international law as a basis for conducting international relations. Furthermore, for a number of years, the UNGA has reiterated its conviction that peaceful settlement of disputes and the progressive elaboration of international law constitute one of the foundation stones of the rule of law and a clear means to also establish a just and lasting peace all over the world<sup>526</sup>.

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524 Preamble, para. 1, Doc. UNGA Res. 1505 (XV), *Future work in the field of the codification and progressive development of international law*, 12 December 1960

525 Doc. UNGA, Res. Adopted by the General Assembly [on the report of the Sixth Committee (A/54/609)] 54/27. *Outcome of the action dedicated to the 1999 centennial of the first International Peace Conference*, 19 January 2000, A/RES/54/27.

526 UNGA Res. entitled *The rule of law at the national and international levels*: 61/39 (4 December 2006); Res. 62/70 (6 December 2007); Res. 63/128 (11 December 2008); Res. 64/116 (16 December 2009); Res. 65/32 (6 December 2010).

#### 4.2.13. Poverty, development and peace

*Recalling the world commitment to eradicate poverty and promote sustained economic growth, sustainable development and global prosperity for all, and the need to reduce inequalities within and among countries.*

Sources: Art. 17, World Summit Outcome Document, Doc. 60/1, UNGA, 24 October 2005

Several declarations and instruments support the relationship between development and peace, for instance, the *Millennium Declaration*<sup>527</sup>, the *Declaration on the Right to Development*<sup>528</sup> and the *2005 World Summit Outcome Document*<sup>529</sup>. In addition, a transformed partnership based on equality between women and men is needed as a condition for people-centred sustainable development and world peace<sup>530</sup>. In addition, the role played by men and boys in advancing gender equality is vital<sup>531</sup>

In accordance with the resolution 7/4 of 2008 the HRC decided to create the mandate of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social

527 Paragraph 32 states that United Nations is the common house of the entire human family, where it should realize its universal aspiration for **peace, cooperation and development**

528 Preamble states that “**international peace and security** are essential elements for the realization of the **right to development**”. Furthermore, article 1.1. indicates that “the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”.

529 The World Summit Outcome Document restated that **human rights, peace and development** are **interrelated and interdependent** and that the fostering of one promotes the realization of the others.

530 Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), paragraphs 1 and 132

531 Report of the Expert Group Meeting that took place in Brasilia, Brazil from 21 to 24 October 2003: The role of men and boys in achieving gender equality. United Nations Division of Advancement of Women, EGM/MEN-BOYS-GE/2003/REPORT, 12 January 2004; Report of the Secretary General, Thematic issue before the Commission: the role of men and boys in achieving gender equality, Commission on the Status of Women, E/CN.6/2004/9, 22 December 2003.

and cultural rights. It was adopted by a recorded vote of 34 in favour<sup>532</sup> to 13 against<sup>533</sup>.

The *World Conference on Human Rights* held in Vienna in 1993 reaffirmed “the right to development, as established in the *Declaration on the Right to Development*, as a universal and inalienable right and an integral part of fundamental human rights. As stated in the *Declaration on the Right to Development*, the human person is the central subject of development. While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development. Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level”<sup>534</sup>.

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532 Angola, Azerbaijan, Bangladesh, Bolivia, Brazil, Cameroon, China, Cuba, Djibouti, Egypt, Gabon, Ghana, Guatemala, India, Indonesia, Jordan, Madagascar, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Uruguay and Zambia.

533 Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, and United Kingdom of Great Britain and Northern Ireland.

534 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 10

Additionally, the *Declaration and Programme of Action of Vienna* focused the implementation of the right to development on the least developed countries<sup>535</sup> and particular groups of people, such as women<sup>536</sup>, indigenous people<sup>537</sup>, minorities<sup>538</sup> and children<sup>539</sup>.

In accordance with the UNESCO transdisciplinary project entitled *Towards a culture of peace* of 1996, “Development is the most secure basis for peace, as “without development, there is no prospect for lasting peace”. Sustainability of development is only possible in a framework of justice and freedom of expression. It requires the “intellectual and moral solidarity of mankind”, as phrased in the Constitution of UNESCO. Reciprocally, peace is a fundamental dimension of development as there is no development without stability and security. Development must preserve the environment in a “true partnership ... between humanity and nature”<sup>540</sup>.

535 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 9: “The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development”

536 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 18: “...Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support...”

537 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 20: “The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development...”

538 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 27: “Measures to be taken, where appropriate, should include facilitation of their (minorities) full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country”

539 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 45: “The World Conference on Human Rights reiterates the principle of “First Call for Children” and, in this respect, underlines the importance of major national and international efforts, especially those of the United Nations Children’s Fund, for promoting respect for the rights of the child to survival, protection, development and participation”

540 Report of the Director-General of the UNESCO entitled on “Towards a culture of

The *Declaration and Programme of Action on a Culture of Peace* proclaimed that development is part of the culture of peace: “a culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on ... (f) Respect for and promotion of the right to development”<sup>541</sup>. Additionally, the *Declaration and Programme of Action* proposed some specific actions to promote sustainable economic and social development (i.e. eradicate poverty, reduce inequalities, external debt, food security, full participation, women and children, post-conflict situation, preservation of natural resources and self-determination).

Development, peace, security and human rights are mutually reinforcing and peace and justice encompass an economic dimension in accordance with the 1974 *Universal Declaration on the Eradication of Hunger and Malnutrition*<sup>542</sup>, and the 2005 *Outcome World Summit Document*<sup>543</sup>. In addition, it should be recalled the UN Secretary-General reports entitled *An agenda for peace. Preventive diplomacy, peacemaking and peacekeeping* of 1992<sup>544</sup> and *In Larger Freedom: Towards Development, Security and Human Rights for All* of 2005<sup>545</sup>.

Additionally, it should be recalled that the concept of human security is closely linked with the right to life. In particular, the *Universal Declaration on the Eradication of Hunger and Malnutrition*<sup>546</sup> and the

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peace”, Doc. A/51/395, 23 September 1996, para.11

541 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc.A/RES/53/243, 6 October 1999, art. 1

542 Principle h) states that “... **Peace and justice** encompass an economic dimension helping the solution of the world economic problems, the liquidation of underdevelopment, offering a lasting and definitive solution of the food problem for all peoples...”

543 Paragraph 72 states that “... no State can best protect itself by acting entirely alone and that all States need an effective and efficient collective security system pursuant to the purposes and principles of the Charter”

544 Paragraphs 43-44 of the “An agenda for peace. Preventive diplomacy, peacemaking and peacekeeping” indicated that an integrated approach to human security would be related to the deepest causes of war, such as economic despair, social injustice and political oppression.

545 In paragraph 25-126 of “In Larger Freedom: Towards Development, Security and Human Rights for All” the former Secretary-General stated that this concept is linked to the twin values of freedom from fear and freedom from want.

546 Preambular paragraph a): “... the grave food crisis .... acutely jeopardizes the most fundamental principles and values associated with the right to life and human dignity ...”

*Outcome World Summit Document*<sup>547</sup> recognized it in connection with the fight against poverty.

The *World Conference on Human Rights* expressed “its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include ... poverty, hunger and other denials of economic, social and cultural rights ...”<sup>548</sup>.

Additionally, the *Declaration and Programme of Action on a Culture of Peace* recognised that the eradication of poverty is close linked to a culture of peace as follows: “The fuller development of a culture of peace is integrally linked to: ... (f) Eradicating poverty and illiteracy and reducing inequalities within and among nations”<sup>549</sup> and on the actions to promote sustainable economic and social development it stressed the following: “(a) Undertake comprehensive actions on the basis of appropriate strategies and agreed targets to eradicate poverty through national and international efforts, including through international cooperation”<sup>550</sup>.

#### **4.2.14. The role of human rights in the prevention of armed conflicts**

*Recalling the importance of prevention of armed conflict in accordance with the purposes and principles of the Charter and the commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world,*

Sources: Art. 74, World Summit Outcome Document, Doc. 60/1, UNGA, 24 October 2005

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547 Paragraph 143 on human security: “... we stress the right of people to live in freedom and dignity, free from poverty and despair. We recognize that 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...”

548 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 30

549 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc.A/RES/53/243, 6 October 1999, art. 3

550 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc.A/RES/53/243, 6 October 1999, art. 10

On 31 January 1992, the first ever Summit Meeting of the SC was convened at the Headquarters of the United Nations in New York. Thirteen of the fifteen Heads of State and Government members of the Council attended the Summit.

As indicated by Boutros Boutros-Ghali, former Secretary-General of the United Nations, in his report on the *Agenda for Peace*, “the January 1992 Summit therefore represented an unprecedented recommitment, at the highest level, to the Purposes and Principles of the *Charter*”<sup>551</sup>. He also stressed that the sources of conflict and war are pervasive and deep and that to eliminate them will require efforts to enhance respect of human rights and fundamental freedoms and also to promote the sustainable economic and social development for wider prosperity<sup>552</sup>.

Pursuant to the UNGA resolution 47/120 on an *Agenda for peace: preventive diplomacy and related matters* of 1993, the building of peace and security can be only construed within the United Nations in an integrated manner:

“... international peace and security must be seen in an integrated manner and that the efforts of the Organization to build peace, justice, stability and security must encompass not only military matters, but also, through its various organs within their respective areas of competence, relevant political, economic, social, humanitarian, environmental and developmental aspects”<sup>553</sup>

The former Secretary-General of the United Nations highlighted that the United Nations was created with a great and courageous vision. According to him, now is the time, for its nations and peoples, to seize the moment for the sake of the future<sup>554</sup>.

Armed conflicts continue to bring fear and horror to humanity. Since the creation of the United Nations in 1945 until 1992, over 100 major

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551 An agenda for peace, preventive diplomacy, peacemaking and peace-keeping, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, Doc. A/47/277, S/24111, 17 June 1992, p. 2

552 An agenda for peace, *op. cit.*, note 551, p. 5

553 *An agenda for peace: preventive diplomacy and related matters*, Doc. A/RES/47/120, General Assembly, 10 February 1993

554 An agenda for peace, *op. cit.*, note 551, p. 86

conflicts have left some 20 million dead. In order to prevent, contain and bring conflicts to an end, the international community should respect –among other measures– the foundation stones of the United Nations, such as the principles of sovereignty and integrity of States and the full respect of human rights for all. In addition, Member States should bring their attention to the deepest causes of conflicts (i.e. economic despair and social injustice) as a means to prevent and resolve conflicts and preserve the universal peace in the world<sup>555</sup>.

In the supplement document to an *Agenda for Peace* of 1995, the Secretary-General of the United Nations stressed that “... demilitarization, the control of small arms, institutional reform, improved police and judicial systems, the monitoring of human rights, electoral reform and social and economic development can be as valuable in preventing conflict as in healing the wounds after conflict has occurred”<sup>556</sup>.

The Preamble of the UN Charter states that the cardinal mission of the United Nations remains “... to save succeeding generations from the scourge of war”. Additionally, as set forth in its Art. 1, paragraph 1, Member States are obligated “to take effective collective measures for the prevention and removal of threats to the peace...”.

As indicated in the report on *Prevention of Armed Conflict* of 2001, the Secretary General stressed that the Charter provides the United Nations with a strong mandate for preventing armed conflict. He added that the prevention is more desirable to ensure lasting peace and security than trying to stop it or alleviate its symptoms. It follows that conflict prevention becomes the cornerstone of the UN collective security system<sup>557</sup>.

A new approach to the concept of peace has emerged in recent years because it has included a broader focus on the nature of sustainable peace, such as social and economic development, good governance and democratization, the rule of law and respect of human rights.

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555 An agenda for peace, *op. cit.*, note 551, p. 13-18

556 Supplement to an Agenda for Peace: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations, Doc. **A/50/60-S/1995/1**, 3 January 1995, p. 47

557 Prevention of armed conflict, Report of the Secretary-General, Doc. **A/55/985-S/2001/574**, 7 June 2001, p. 18-19

The Secretary-General also stated that in the twenty-first century, collective security should imply an obligation to address tensions, grievances, inequality, injustice, intolerance and hostilities at the earliest stage possible, before the conflict erupts. He also indicated that this understanding brings the United Nations back to its roots due to the Charter, and in particular Art. 55<sup>558</sup>, creates the basis for elaborating a more comprehensive and long-term approach to conflict prevention<sup>559</sup>.

Both the *United Nations Millennium Declaration* adopted by the UNGA in its resolution 55/2<sup>560</sup> and the resolution 1318 (2000) adopted by the SC<sup>561</sup> recognized the vital role of all parts of the United Nations system in conflict prevention, peaceful resolution of disputes, peacekeeping, post-conflict peace-building and reconstruction and also pledged to enhance the effectiveness of the United Nations in this field. Furthermore, in its resolution 53/243 on the *Declaration and Programme of Action on a Culture of Peace*, the UNGA calls upon Member States, civil society and the whole United Nations system to promote activities related to conflict prevention<sup>562</sup>.

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558 Art. 55: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a) higher standards of living, full employment, and conditions of economic and social progress and development; b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.

559 Prevention of armed conflict, *op. cit.*, note 557, p. 19

560 Art. 9: “To make the United Nations more effective in maintaining peace and security by giving it the resources and tools it needs for conflict prevention, peaceful resolution of disputes, peacekeeping, post-conflict peace-building and reconstruction. In this context, we take note of the report of the Panel on United Nations Peace Operations and request the General Assembly to consider its recommendations expeditiously”

561 Art. 2: “Pledges to enhance the effectiveness of the United Nations in addressing conflict at all stages from prevention to settlement to post-conflict peace-building”

562 Art. 9.G: “Actions to foster a culture of peace through education ... g) Strengthen the ongoing efforts of the relevant entities of the United Nations system aimed at training and education, where appropriate, in the areas of conflict prevention and crisis management, peaceful settlement of disputes, as well as in post-conflict peace-building”

As recognised by the Secretary General, the promotion and protection of all human rights is an important legal tool aimed at preventing armed conflicts in the world:

“Sustainable and long-term prevention of armed conflict must include a focus on strengthening respect for human rights and addressing core issues of human rights violations, wherever these occur. Efforts to prevent armed conflict should promote a broad range of human rights, including not only civil and political rights but also economic, social and cultural rights, including the right to development”<sup>563</sup>.

On 18 July 2003, the UNGA adopted upon consensus the resolution 57/337 on prevention of armed conflict, by which it recognized that “the need for mainstreaming and coordinating the prevention of armed conflict throughout the United Nations system, and calls upon all its relevant organs, organizations and bodies to consider, in accordance with their respective mandates, how they could best include a conflict prevention perspective in their activities”<sup>564</sup>.

#### **4.2.15. Women and peace**

*Recalling that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,*

Sources: Preamble, paragraph 12, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

In the 2005 *World Summit Outcome* the UNGA acknowledged that peace and security, development and human rights were the foundations for collective security and well-being. Moreover, peace and respect for human rights, along with the right to the rule of law and gender equality, among others, were interlinked and mutually reinforcing<sup>565</sup>.

A transformed partnership based on equality between women and men is needed as a condition for people-centred sustainable development and world peace<sup>566</sup>. In addition, the role played by men and boys in advancing gender equality is vital<sup>567</sup>.

563 Prevention of armed conflict, *op. cit.*, note 557, p. 18-94

564 Doc. UNGA Resolution 57/337 on Prevention of armed conflict, 18 July 2003, p. 11

565 Opening statement by the Deputy High Commissioner, A/HRC/14/38, paragraph 6

566 Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), paragraphs 1 and 132

567 Report of the Expert Group Meeting that took place in Brasilia, Brazil from 21 to 24 October 2003: The role of men and boys in achieving gender equality. United

Although the relationship between gender and disarmament is not immediately apparent, gender mainstreaming represents a different approach to the traditionally complex and politically sensitive fields of security, disarmament, non-proliferation and arms control<sup>568</sup>. The *Beijing Declaration and Platform for Action* stated that full participation of women in decision-making, conflict prevention and resolution and any other peace initiative is essential to the realization of lasting peace<sup>569</sup>. Besides, SC resolution 1325 (2000) on women, peace and security, recognized gender mainstreaming as a major global strategy to promote gender equality by indicating that “all those involved in the planning for disarmament, demobilization and reintegration should consider the different needs of female and male ex-combatants”.

#### 4.2.16. Education and peace

*Recalling also that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern,*

Sources: Preamble, paragraph 4, Constitution of UNESCO

The right to education on peace and human rights is deeply rooted in international human rights instruments (i.e. the UDHR<sup>570</sup>, the

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Nations Division of Advancement of Women, EGM/MEN-BOYS-GE/2003/REPORT, 12 January 2004; Report of the Secretary General, Thematic issue before the Commission: the role of men and boys in achieving gender equality, Commission on the Status of Women, E/CN.6/2004/9, 22 December 2003.

568 Briefing note issued by the Office for Disarmament Affairs in collaboration with the Office of the Special Adviser on Gender Issues and the Advancement of Women of the Department for Economic and Social Affairs, <http://disarmament.un.org/gender.htm>, 2008

569 The United Nations Fourth World Conference on Women: *Action for equality, development and peace*, Beijing, China, September 1995, par. 22

570 Article 26.2 UDHR states that “education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace”.

UN *Convention on the Rights of the Child*<sup>571</sup>, the ICESCR<sup>572</sup>) and the *Declaration on the Preparation of Societies for Life in Peace*<sup>573</sup>. At the regional level, reference should be made to the 2000 *Dakar Framework for Action, Education for All*<sup>574</sup> and the *Protocol of San Salvador on Economic, Social and Cultural Rights*<sup>575</sup>).

As stated by the former Special Rapporteur on the Right to Education, gender inequality and other forms of social, religious, ethnic and racial discrimination impede social mobility and impact negatively on the full realization of all human rights, including development, peace and security<sup>576</sup>.

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571 Article 29 CRC states that children's education should develop each child's personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect the rights their parents, and education should aim to develop respect for the values and culture of their parents.

572 Article 13 ICESCR states that "... recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace".

573 Article 1 states that "... to ensure that their policies relevant to the implementation of the present Declaration, including educational processes and teaching methods as well as media information activities, incorporate contents compatible with the task of the preparation for life in peace of entire societies and, in particular, the young generations".

574 Goal 6 states that "Education, both formal and non-formal, is therefore a key element to achieving sustainable development, peace and stability within and among countries, by fostering social cohesion and empowering people to become active participants in social transformation".

575 Article 13 states that "... education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and **peace**. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace".

576 Report submitted by the Special Rapporteur on the Right to Education, Mr. Ver-nor Muñoz Villalobos, E/CN.4/2006/45, 8 February 2006, par. 18

The *World Conference on Human Rights* held in 1993 in Vienna reaffirmed that States are duty-bound “... to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms ...”<sup>577</sup> and emphasized “... the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion and respect of human rights...”<sup>578</sup>.

Additionally, the DPAV emphasized the obligation to facilitate access to education for people with disabilities<sup>579</sup>, vulnerable groups –in particular migrant workers-<sup>580</sup> and women<sup>581</sup>. As to the human rights

577 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, art. 33

578 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, art. 33

579 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 63: “The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society....”

580 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 24: “Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments. States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems”

581 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 18: “...Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support....”;

education, the Declaration should promote the values of peace, social justice, democracy, tolerance and development<sup>582</sup>.

In accordance with the UNESCO transdisciplinary project entitled “Towards a culture of peace” of 1996, “Education, seen broadly, is the most important process by which people gain the values, attitudes and behaviours of a culture of peace...”<sup>583</sup>.

The *Declaration and Programme of Action on a Culture of Peace* recognised education as a part of the culture of peace: “education at all levels is one of the principal means to build a culture of peace. In this context, human rights education is of particular importance”<sup>584</sup>. In addition, it identifies specific actions to promote the culture of peace through education (i.e. international cooperation, children, women, curricula, dialogue, conflict prevention and higher education).

#### 4.2.17. Culture of peace and human rights

*Reaffirming that the culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life, as identified in the Declaration on a Culture of Peace, and that all this should be fostered by an enabling national and international environment conducive to peace,*

Sources: Art. 1.C, Declaration and Programme of Action on Culture of Peace

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582 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 79: “States should strive to eradicate illiteracy and should direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The World Conference on Human Rights calls on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings”; art. 80: “Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights” and art. 82: “Governments, with the assistance of intergovernmental organizations, national institutions and non-governmental organizations, should promote an increased awareness of human rights and mutual tolerance....”

583 Report of the Director-General of the UNESCO entitled on “Towards a culture of peace”, Doc. A/51/395, 23 September 1996, para.22

584 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc.A/RES/53/243, 6 October 1999, art. 4

The *Declaration on a Culture of Peace* clearly defines a culture of peace as a set of values, attitudes, traditions and modes of behaviour and ways of life, which is based on some elements, and also indicates that its full development is integrally linked to several important fields. Moreover, it identifies the main actors responsible to implement the Declaration and the role played by education in the construction of a culture of peace.

Pursuant to UNGA resolution 56/5 on the *International Decade for a Culture of Peace and Non-Violence for the Children of the World* (2001-2010), proclaimed in Assembly resolution 53/2, the Secretary-General transmitted in July a report of the UNESCO Director-General covering implementation of the Programme of Action.

#### **4.2.18. Promotion of tolerance and dialogue**

*Recalling the need for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs*

*Sources: HRC resolution 16/18 on Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief*

*Recognizing the importance of moderation and tolerance as values contributing to the promotion of peace and security,*

*Recalling also that tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human, and the virtue that makes peace possible and contributes to the promotion of a culture of peace,*

Sources: UNESCO Declaration of Principles on Tolerance (1995), art.1

On the initiative of UNESCO, on 23 December 1994 the UNGA proclaimed 1995 the *United Nations Year for Tolerance*, by which designated UNESCO as lead agency for this Year and called upon all Member States, specialized agencies, regional commissions and other organizations to cooperate with UNESCO in the observance of the national and international programmes for the Year<sup>585</sup>.

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585 General Assembly, United Nations Year for Tolerance, Res. A/RES/49/213, 23 December 1994

In conformity with its mandate and in order to call public attention worldwide to the urgent matter of tolerance, the General Conference of UNESCO solemnly adopted on 16 November 1995, the 50th anniversary of the signature of UNESCO's Constitution, the *Declaration of the Principles of Tolerance*. The Member States of the UNESCO, meeting in Paris at the twenty-eighth session of the General Conference, from 25 October to 16 November 1995.

On 12 December 1996, the UNGA adopted resolution 51/95 by which welcomed the role played by UNESCO in the preparation and implementation of the *United Nations Year of Tolerance*, takes note of the *Declaration of the Principle on Tolerance and the follow-up Plan of Action* and invited Member States to consider applying the Declaration of Principles at the national level<sup>586</sup>.

In accordance with the *Declaration of the Principles of Tolerance*, the meaning of tolerance is the following:

«Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace» (art. 1.1).

In light of the Declaration of the Principles the notion of tolerance «...means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behaviour and values, have the right to live in peace and to be as they are» (art. 1.4).

The legal basis to elaborate the *Plan of Action of Tolerance* might be the following:

Firstly, the *Charter of the United Nations*: «We the Peoples of the United Nations 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

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586 General Assembly, Follow-up to the United Nations Year for Tolerance, Res. A/RES/51/95, 12 December 1996

the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, ... and for these ends to practice tolerance and live together in peace with one another as good neighbours »

Secondly, the *Universal Declaration of Human Rights*: «Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace» (art. 26).

Thirdly, the main legal instruments on human rights, such as the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention on the Prevention and Punishment of the Crime of Genocide*, the *Convention on the Rights of the Child*, the 1951 *Convention relating to the Status of Refugees and its 1967 Protocol* and regional instruments, the *Convention on the Elimination of Any Form of Discrimination against Women*, the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Declaration on the Elimination of Any Form of Intolerance Based on Religion or Belief*, the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, the *Declaration on measures to Eliminate International Terrorism*, the *Vienna Declaration and Programme of Action of the World Conference on Human Rights*, the *Copenhagen Declaration and Programme of Action* adopted by the *World Summit for Social Development*, the *UNESCO Declaration on Race and Racial Prejudice*, the *UNESCO Convention and Recommendation against Discrimination in Education*.

Fourthly, the *Vienna Declaration and Programme of Action* of 25 June 1993: «the World Conference on Human Rights considers that the creation of conditions to foster greater harmony and tolerance between migrant workers and the rest of the society of the State in which they reside is of particular importance» (art. 34) and «the World Conference on Human Rights considers human rights education,

training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace» (art. 78)

Fifthly, the *World Conference on Human Rights* of 13 October 1993: «... The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives... ». (art. 33).

Sixthly, the *United Nations Millennium Declaration* of 18 September 2000: Member States considered the following fundamental values to be essential to international relations in the twenty-first century, such as freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. As to value of tolerance the Declaration says as follows: «Human beings must respect one other, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted».

In accordance with the *Declaration of the Principles of Tolerance*, tolerance at the State level requires the following measures : impartial legislation, law enforcement and judicial and administrative process; economic and social development without discrimination; ratification of the existing international human rights instruments; equality of treatment and opportunity; respect of the multicultural character of the human family; elimination of exclusion and marginalization of vulnerable groups. Consequently, «education is the most effective means of preventing intolerance. The first step in tolerance education is to teach people what their shared rights and freedoms are, so that they may be respected, and to promote the will to protect those of others» (art. 4.1).

At its twenty-third plenary meeting, on 15 November 1995, the General Conference adopted on the report of Commission V, the Plan of Action to follow up the *United Nations Year for Tolerance*.

This Plan states that tolerance will continue to be central to the UNHCR mandate to provide international protection and seek permanent solutions for the problems of refugees. Additionally, it recognizes that tolerance is also a central objective of the ILO's long standing programmes concerning equality in workplace, migrant workers, exploited and indigenous populations. In addition, UNICEF will pursue peace education initiatives aimed at rehabilitation, reconciliation and conflict prevention. The UNDP will address the role of economic factors in exacerbating social tensions through diverse development projects. Additionally, health status is a factor in discrimination and intolerance.

#### **4.2.19. Respect of cultural diversity**

*Recalling that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding, are among the best guarantees of international peace and security,*

*Sources:* UNESCO Universal Declaration on Cultural Diversity (2001), Preamble

In accordance with the UNESCO *Universal Declaration on Cultural Diversity* of 2001, cultural diversity is “embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind”. Additionally, the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* of 2005 the notion of cultural diversity:

“Refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies”.

“cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used”<sup>587</sup>.

In the Preamble of this Convention, the notion of cultural diversity is widely elaborated. In particular, the Preamble understands

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587 Art. 4.1

the cultural diversity as follows: firstly, a defining characteristic or common heritage of humanity which should be preserved for the benefit of all<sup>588</sup>; secondly, a linkage to the cultural expressions or linguistic diversity<sup>589</sup> and thirdly, a manifestation of free flow of ideas<sup>590</sup>.

Apart from the *Declaration of the Principles of International Culture Cooperation* of 1966, the *Universal Declaration on Cultural Diversity* of 2001 and the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* of 2005, the other main legal instruments in which the notion of cultural diversity is based are the following: firstly, *United Nations Year of Dialogue among Civilizations*; secondly, the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*; thirdly, *Global Agenda for Dialogue among Civilizations* and fourthly, the *World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance*.

The former Independent Expert in the field of cultural rights, Ms. Farida Shaheed, added that cultural diversity exists not only between groups and societies, but also within each group and society, and that identities are not singular<sup>591</sup>.

In accordance with Ms. Farida, one principle widely agreed upon today, and emphasized in UNGA resolution 64/174, is that universal promotion and protection of human rights, including cultural rights on the one hand, and respect for cultural diversity on the other, are mutually supportive<sup>592</sup>. This principle is expressed in the following terms:

“Also emphasizes that tolerance and respect for diversity facilitate the universal promotion and protection of human rights, including gender equality and the enjoyment of all human rights by all, and underlines the fact that tolerance and

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588 Preambular paragraph 1 and 2

589 Preambular paragraph 13 and 14

590 Preambular paragraph 11

591 Report of the Independent expert in the field of cultural rights, Ms. Farida Shaheed, A/HRC/14/36, 22 March 2010, para. 23

592 Report of the Independent expert in the field of cultural rights, Ms. Farida Shaheed, A/HRC/14/36, 22 March 2010, para. 24

respect for cultural diversity and the universal promotion and protection of human rights are mutually supportive” (para. 10)

The *Universal Declaration on Cultural Diversity* states that the respect of cultural rights creates an enabling environment for the existence of cultural diversity. In particular, this provision indicates that for the full implementation of cultural rights, all persons person should have the right to express themselves, to create and disseminate their work in the language of their choice and to participate in his/her cultural life (para. 5). This provision is linked to the provision, which states that the defence of cultural diversity is an ethical imperative inseparable from respect for human rights (para. 4). Consequently, freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity (para. 6).

The *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* reiterates the linkage between the principle of respect for human rights and fundamental freedoms and cultural diversity by saying that cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed (art. 2.1).

Ms. Farida also said that the respect, protection and promotion of cultural diversity are essential for ensuring the full respect of cultural rights<sup>593</sup>. She affirmed that this idea is implicitly proclaimed in the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities* of 1992, according to which States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

This idea has also been included in the *United Nations Declaration on the Rights of Indigenous Peoples* of 2007 and the general comment

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<sup>593</sup> Report of the Independent expert in the field of cultural rights, Ms. Farida Shaheed, A/HRC/14/36, 22 March 2010, para. 26

No. 21 of the Committee on Economic, Social and Cultural Rights by proclaiming that the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected, and consequently, the obligation to protect is to be understood as requiring States to take measures to prevent third parties from interfering in the exercise of rights<sup>594</sup>.

The Committee on Economic, Social and Cultural Rights also adds that the right of everyone to take part in cultural life, like the other rights enshrined in the Covenant, imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil.

For the Committee, “the obligation to respect requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life. The obligation to protect requires States parties to take steps to prevent third parties from interfering in the right to take part in cultural life. Lastly, the obligation to fulfil requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right”<sup>595</sup>.

The delegate of the United States of America said in the Commission on Human Rights in 2003 that cultural diversity embodied the freedom of cultural expression within and across the borders. For this reason, they understood that the notion of cultural diversity is closely linked to the free flow of cultural goods and services within and between nations<sup>596</sup>.

As indicated by Ms. Farida, the principle of universality of human rights and cultural rights and cultural diversity are sometimes considered as opposed. According to her, this view stems partly from a misplaced tendency to equate cultural diversity with cultural

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594 General comment No. 21, Right of everyone to take part in cultural life of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/21, 21 December 2009, para. 50

595 General comment No. 21, Right of everyone to take part in cultural life of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/21, 21 December 2009, para. 48

596 Records of the debate at the Commission on Human Rights, E/CN.4/2003/SR.56, para. 55

relativism<sup>597</sup>. However, on this point the *Universal Declaration on Cultural Diversity* and reiterated in the HRC resolution 25/19 of 2014 was pretty clear when says that “one may invoke cultural diversity to infringe upon human rights guaranteed by international law, not to limit their scope”<sup>598</sup>.

As to the debate between universality of cultural rights and cultural diversity, the UNESCO *World Report on Cultural Diversity* states that “Recognition of cultural diversity grounds the universality of human rights in the realities of our societies by drawing attention to their appropriation by *all* individuals who can identify these rights with a sense of ownership, regardless of language, tradition and location. In the same vein, the fact that these rights and freedoms are meant to be exercised in a wide variety of cultural environments by no means implies that universal norms can be relativized in terms of their application”<sup>599</sup>.

As to the universality of human rights, the delegate of the European Union stated in the Commission on Human Rights in 2004 that all human rights were universal, indivisible and interdependent, and should be treated globally in a fair and equal manner. Regardless of their political, economic and cultural systems, States had a duty to promote and protect all human rights and fundamental freedoms<sup>600</sup>.

The principle of universality of all human rights for all has always been included in the resolutions on the independent expert in the field of cultural rights or special rapporteur in the field of cultural rights – Res. 10/23, 19/6 and 29/9 - and the promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity – Res. 17/15, 20/11, 23/10 and 25/19 – as follows: “Reaffirms that cultural rights are an integral part of human rights, which are universal, indivisible, interrelated and interdependent”<sup>601</sup> and “... no may invoke cultural diversity to infringe upon human rights guaranteed by international law ...”<sup>602</sup>.

597 Report of the Independent expert in the field of cultural rights, Ms. Farida Shaheed, A/HRC/14/36, 22 March 2010, para. 32

598 Resolution on the Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity, A/HRC/RES/25/19, 15 April 2014, para. 4

599 UNESCO World Report, Investing in Cultural Diversity and Intercultural Dialogue, Paris, 2009, p. 225

600 Records of the debate at the Commission on Human Rights, E/CN.4/2004/SR.51, para. 95

601 Para. 1

602 Para. 4

Additionally, an increasing number of such international instruments make room for the integration of cultural diversity in the effective exercise of human rights, such as the *Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Rights of the Child* and *The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*<sup>603</sup>.

The linkage between culture and peace can initially be found in the *Declaration of International Cultural Co-operation* of 1966. In particular, article 10 states that cultural co-operation shall be especially concerned with the moral and intellectual education of young people in a spirit of friendship, international understanding and peace. This idea was also included in the resolutions 2002/23, 2004/20 and 2005/20 on the promotion of the enjoyment of the cultural rights of everyone and respect for different cultural identities in its paragraph 9 and 10 adopted in the times of the Commission on Human Rights.

Additionally, the Preamble of this UNESCO instrument recalled that the UNESCO Constitution also states that the wide diffusion of culture and the education of humanity for justice and liberty and peace are indispensable to the dignity of man.

Apart from recalling again in its Preamble that education on peace is an indispensable element of human dignity, the *UNESCO Universal Declaration on Cultural Diversity* affirms that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security. Additionally, this instrument declares in its article 2 that policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace.

The original connection between cultural diversity and peace is further elaborated by including also the notion of dialogue among cultures and culture of peace. In particular, the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* states that

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603 UNESCO World Report, Investing in Cultural Diversity and Intercultural Dialogue, Paris, 2009, p. 225-226

Member States undertake to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace and to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples.

In 2007 the UNGA wanted to take into account the culture of peace as a means to foster non-violence and respect for human rights and strengthen solidarity among peoples and nations and dialogue between cultures in its resolution on human rights and cultural diversity<sup>604</sup>.

The *Faro Framework Convention on the Value of Cultural Heritage for Society* adopted by the Council of Europe in 2005 refers to the role of cultural heritage in the construction of a peaceful and democratic society, and in the processes of sustainable development and the promotion of cultural diversity (Art. 1).

This latter idea of the Council of Europe was reaffirmed by the UNGA in the resolution on human rights and cultural diversity adopted in 2007 when it affirms "... the importance for all peoples and nations to hold, develop and preserve their cultural heritage and traditions in a national and international atmosphere of peace, tolerance and mutual respect"<sup>605</sup>.

In this vein, the UNESCO *World Report on Cultural Diversity* states that cultural diversity can become a powerful lever for renewing the international community's strategies towards development and peace, based on respect for universally recognized human rights. By furthering human rights, social cohesion and democratic governance, cultural diversity creates a convergence of three factors that are essential for the establishment of peace and peaceful co-existence within and between nations. In this way, the triad of human rights, social cohesion and democratic governance is strengthened by the promotion and safeguarding of cultural diversity<sup>606</sup>.

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604 General Assembly resolution 62/155 on Human Rights and cultural diversity, A/RES/62/155, preambular paragraph 12

605 General Assembly resolution 62/155 on Human Rights and cultural diversity, A/RES/62/155, para. 1

606 UNESCO World Report, Investing in Cultural Diversity and Intercultural Dialogue, Paris, 2009, p. 202

Consequently, the report added that there is an urgent need to invest in cultural diversity and dialogue. Integrating cultural diversity into a wide range of public policies – including those somewhat remote from the cultural field proper – can help renew the international community’s approaches to two key objectives: development and peace building and conflict prevention<sup>607</sup>.

This UNESCO idea has always been shared by the HRC by recognizing that “respect for cultural rights is essential for development, peace and eradication of poverty, building social cohesion and the promotion of mutual respect, tolerance and understanding between individuals and groups, in all their diversity”<sup>608</sup>.

In 2007 the UNGA called upon “States, international organizations and United Nations agencies, and invites civil society, including non-governmental organizations, to recognize and promote respect for cultural diversity for the purpose of advancing the objectives of peace, development and universally accepted human rights”<sup>609</sup>.

#### **4.2.20. Education and training on human rights**

*Recalling the United Nations Declaration on Human Rights Education and Training, which proclaimed that everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training,*

Sources: Art. 1, United Nations Declaration on Human Rights Education and Training

The Preamble of the Declaration indicates that “... that everyone has the right to education, and that education shall be directed to the full development of the human personality and the sense of its dignity, enable all persons to participate effectively in a free society and promote understanding, tolerance and friendship among all nations

607 UNESCO World Report, Investing in Cultural Diversity and Intercultural Dialogue, Paris, 2009, p. 251

608 Human Rights Council resolution on the Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity, A/HRC/RES/20/11 (16 July 2012), A/HRC/RES/23/10 (20 June 2013), A/HRC/RES/25/19 (15 April 2014), para. 7

609 General Assembly resolution 62/155 on Human Rights and cultural diversity, A/RES/62/155, para. 13

and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace, security and the promotion of development and human rights”.

All human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing in accordance with Article 5 of the *Vienna Declaration and Programme of Action on Human Rights*.

The *Vienna Declaration and Programme of Action* emphasizes that all human rights are of equal importance, seeking to end the qualitative division between civil and political rights and economic, social and cultural rights, which was pronounced during the Cold War era. Part I, para 5 states that “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

This phrase is also cited by *Declaration of Montreal* as well as *The Yogyakarta Principles*<sup>610</sup> and the *Convention on the Rights of Persons with Disabilities*<sup>611</sup>. To this end, Part II, para 75 also encourages the Commission on Human Rights, in accordance with the Committee on Economic, Social and Cultural Rights, to continue the examination of Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights* on equal basis of the *Optional Protocols to the International Covenant on Civil and Political Rights*.

#### 4.2.21. Protection of minorities

*Recalling further that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of a society*

610 Art. 1.a: “Embody the principles of the universality, interrelatedness, interdependence and indivisibility of all human rights in their national constitutions or other appropriate legislation and ensure the practical realisation of the universal enjoyment of all human rights ».

611 Preamble, paragraph c: “Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination”

*as a whole and within a democratic framework based on the rule of law would contribute to the strengthening of friendship, cooperation and peace among peoples and States,*

Sources: Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

#### **4.2.22. Struggle against racism**

*Recalling the need to design, promote and implement, at the national, regional and international levels, strategies, programmes and policies, and adequate legislation, which may include special and positive measures, for furthering equal social development and the realization of the civil and political, economic, social and cultural rights of all victims of racism, racial discrimination, xenophobia and related intolerance,*

*Recognizing that racism, racial discrimination, xenophobia and related intolerance, where they amount to racism and racial discrimination, are an obstacle to friendly and peaceful relations among peoples and nations, and are among the root causes of many internal and international conflicts, including armed conflicts,*

Sources: Declaration on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, para. 107 and Preamble

In recent years the reported acts of incitement to racial, ethnic and religious hatred have dramatically increased in the world.

As recognized by the former *Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, discrimination, racism and xenophobia constitute by definition a rejection of or a failure to, recognize differences. Combating racism requires not only identifying its manifestations and expressions but also analysing and better understanding its underlying causes. The resurgence of the racist and xenophobic culture and mentality can feed and foster a dynamic of conflicts between cultures and civilizations, which constitutes the most serious threat to world peace.

The lack of recognition of multiculturalism is an underlying factor of racism and the central issue in present-day crisis in most of the regions

of the world. The identity crisis is developed around the dilemma of whether to preserve an ethnic centred identity or to recognize the reality of cultural and inter-religious pluralism.

Identity should be not an obstacle to, but a factor that enables dialogue, mutual understanding, rediscovery of the proximity of the other and pluralism. The concept of diversity should not be interpreted as radical difference, inequality and discrimination against the other, but as a vital element enabling to build a new social vision based on the dialectic of unity, diversity and promotion of the value of cross fertilization between cultures, peoples, ethnic identities and religions. This new social vision should lead to peace.

In their contributions to the *Durban Review Conference* the African Group stated that, against the culture of fear, is necessary to promote dialogue, peace, cultural diversity and mutual understanding; and the Latin American and Caribbean Group concluded that the promotion of tolerance and cross-cultural values is closely linked to the spirit of the *Durban Declaration and Programme of Action*.

Educational policies and programmes should be orientated to promote peace, respect for cultural diversity and universal human rights. Furthermore, as indicated by Intergovernmental Working Group on the Effective Implementation of the *Durban Declaration and Programme of Action*, human rights education should play a prominent role in combating racism, racial discrimination, xenophobia and related intolerance and promoting a culture of peace and dialogue.

The role of education in promoting tolerance and understanding has been underscored by the *Universal Declaration of Human Rights* (art. 26, para. 2), which spells out that, inter alia, education shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. In addition, the *Durban Declaration* specifically underlines the links between the right to education and the struggle against racism, racial discrimination, xenophobia and related intolerance and the essential role of education, including human rights education and education which is sensitive to and respects cultural diversity, especially amongst children and young people, in the prevention and eradication of all forms of intolerance and discrimination (para. 97).

Education is also crucial in consolidating peace and ensuring development in post-conflict situations. Mr. Mutuma Ruteere, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, recommends ensuring that education policy is an integral part of the programme of consolidating peace and integrating assessments of post-conflict situations and peace consolidation into national education strategies.

Since peoples of the world are entitled to equality of opportunity and the enjoyment of their human rights, including the right to development and the right to live in peace (Durban *Declaration and Programme of Action*, Preamble, paragraph 21), actions undertaken by Governments aimed at eliminating racism should include economic and social measures in support of peoples marginalized by racial discrimination. As emphasized by the Asian Group “poverty, underdevelopment, marginalization, social exclusion and economic disparities are closely associated with racism, racial discrimination, xenophobia and related intolerance, and contribute to the persistence of racist attitudes and practices which in turn generate more poverty”.

Racism, racial discrimination, xenophobia and related intolerance manifest themselves in an aggravated and differentiated manner for women and girls “causing their living standards to deteriorate, generating multiple forms of violence and limiting or denying them the exercise of their human rights ...”. The *Convention on the Elimination of Discrimination against Women*, as well as its Committee’s General Recommendations, in particular GR 19 (1992) on violence against women, including older and immigrant women, should also be stressed. A transformed partnership based on equality between women and men is needed as a condition for people-centred sustainable development and world peace.

Discrimination and racism is an extended phenomenon affecting people of African descent and indigenous peoples. Although some legal and administrative measures have been adopted to promote, enhance and strengthen the ethnic, cultural, religious and linguistic identities, participation of minority groups at the political, economic, social and cultural spheres, continues to be irrelevant in many countries where racial policies based on superiority, xenophobia or discrimination are prevailing.

As requested in Article 4 of *the International Convention on the Elimination of All Forms of Racial Discrimination*, States Parties should adopt immediate and positive measures designed to eradicate all incitement to, or acts of, racial discrimination. In addition, the Human Rights Committee stated in its General Comment 18 that the principle of non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.

The Rabat Plan of Action on the prohibition of advocacy on national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, adopted in 2012, reiterated that all human rights are universal, indivisible and interdependent and interrelated, and recalled the interdependence between freedom of expression and other human rights. The realization of freedom of expression enabled public debate, giving voice to different perspectives and viewpoints and playing a crucial role in ensuring democracy and international peace and security.

#### **4.2.23. Elimination of war and armed violence**

Inviting solemnly all stakeholders to guide themselves in their activities by recognizing the high importance of practising tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace; to that end, present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war,

Sources: The first part of the paragraph is language proposed by the Chairperson-Rapporteur and the second one makes reference Art. 9.1 and 9.2, Declaration on the Responsibilities of the Present Generations Towards Future Generations, UNESCO, 12 November 1997.

The United Nations is a response to the two world wars and the intention of the member States to suppress war. After a lively debate during the negotiation process of the Charter<sup>612</sup>, a consensus

<sup>612</sup> The Soviet Union initially supported the position that the “primary and indeed the only task of the international organization should be the maintenance of peace and security and for the economic and social matters a separate organization should be created” , in HILDEBRAND, R., *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security*, University of North

was reached among all States that the efforts should no longer be limited to stopping direct threats of war, but should also include to fight against its roots causes, including “poverty, disease, ignorance, insecurity, unemployment, inequality and not least lawless tyranny and lack of human dignity”<sup>613</sup>.

In a context of armed conflict and violence the right to life is the most relevant fundamental human right violated. The arbitrary deprivation of life, the practice of ethnic cleansing and mass killings are considered crimes against humanity. For this reason, the drafters of the Declaration on the Right to Peace wanted to elaborate the right to life in the last preambular paragraph in the following terms: “... to that end, present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war”.

Both the SC and the HRC deals with situations of armed conflict in which human rights, and in particular the deprivation of life, are massively violated. While the SC is the competent body to determine whether the violation of the right to life, among other rights, threaten international peace and security, the HRC investigates the human rights situation on the field.

Unlike the SC, the HRC is not the competent body to deal with matters linked to the maintenance of international peace and security in the world<sup>614</sup>. Pursuant UNGA resolution 60/251 of 2006, the HRC is trusted to work in some of the purposes and principles contained in the UN Charter, but never on matters related to breach of peace, the use or threat of force or the crime of aggression.

The right to life or live in peace have been extensively elaborated in the work of the SC and the HRC. It demonstrates that one of the nexus between both UN intergovernmental bodies is through the notion of life as a paramount right, which main mandate-holders are States and individuals.

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Carolina Press, 1990, p. 87-88.

613 MACLAURIN, J., *The United Nations and Power Politics*, George Allen and Unwin Ltd, 1951, p. 10.

614 GUILLERMET FERNÁNDEZ, C. and FERNÁNDEZ PUYANA, D., «From a Culture of Conflict to a Culture of Peace, Human Rights and Development», *Pace diritti umani*, 2-3, maggio-dicembre 2013, p. 26-27.

In 1967 the SC unanimously adopted under Chapter VI the resolution 242 by which Council members recognized that a just and lasting peace includes “...their right to live in peace within secure and recognized boundaries free from threats or acts of force”.

During the debate of this resolution the representative of India stated that «there was considerable agreement on the principle that every State has the right to live in peace and complete security free from threats or acts of war and consequently all States in the area should terminate the state or claim of belligerency and settle their international disputes by peaceful means » (para. 46)<sup>615</sup>.

Additionally, the representative of France and Argentina added that they were glad to see that the resolution stresses the second principle, the right to live in peace within its own boundaries (para. 113 and 164)<sup>616</sup>.

The “right to live in peace” is principally devoted to the relationship among countries without referring properly to international human rights law. This notion is principally referred to the principles included in Art. 2 of the UN Charter (i.e. prohibition of the threat or use of force against the territorial integrity or political independence of any State; settlement of international disputes by peaceful means; prohibition to intervene in matters within the domestic jurisdiction; cooperation among States; self-determination of peoples and sovereign equality of States).

In addition, some legal international instruments (i.e. *Declaration on the Strengthening of International Security*<sup>617</sup> and the *Declaration on the Deepening and Consolidation of International Détente*<sup>618</sup>) and GA

615 Security Council Official Records, Twenty-second year 1382 meeting, 22 November 1967, New York.

616 Security Council Official Records, Twenty-second year 1382 meeting, 22 November 1967, New York.

617 Preamble, paragraph 1: “Recalling the determination of the peoples of the United Nations, as proclaimed by the Charter, to save succeeding generations from the scourge of war, and to this end to live together in peace with one another as good neighbours and to unite their strength to maintain international peace and security”. Doc. UNGA resolution 25/2734 of 16 December 1970

618 Preamble, paragraph 1: “Reaffirming their full commitment to the purposes and principles of the Charter of the United Nations and their resolve to ensure conditions in which all peoples can live and prosper in peace with justice”. Doc. UNGA, Resolution A/RES/32/155 of 19 December 1977

resolutions (i.e. Measures to be taken against propaganda and the inciters of a new war<sup>619</sup>) again recognized the connection between life and peace in the line of the Preamble of the UN Charter. Furthermore, it should be noted that the *Durban Declaration* expressly recognized that peoples of the world are endowed with the right to live in peace and freedom and to equal participation without discrimination in economic, social, cultural, civil and political life<sup>620</sup>.

In order to progressively eliminate armed conflict and war over the earth and consequently to live in a context of peace, the protection of human rights and dignity should be in the center of all decision-making processes in both the national and international level. It follows that *Declaration on the Right to Peace* could be a useful means to promote among different stakeholders positive measures in the economic, social and cultural fields through the respect of human rights and human dignity<sup>621</sup>.

The right to life as a fundamental and universal human right of everyone has been spelled out in the UDHR<sup>622</sup>, ICCPR<sup>623</sup>, the *African Charter on Human and Peoples' Rights* (ACHPR)<sup>624</sup>, the *European*

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619 Preamble, paragraph 1: "Whereas in the Charter of the United Nations the peoples express their determination to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to practice tolerance and live together in peace with one another as good neighbours". Doc. 110 (II), 3 November 1947

620 Preamble, paragraph 21: "Having listened to the peoples of the world and recognizing their aspirations to justice, to equality of opportunity for all and everyone, to the enjoyment of their human rights, including the right to development, to live in peace and freedom and to equal participation without discrimination in economic, social, cultural, civil and political life". Adopted by consensus in Durban on 8 September 2001 and endorsed by the UNGA resolution 56/266 of 15 May 2002

621 GUILLERMET FERNÁNDEZ, C. and FERNÁNDEZ PUYANA, D. , op. cit. 614, p. 35.

622 Art. 3: "Everyone has the right to life, liberty and security of person"

623 Art. 6 (1): "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976

624 Art. 4: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right". Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

*Convention on Human Right* (ECHR)<sup>625</sup> and the *American Convention on Human Rights* (ACHR)<sup>626</sup>. In accordance with these legal provisions, States Parties are expressly obligated to protect the right to life by law and to take positive measures to ensure it.

The right to life has properly been characterized as the supreme human right, since without effective guarantee of this right, all other rights of the human being would be devoid of meaning<sup>627</sup>. Since the right to life is non-derogable right in accordance with Art. 4(2) of the ICCPR<sup>628</sup>, it may never be suspended in time of public emergency which threatens the life of the nation. In addition, the right to life has been deemed *ius cogens* under international law<sup>629</sup>.

The Human Rights Committee has issued two General Comments interpreting the content of Art. 6 on the right to life contained in the ICCPR. Both comments focus on the duty of States to prevent mass violence such as war and emphasize the duty of States to adopt positive measures to protect the right to life<sup>630</sup>.

In the first of these General Comments, adopted on 27 July 1982 (16<sup>th</sup> session), the Committee pointed out that: "... every effort they make to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life..."<sup>631</sup>. In its second General Comment, adopted on 2 November 1984 (23<sup>rd</sup> session), the Committee, after expressing its concern by the toll of human life taken by conventional weapons in armed conflicts, noted that: "... the very existence and gravity of this

625 Art. 2 (1): "Everyone's right to life shall be protected by law...." Signed on 4 November 1950 in Rome.

626 Art. 4 (1): "1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life". Signed at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969

627 NOWAK, M., *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, Engel Publisher, Kehl/Strasbourg/Arlington, 2005, p. 104

628 Art. 4 (2): "No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision".

629 RAMCHARAN, B., "The Right to Life", *Netherlands International Law Review* (NILR), 1983

630 MOLLER, J. TH. and ZAYAS, A. *United Nations Human Rights Committee Case Law 1977-2008: a Handbook*, Kehl/Strasbourg, Engel Publisher, 2009, p. 144

631 Doc. General Comment No. 6: The right to life (art. 6): 30 April 1982, para. 2

threat (nuclear weapons) generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights”<sup>632</sup>.

This latter General Comment met with vehement criticism in the Social, Humanitarian Cultural Affairs Committee (GA Third Committee) because of the big opposition coming from Western States. Committee members Ermacora and Errera stated that the demand that the production and possession of nuclear weapons be recognized as crimes against humanity exceeds the Committee’s competence. On the other hand, other members Opsahl, Coté-Harper, Dimitrijevic and Tomuschat considered that “the Committee should take care not to undermine its own authority as the most important quasi-judicial organ of human rights protection within the framework of the United Nations by making political decisions in the area of “soft” international law”<sup>633</sup>.

As to the inter-relationship between the right to life and other human rights, including the enabling right to peace, energy is sometimes unnecessarily spent on the question of which should come first – either right to life or right to peace, or vice versa-. About the position regarding the inter-relationship between both rights appears to have been correctly stated in the Preamble to the UDHR, namely that “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Therefore, the enabling right to peace would seem to be a derivative of the right to life rather than vice versa. It follows that the right to life is not only the legal foundation for other rights, but also an integral part of all the rights which are essential to guarantee a better life for all human beings.

Consequently, this perspective was used in the adoption of the *Istanbul Declaration* by the Red Cross in its Twenty-first International Conference held in 1969 in the following terms<sup>634</sup>: “Man has a right

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632 Doc. General Comment No. 14: The right to life (art. 6): 9 November 1984, para. 5

633 NOWAK, M., op.cit., note 627, p. 109

634 RAMCHARAN, B., op.cit., note 629, p. 307-308

to enjoy lasting peace, that it is essential for him to be able to have a full and satisfactory life founded on respect of his rights and of his fundamental liberty”<sup>635</sup>

In accordance with the operative section of the resolution 60/251, the mandate of the HRC is to promote and protect human rights, but not directly peace. It follows that peace should be elaborated in light of some fundamental human right, which has already been recognised by the international community as a whole, such as the right to life.

The right to life in peace is more linked to human rights than the so called right to peace in both its individual and collective dimension. It follows that the linkage between the right to life and peace could be much more acceptable for all countries. Therefore, instead of re-creating new rights without the necessary consensus or unanimity, the international community could progressively elaborate existing and already consolidated rights in international law. As indicated previously, the linkage between the right to life and peace was unanimously recognised in Art. 1 of the *Declaration on the Preparation of Societies for Life in Peace*.

### 4.3. Operative Part

#### 4.3.1. Definition

*Everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized (Article 1)*

The legislator has desired to understand this provision as the right of everyone to enjoy the three UN pillars –peace, human rights and development –.

In order to move towards a consensual outcome using a more ambiguous and vague language, the ASEAN States and many civil society organizations have always advocated for the notion of the right to enjoy peace. This proposal of language was made by Indonesia during the third session and obtained the support from Malaysia, India, Venezuela, Pakistan and Philippines. Additionally, on 25 June 2015, Vietnam on behalf of ASEAN<sup>636</sup> delivered a statement in which they recalled art. 38 of the 2012 *ASEAN Human Rights Declaration*

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635 International Review of Red Cross, Ninth year, n. 104, 1969, Para. 1 and 2, p. 620. See in [http://www.loc.gov/rr/frd/Military\\_Law/pdf/RC\\_Nov-1969.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/RC_Nov-1969.pdf)

636 Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand and Vietnam

which states “every person and the peoples of ASEAN have the right to enjoy peace ....”.

This proposal also received the support from some civil society organizations. On 22 September 2015, an important NGO network called “...on Member States to take a step forward in the promotion of peace by adopting a declaration that proclaims the human right to peace, or at least the “right to enjoy peace”...”<sup>637</sup>.

It is interesting to highlight that, with this provisions assertion of the right to enjoy peace, human rights and development, the notion of “peace” “human rights” “development” is read in conjunction with the “the right to enjoy.” According to the Black Law Dictionary, the expression “enjoyment” is defined as the “possession and fruition of a right, privilege or incorporeal hereditament,” and synonymous with “comfort, consolation, contentment, ease, happiness and satisfaction.” It thus follows that “peace,” which this document inexorably links to the idea of “enjoyment,” can be understood either as a right of all people, or as an aspiration or privilege to be reached by all humankind.

The notion of enjoyment has been used in some relevant legal instruments, such as the International covenant on Economic, Social and Cultural Rights (art. 15.3), International Covenant on Civil and Political Rights (art. 27) and the Council of Europe’s convention on Human Rights and Biomedicine (Preamble).

Additionally, in the context of the thirty-third session, on 16 September 2016, the Core State Group<sup>638</sup> of the resolution “Cultural rights and the protection of cultural heritage” used the notion of enjoyment in its

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637 On 22 September 2015, Associazione Comunità Papa Giovanni XXIII delivered a joint oral statement in item 5 on behalf of the Resource Center for Palestinian Residency and Refugee Rights (BADIL), Center for Global Nonkilling, Commission Africaine des Promoteurs de la Santé et des Droits de l’homme (CAPSDH), Institute for Planetary Synthesis, Institute of Global Education, International Association of Democratic Lawyers (IADL), International Network for the prevention of elder Abuse (INPEA), International Peace Bureau, International Society for Human Rights, Istituto Internazionale delle figlie di Maria Ausiliatrice (IIMA), Mothers Legacy Project, Organisation pour la Communication en Afrique et de Promotion de la Coopération Economique Internationale (OCAPROCE), International Pan Pacific Southeast Asia Women’s Association International (PP-SEAWA), Pax Romana, United Network of Young Peacebuilders, Volontariato Internazionale Donna Educazione Sviluppo (VIDES) and Women’s World Summit Foundation.

638 Cyprus, Greece, Poland, Mali, Switzerland, Ethiopia, Qatar, Ireland and Serbia

article 1 as follows: “calls upon all States to respect and protect the right of everyone to access and enjoy cultural heritage” (art. 1).

It should be confirmed that the inclusion of the right to enjoy peace, human rights and development –three UN pillars- in legal documents is intended to ensure that authorities take measures to guarantee that peace, human rights and development may be enjoyed in a natural and dignified manner. Nevertheless, we note that “peace” is a holistic concept that extends beyond the strict absence of armed conflicts; it is also linked to the eradication of structural violence that results from economic and social inequalities, and to the effective and indiscriminate respect for all human rights and development.

Some experts affirm that the right to peace is deeply rooted in article 28 of the UDHR, which states that “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.

It should be noted that in this provision the legislator uses the notion of “entitlement” rather than “right”, because they understand that it would be more linked to another notion of “benefit”. In this sense, although the expression «benefit entitlement» is often used, the word «benefit» is superfluous in this provision, as «entitlement» is used to refer to a guarantee of access to benefits based on established rights or by legislation<sup>639</sup>.

The use of “entitlement” rather than “right” in article 28 should be understood in the context of the debate on justiciability and legal consequences of this provision held among delegations during the drafting process of the UDHR<sup>640</sup>. Some delegations proposed the deletion of this article - Ecuador, Norway and Saudi Arabia- arguing that it was quite impossible for any individual to lay claim in an effective manner the right granted in this provision –Ecuador- and that it was rather tenuous in meaning and failed to confer any specific right –Norway and China-.

On the other hand, other delegations underscored that while the first twenty-five articles of UDHR dealt with individual rights, the

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639 Garner, B (2014), *Black's Law Dictionary*, Thomas Reuters

640 SCHABAS, W. (2013), *The Universal Declaration of Human Rights: the travaux préparatoires*, Cambridge, University Press

current article is concerned with general principles and it set forth the ultimate conditions necessary for the realization of those rights –Lebanon-. Certain preliminary conditions, such as a social and international order, had to be laid down to ensure the implementation of the rights contained in the Declaration –France-. Other delegations stated that this article was drafted as an umbrella article and as a compromise measure to avoid specific reference to the duties of the State –New Zealand-. Therefore, as said by some delegations, it should be understood from the perspective that the individual had the right to the implementation of all the articles of the declaration –URSS-.

As indicated by Prof. Eide, “some might say that article 28 is a utopian aspiration. It is preferable, however, to see it as a vision to be pursued with determination, while taking into account that it will only gradually and partially be achieved in practice ... Article 28 deals with the process of realization”<sup>641</sup>. He also says that this provision requires that “social and international conditions be so structured as to make possible the equal enjoyment throughout the world of all the rights listed”<sup>642</sup>. Consequently, this provision refers to the transformation of ideals into normative standards<sup>643</sup>.

Like the right to enjoy peace, human rights and development as contained in the Declaration on the Right to Peace, art. 28 corresponds to the vision of peace, human rights and development underlying the creation of the United Nations. In particular, Art. 55 of the *Charter of the United Nations* states that “... to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and/or fundamental freedoms for all without distinction as to race, sex, language, or religion”.

In order to avoid the justiciability of environment law, the international community as a whole decided to use the notion of “entitlement” in principle 1 of the Rio Declaration on Environment

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641 EIDE, A. (1999), *Article 28*, in: *The Universal Declaration of Human Rights: a common standard of achievement* (eds), Alfredsson, G. and Eide, A., The Hague/ Boston/London, Martinus Nijhoff Publishers, p. 597-604

642 ALFREDSSON, G. and EIDE, A. (2004), *The Universal Declaration of Human Rights: a common standard of achievement*, Hague, Martinus Nijhoff Publishers, p. 597

643 (ALFREDSSON, G. and EIDE, A., 2004: 18, p. 606)

and Development of 1992 as follows: “Human beings are at the centre of concerns for sustainable development. They are **entitled** to a healthy and productive life in harmony with nature”. This was an important shift compared to the Stockholm Declaration of the United Nations Conference on the Human Environment of 1972, when this instrument used the notion of “right” as follows in its first principle: “... Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the **right** to life itself”.

In the field of human rights, there are some clear differences between “right” and “entitlement”, because while a “right” is itself an entitlement associated with a moral or social principle, “entitlement” is referred to a guarantee of access to benefits or enjoyment of some privilege or right. Article 22 of the UDHR clearly recognizes this different perspective as follows: “Everyone, as a member of society, has the **right** to social security and is **entitled** to realization, through national effort and international co-operation... ”. The translation of this provision to Spanish<sup>644</sup> and French<sup>645</sup> -two official UN languages- clearly highlights some differences between the notion of “right” and “entitlement”. For both languages and in this particular case, this later notion could be translated as “obtain”, which translated to a legal English term is an “entitlement”.

Independently, whether human beings have a right or are entitled to the enjoyment of peace, human rights and development as set out in the different legal systems, what is clear is that thanks to the reference to “right” everyone should have access to the fruition or benefits derived from the respect and protection of the three UN pillars - peace, human rights and development.

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644 “Toda persona, como miembro de la sociedad, tiene **derecho** a la seguridad social, y a **obtener**, mediante el esfuerzo nacional y la cooperación internacional...”

645 “Toute personne, en tant que membre de la société, a **droit** à la sécurité sociale; elle est fondée à **obtenir** la satisfaction des droits économiques...” »

### 4.3.2. Principles of international law derived from the notion of human dignity

*States should respect, implement and promote equality and non-discrimination, justice and the rule of law, and guarantee freedom from fear and want as a means to build peace within and between societies (article 2)*

Art. 38.1 of the Statute of the ICJ describes the law to be applied by the ICJ when deciding cases within its jurisdiction. It is generally considered to be the most authoritative enumeration of the sources of International Law. The Court recognizes three main legal sources: firstly, *international conventions*, whether general or particular, establishing rules expressly recognized by the contesting States; secondly, *international custom*, as evidence of a general practice accepted as law and thirdly, the *general principles of law* recognized by civilized nations.

One normative element of law, which most progressively supports the connotation of international law as a process are *general principles*. These principles are “an authoritative recognition of a dynamic element of international law, and of the creative function of the courts which may administer it”<sup>646</sup>. In law as a continuing process, they provide general principles for a “welcome possibility for growth”<sup>647</sup>, in which capacity they also contribute to the development of international law.

When classifying general principles as a supplement to treaty and custom, they are seen as a category of norms which usually comes after those depending more immediately on the consent of States<sup>648</sup>. As indicated by *Bruno Simma* and *Philip Alston*, “general principles seem to conform more closely than the concept of custom to the situation where a norm invested with strong inherent authority is widely accepted even though widely violated”<sup>649</sup>. Similarly, *Ben*

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646 BRIERLY, J.L., (H. Waldock ed.), “The Law of the Nations: An Introduction to the International Law of Peace”, (Oxford: Clarendon, 1963), p. 63.

647 BOS, M., “The Recognized Manifestations of International Law” (1977), *German Yearbook of International Law*, Vol. 20, 1977, p. 42.

648 BROWNLIE, I., *Principles of International Law*, Oxford, 6th ed., Oxford University Press, 2003, p. 15

649 B. SIMMA, B. and ALSTON, P., “The Sources of Human Rights Law: Custom, Jus Cogens and General Principles”, *Australian Yearbook of International Law*, 1991, vol. 12 p. 102.

*Cheng* regarded the practice element to be unnecessary in the context of general principles when he stated: “In the definition of the third source of international law, there is also an element of recognition on the part of civilised peoples but the requirement of a general practice is absent”<sup>650</sup>. State practice, which is a requirement for custom, is not necessarily a precondition for general principles to emerge.

General principles are complementary to treaty law and a supplement to it. It can guide lawmakers and shape the content of treaty law. In addition, “these principles sketch the context of the lawmakers’ competence with regard to the policy path and direct the course of the law’s passage. Especially in the absence of a central ‘lawmaker’ in the international arena, ‘guidance’ in a legislative context is of significant importance”<sup>651</sup>.

In this sense, human dignity can be divided into three components or principles: “*intrinsic values*, which identify the special status of human beings in the world; *autonomy*, which expresses the right of every person, as a moral being and as free and equal individual, to make decisions and pursue his own idea of the good life; and *community value*, conventionally defined as the legitimate state and social interference in the determination of the boundaries of personal autonomy”<sup>652</sup>.

#### 4.3.2.1. Intrinsic values

As to the *intrinsic values* of human dignity, it should be noted that intrinsic value is the origin of a set of fundamental rights. The first of these rights is the right to life, a basic pre-condition for the enjoyment of any other right. Another right related to intrinsic value is equality before and under the law. This means not being discriminated against due to race, color, ethnic or national origin, sex or age. The last fundamental right is the right to integrity, both physical and mental<sup>653</sup>.

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650 B. CHENG, B., “General Principles of Law as applied by International Courts and Tribunals”, London, Stevens, 1953, p. 24.

651 VOIGHT, A. C., *op. cit.*, note 4, p. 13

652 BARROSO, L.R., “Here, there and everywhere: human dignity in contemporary and in the transitional discourse”, *International and Comparative Law Review*, 2012, p. 392

653 BARROSO, L.R., *op.cit.*, note 652, p. 363-364

Respect for the integrity of the person requires states to protect the right to life and respect the prohibition of torture and ill-treatment. The rights to integrity are of utmost importance. This is reflected by the fact that unlike some other rights which contain clauses permitting their restriction on grounds such as the need to maintain public order it is never possible to justify restrictions to these rights. A second important attribute of the rights to integrity is that they cannot be derogated in time of public emergency. The right to life and its linkage to peace have been already dealt in the section 3.4.

Equality and non-discrimination are held to be positive and negative statements of the same principle. One is treated equally when one is not discriminated against and one is discriminated against when one is not treated equally<sup>654</sup>. Equality and non-discrimination are better understood as distinct norms that are in creative tension with each other than subsumed under the human rights concept. This is founded in equal moral status and equal moral status is realized through individual human rights<sup>655</sup>. As principle, it is never defined in a single and uniform fashion.

In his dissenting opinion to the ICJ judgment in the South West African Cases, Judge Tanaka undertook to examine whether the legal principles of non-discrimination and equality, denying apartheid, can be recognized as general principles. He came to maintain the position that

“The principle of equality before the law, however, is stipulated in the list of human rights recognized by the municipal system of virtually every state no matter whether the form of government be republican or monarchical and in spite of any differences in the degree of precision of the relevant provision. This principle has become an integral part of the constitutions of most civilized countries of the world”<sup>656</sup>

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654 MCCRUDDEN, C., *Equality and Non-Discrimination*, in *English Public Law*, Oxford, David Feldman ed., 2004 and BAYEFESKY, A., “The principle of Equality and Non-discrimination in International law”, *Human Rights Quarterly*, 1990, Vol. 11, p. 5-19

655 BESSON, S., “International Human Rights and Political Equality—Implications for Global Democracy”, in EMAN, E. & NASSTROM, S. (eds), *Equality in Transnational and Global Democracy*, London, Palgrave, 2013

656 *South West African cases*, ICJ Reports, 1966, para. 299.

The principles of ‘elementary considerations of humanity’, ‘human dignity’ and ‘equality before the law’ have considerably broadened the scope of human rights law and its link with other fields of written and unwritten international law<sup>657</sup>.

The *Vienna Declaration and Programme of Action* of 1993 recognised the concept of equality as a principle of international law in the following terms:

“Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity”<sup>658</sup>

The *Declaration and Programme of Action on a Culture of Peace* adopted by the UNGA in 1999 recognised the importance of equality between men and women as follows: “Actions to ensure equality between women and men...”<sup>659</sup> and the non-discrimination principle in connection with education: “Ensure that children, from an early age, benefit from education on the values, attitudes, modes of behaviour and ways of life to enable them to resolve any dispute peacefully and in a spirit of respect for human dignity and of tolerance and non-discrimination”<sup>660</sup>.

The *World Summit Outcome document* considered equality as a fundamental value in international relations in the following terms: “we reaffirm that our common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, are essential to international

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657 BEDI, *The Development of Human Rights Law by the Judges of the International Court of Justice*, Portland Oregon, Hart Publishing: Oxford, 2007, p. 107

658 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, para. 9

659 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc.A/RES/53/243, 6 October 1999, art. 12

660 *Declaration and Programme of Action on a Culture of Peace*, *op. cit.*, note 302, art. 9.b

relations ”and “we are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter. We rededicate ourselves to support all efforts to uphold the sovereign equality of all States...”<sup>661</sup>.

#### 4.3.2.2. Autonomy

The idea of autonomy in the human dignity is the concept of existential minimum, also referred to as social minimum or freedom from want, or the basic right to the provision of adequate living conditions. This requires access to some essential utilities, such as basic education and health services, as well as some elementary necessities, such as food, water, clothing and shelter<sup>662</sup>. In addition, autonomy is the ability to make personal decisions and choices in life without undue external influences. It would be linked to the freedom from fear.

The *World Summit Outcome document* considered freedom as a fundamental value in international relations in the following terms: “we reaffirm that our common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, are essential to international relations”<sup>663</sup>.

The *Declaration and Programme of Action on a Culture of Peace* recognised the respect of fundamental freedoms as a part of culture of peace as follows: “a culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on...: (c) Full respect for and promotion of all human rights and fundamental freedoms” and ... “(i) Adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations <sup>664</sup>.

Additionally, the *VDPA* of 1993 recognised that “... the human person is the central subject of human rights and fundamental freedoms,

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661 Doc. A/RES/60/1, World Summit Outcome document, General Assembly, 24 October 2005, paragraph 4-5

662 BARROSO, L.R., *op.cit.*, note 652, p. 371

663 Doc. A/RES/60/1, World Summit Outcome document, General Assembly, 24 October 2005, paragraph 4

664 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc.A/RES/53/243, 6 October 1999, art. 1

and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms”<sup>665</sup>

The freedom from fear and want refers to the proclamation made by the President Franklin Roosevelt in his 1941 message to Congress by which proposed those four fundamental freedoms that people “everywhere in the world” ought to enjoy, namely: freedom of speech, freedom of worship, freedom from want and freedom from fear. The declaration of the Four Freedoms as a justification for war would resonate through the remainder of the war, and for decades longer as a frame of remembrance<sup>666</sup>.

The phrase of “freedom from fear and want” derived from the *Atlantic Charter* of 1941, which proclaimed in its Preamble “Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want”.

In accordance with second recital of the *UDHR* “... freedom from fear and want has been proclaimed as the highest aspiration of the common people”. Additionally, both the International Covenant on Civil, Political, Economic, Social and Cultural Rights recognized in its Preamble that “... the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”.

Dag Hammarskjöld, second UN Secretary General, stated that “the work for peace is essentially working for the most elementary human right: the right to security and freedom from fear”. Therefore, in his view, the UN had a “responsibility to assist governments in protecting this essential human right without them having to hide behind a shield of weapons”<sup>667</sup>.

665 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, para. 2

666 BODNAR, J., *The “Good War” in American Memory*, Maryland, Johns Hopkins University Press, 2010, p. 11

667 D. Hammarskjöld, *Tal, Ett urval redigerat av Wilder Foot* (Speeches, A selection Edited by Wilder Foot) (Norstedt, Stockholm, 1962, p. 144

As indicated by the *Human Development Report* prepared by the United Nations Development Program (hereinafter: UNDP) in 1994, in the process of establishing an international organization like the United Nations, the questions were first, how to “maintain international peace and security” and secondly, how to pursue “freedom from fear and want”. The peace of the world could be established not only through preventing war and military conflicts among sovereign states, but also by taking initiatives to “achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”<sup>668</sup>.

As spelled out by the *World Summit Outcome document*, “we recognize that 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”<sup>669</sup>.

When Kofi Annan launched *In Freedom from Fear*<sup>670</sup> in 2005, the title was deliberately chosen so as to “stress the enduring relevance of the Charter of the United Nations”. The report acknowledges that there is much work that still needs to be done in order to achieve the goals set by the *Millennium Declaration*. Specifically, he highlights several key areas that need substantial work, including goals relating to freedom from want (such as financing for development and meeting Millennium Development Goals), and freedom from fear (preventing catastrophic terrorism, the proliferation of biological, chemical, and especially nuclear weapons, building a lasting peace in war torn lands), goals ensuring the freedom to live in dignity (such as establishing the rule of law), and the strengthening of the United Nations.

In accordance with the Annan’s report “larger freedom implies that men and women everywhere have the right to be governed by their own consent, under law, in a society where all individuals can, without

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668 OKUBO, S., “Freedom from Fear and Want” and “the Right to Live in Peace”, and “Human Security”, *Ritsumeikan International Affairs*, 2007, Vol.5, p.1-15, p. 5

669 Doc. A/RES/60/1, World Summit Outcome document, General Assembly, 24 October 2005, paragraph 143

670 Report of the Secretary-General: *In Larger Freedom: Towards Development, Security and Freedom for All*, UN Doc. A/59/2005, 21 March 2005

discrimination or retribution, speak, worship and associate freely. They must also be free from want — so that the death sentences of extreme poverty and infectious disease are lifted from their lives — and free from fear — so that their lives and livelihoods are not ripped apart by violence and war. Indeed, all people have the right to security and to development”<sup>671</sup>.

Freedom from want addresses development and encompasses the eight *Millennium Development Goals* (i.e. eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and empower of women; reduce child mortality; improve maternal health; combat AIDS, Malaria and other diseases; ensure environmental sustainability and develop a global partnership for development). Freedom from fear bears on collective security (i.e. terrorism prevention; nuclear, biological and chemical weapons; reduced risk and prevalence of war; use of force; peacekeeping and peacebuilding; disarmament and mercenarism)<sup>672</sup>.

#### 4.3.2.3. Community values

The third and final element of human dignity is community values, which is related to the social dimension of dignity. It emphasizes “the role of the state and community in establishing collective goals and restrictions on individual freedoms and rights on behalf of a certain idea of good life”<sup>673</sup>. The pursuit of peace through justice is one of the most important objectives to be progressively realized by States as spelled out in their national constitutions.

Justice is one of the most important moral and political concepts. The word comes from the Latin *jus*, meaning right or law. This aspect of the concept of justice is based upon the rights and duties of the individual person. The liberal concept of justice is an interpersonal one - resolution of conflicts between individuals.

In accordance with Art. 29 of the UDHR: “Everyone has duties to the community in which alone the free and full development of his personality is possible”. Additionally, the *African Charter of*

671 Report of the Secretary-General: *In Larger Freedom: Towards Development, Security and Freedom for All*, UN Doc. A/59/2005, 21 March 2005, par. 15

672 KANG, G., “The three freedoms of the United Nations in Northeast Asia”, *Korea Observer*, Vol. 36, 2005, No. 4, p. 719-720

673 BARROSO, L.R., *op.cit.*, note 652, p. 374

*the Rights of Man and of Peoples* states in its article 27 that every individual “shall have duties towards his family and society, the State and other legally recognized communities and the international community”. Additionally, as indicated by Mary Robinson, former High Commissioner for Human Rights, the message of article 29 is clear: the individual must work to improve human rights, whether individually or in the community or as a member of a non-governmental organizational group in its widest sense<sup>674</sup>.

The *World Summit Outcome document* considered justice as a fundamental principle in international relations in the following terms: “We rededicate ourselves ... to uphold resolution of disputes by peaceful means and in conformity with the principles of justice and international law”<sup>675</sup>.

The *Declaration and Programme of Action on a Culture of Peace* included justice is part of the culture of peace: “a culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on ...adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations; and fostered by an enabling national and international environment conducive to peace.”<sup>676</sup>

The delicate balance between peace and justice laid out in the *Charter* had quickly been tested by the Nuremberg trials, because several issues that have proved problematic for peacemakers left unresolved during the drafting process, namely: the retroactive application of law, human rights observance as a necessary condition to enduring peace and the situation of past accountability in contemporary discussions of post-war justice<sup>677</sup>.

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674 ROBINSON, M., “From Human Rights to People’s Rights: fifty years after the Universal Declaration”, *Diritti dell’uomo, diritti dei popoli*, 2002, p. 29.

675 Doc. A/RES/60/1, World Summit Outcome document, General Assembly, 24 October 2005, paragraph 5

676 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc.A/RES/53/243, 6 October 1999, art. 1.i

677 MCGUINNESS, M., “Peace v. Justice: The Universal Declaration of Human Rights and the Modern Origins of the Debate”, *Diplomatic History*, Vol. 35, No. 5, p. 750-752

The post- War World II collective system had to reconcile and link two central goals: to maintain peace and security in the world and at the same time foster respect for human rights within the domestic legal system. These twin goals are described in the Preamble of the Charter, which declares that the United Nations are determined “to save succeeding generations from the scourge of war”, “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”, as well as, “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”.

The *World Conference on Human Rights* held in Vienna in 1993 stressed that “all persons who perpetrate or authorize criminal acts associated with ethnic cleansing are individually responsible and accountable for such human rights violations, and that the international community should exert every effort to bring those legally responsible for such violations to justice”<sup>678</sup>.

In accordance with the UNESCO transdisciplinary project entitled *Towards a culture of peace* of 1996, “Justice - there is no justice without freedom - is essential to peace-building. Injustice lies at the very roots of conflict and without justice there can be no peace...”<sup>679</sup>.

The Preamble of the UDHR does not declare that the deprivation of rights caused the war, but it does make note that the “disregard and contempt” for rights occurred both and during the war<sup>680</sup>.

The rule of law is a form of government, in which people enjoy rights to be free from oppression, interference and discrimination and in which they may exercise rights of free expression, conscience and belief. Some topics related to the rule of law are good governance, the adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency<sup>681</sup>.

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678 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 23

679 Report of the Director-General of the UNESCO entitled on “Towards a culture of peace”, Doc. A/51/395, 23 September 1996, para.12

680 Paragraph 2, UDHR: “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind ...”

681 MCGUINNESS, M., *op.cit.*, note 677, p. 764

The *Vienna Declaration and Programme of Action* of 1993 recognised the concept of rule of law as a principle of international law in the following terms:

“Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity”<sup>682</sup>

In addition, as indicated by the *World Summit Outcome document*, the linkage between human rights, rule of law and democracy is very closed. It states that

“We recommit ourselves to actively protecting and promoting all human rights, the rule of law and democracy and recognize that they are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations, and call upon all parts of the United Nations to promote human rights and fundamental freedoms in accordance with their mandates”<sup>683</sup>.

Since 2006 the has regularly adopted a resolution without vote entitled *The rule of law at the national and international levels*<sup>684</sup> by which it reaffirmed that rule of law and international law is essential for peaceful coexistence and cooperation among States<sup>685</sup>; that it is essential for the realization of economic growth, sustainable development, the eradication of poverty and hunger and the protection

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682 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, para. 9

683 Doc. A/RES/60/1, *World Summit Outcome document*, General Assembly, 24 October 2005, paragraph 5

684 Doc. A/RES/61/39, 18 December 2006; A/RES/62/70, 8 January 2008; A/RES/63/70, 15 January 2009; A/RES/64/70, 15 January 2010; A/RES/65/32, 10 January 2011; A/RES/66/102, 13 January 2012 and A/RES/67/07, 14 January 2013

685 Paragraph 3: “Reaffirming further the need for universal adherence to and implementation of the rule of law at both the national and international levels and its solemn commitment to an international order based on the rule of law and international law, which together with the principles of justice, is essential for peaceful coexistence and cooperation among States”

of all human rights<sup>686</sup> and that it should guide the activities of the United Nations and of its Member States<sup>687</sup>.

### 4.3.3. Positive measures

*States, the United Nations and specialized agencies should take appropriate sustainable measures to implement the present Declaration, in particular the United Nations Educational, Scientific and Cultural Organization. International, regional, national and local organizations and civil society are encouraged to support and assist in the implementation of the present Declaration (article 3)*

#### 4.3.3.1. Introduction

Positive action is a concept of great importance in the context of antidiscrimination laws, which have been adopted by several international human rights instruments and openly applied by courts<sup>688</sup>. It includes all measures aimed to make positive steps to alter existing social practices so as to eliminate patterns of group exclusion and disadvantage<sup>689</sup>. These actions were introduced for first time in Europe and North America in the aftermath of the First and Second World Wars to reserve particular posts for persons with disabilities because of the very large number of seriously wounded survivors of both wars<sup>690</sup>. In international human rights law there is a broad consensus that permits the use of temporary and proportionate positive action measures, and even may impose certain obligations upon states to use positive action<sup>691</sup>.

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686 Paragraph 4: “Convinced that the advancement of the rule of law at the national and international levels is essential for the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms, and acknowledging that collective security depends on effective cooperation, in accordance with the Charter and international law, against transnational threats”

687 Paragraph 6: “Convinced that the promotion of and respect for the rule of law at the national and international levels, as well as justice and good governance, should guide the activities of the United Nations and of its Member States”

688 European Court of Human Rights and Constitutional Courts: USA, Germany, South-Africa

689 C.BELL,A.HEGARTY AND S.LIVINGSTONE, “The Enduring Controversy: Developments on Affirmative Action Law in North America” (1996), *International Journal of Discrimination and the Law* 233, at p.234.

690 L. WADDINGTON, “Reassessing the Employment of People with Disabilities in Europe From Quotas to Anti-Discrimination Laws”, 1996, 18 *Comparative Labour Law Review* 62

691 O’CINNEIDE, *Positive action*, University College, London, p. 23

As part of the social development, it has become apparent that achieving progress requires that special measures are taken to ensure socially excluded groups are able to participate in decision-making by public authorities and important areas of social life. Without such participation, social exclusion would remain a persistent problem. Active steps to promote a better life are required to reach a peaceful world.

In order to progressively eliminate armed conflict and war over the earth and consequently to live in a context of peace, the protection of human rights and dignity should be in the center of all decision-making processes in both the national and international level. It follows that different stakeholders should adopt positive measures in the economic, social and cultural fields on peace matters through the promotion of human rights and human dignity.

In light of the contribution of the UNESCO to the cause of dialogue and cooperation, references to the notions of positive peace and culture of peace have extensively been elaborated in the Declaration.

In its article 3, the *Declaration on the Right to Peace* decided to invite UNESCO, among others, to support and assist in the implementation of the present Declaration.

In 2011, the AC prepared a questionnaire on possible elements for a draft Declaration on the right of peoples to peace in accordance with AC recommendation 5/2. Member States, civil society, academia and all relevant stakeholders, including the UNESCO, participated in this process.

According to the UNESCO contribution to the AC request, UNESCO understood that such a declaration should be built around universally-accepted values of: respect for life and for the dignity and human rights of individuals; a rejection of violence; a recognition of equal rights for women and men and must include the principles of freedom, justice, solidarity, tolerance, the acceptance of differences, and understanding between peoples, nations, countries and between ethnic, religious, cultural and social constructs. These precepts are underscored through UNESCO's approach to the promotion of a culture of peace and the dialogue among cultures which should merit your further consideration.

#### **4.3.3.2. National level**

In its article 3 the Declaration encourages States, the United Nations and specialized agencies to take appropriate sustainable measures to implement the present Declaration, in particular the UNESCO.

As proposed by UNESCO in the AC questionnaire, at national level, increased investments are necessary to engage youth in supporting the realization of the right to peace. A wide-ranging set of measures is necessary to support this role at different levels and to mitigate risk factors which would potentially lead to youth involvement in violence or conflict. Such measures include:

- Ensuring adequate quality of education, including peace and human rights education, both through formal and non-formal processes);
- Providing opportunities to youth organization at national and regional level to collaborate with related stakeholders and with their peers;
- Raising awareness among youth of their role and contribution in this regard and of the rights that they can claim;
- Addressing the needs of the most vulnerable groups of youth in terms of human development opportunities and integration to their communities.

In addition, States should enable civil society organizations to play an active and important role in the policy process. Their role would be instrumental in identifying local-level conflicts and proposing non-violent approaches to conflict. They can also play an important role in peace education.

#### **4.3.3.3. International and regional level**

As suggestions proposed by UNESCO in the AC questionnaire of 2011, which would be aimed at implementing the right to peace at international and regional levels, are the following:

Firstly, develop and strengthen existing mechanisms to eliminate inequalities, exclusion and poverty, especially between young people, as they generate structural violence which is incompatible with peace at both national and sub-regional levels.

Secondly, improve regional observation instruments in order to oversee the fulfilment of the obligations of relevant treaties in the field of disarmament; so as to supervise the manufacturing of weapons, the arms race and especially the excessive and uncontrolled arm trafficking, which puts regional peace and security in jeopardy.

Thirdly, facilitate recourse to the International Court of Justice and of other international and regional mechanisms (ie. *Southern African Development Community* and African Union mechanisms) for obtaining its opinion on legal issues underlying a specific conflict.

#### **4.3.4. Education for peace**

*International and national institutions of education for peace shall be promoted in order to strengthen among all human beings the spirit of tolerance, dialogue, cooperation and solidarity. To this end, the University for Peace should contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge (article 4)*

Pursuant article 4 of the *Declaration on the Right to Peace* Member States agreed on the need of promoting education for peace in order to strengthen among all human beings the spirit of tolerance, dialogue, cooperation and solidarity.

As indicated by UNESCO in the AC questionnaire of 2011, examples of action on peace education could be the following: Prize for Peace Education awards; interregional philosophical dialogues; regional consultations in the field of promotion of philosophy teaching as a factor of peace; efforts to combat xenophobia in the cities; to integrate in the school programs in primary, secondary and tertiary peace education through the course “Education on Citizenship” or to develop peace education curricula for university level in different countries. Another proposal could be to integrate peace education in the mechanisms for monitoring the implementation of the *World Programme for Human Rights Education*.

The *Declaration on the Right to Peace* adopted by the UNGA has elaborated the notion of the culture of peace, among others, in connection to education, cultural diversity, civil society and the realization of the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation.

In the progress report on the right to peace of 2011, the AC included a brief history of the concept of a culture of peace promoted by the UNESCO in the past years. In particular, they focused on the origin of the concept at UNESCO, the national programmes for a culture of peace, the UNESCO Executive Board, the UNESCO's medium term strategy and the Declaration and programme of action (A/HRC/17/39).

Both the SC and HRC play an important role in the prevention of armed conflict through the promotion and protection of all human rights for all, in particular the right to life and the right to peace.

In accordance with resolution 60/251, the UNGA decided that the HRC should "... contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies"<sup>692</sup>.

The HRC resolution 14/3 on the right to peace of 2010 explicitly recalled "the *United Nations Declaration and Programme of Action on Culture of Peace*, 1999, and the UNGA resolution 53/25 proclaiming 2001-10 as the *International Decade for a Culture of Peace and Non-Violence for the children's of the world* (para. 4); "calls upon States and relevant United Nations bodies to promote effective implementation of the *United Nations Declaration and Programme of Action on Culture of Peace*" (para. 11); and in that regard requests "the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace, and to report on the progress thereon to the Council at its seventeenth session" (para. 15).

Article 4 of the *Declaration on the Right to Peace* also declares that «the University for Peace should contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge».

The University for Peace (UPEACE) is an intergovernmental organization with university status, established by a UNGA resolution in 1980 and having its main campus in Costa Rica. Its stated mission is « ... to provide humanity with an international institution of higher education for peace and with the aim of promoting among all human beings the spirit of understanding, tolerance and peaceful

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692 Art. 5 (f), A/RES/60/251, 3 April 2006, on the Human Rights Council.

coexistence, to stimulate cooperation among peoples and to help lessen obstacles and threats to world peace and progress, in keeping with the noble aspirations proclaimed in the *Charter of the United Nations*».

In order to achieve this noble mandate of higher education for peace, the Charter states in its article 3 that «the University shall maintain close links with the UNESCO in view of its special responsibilities in the field of education».

The Council of UPEACE shall be the supreme authority of the University. It shall be composed, among others, of two representatives designated by the Secretary-General of the United Nations and by the Director-General of the UNESCO.

#### **4.3.5. Principle of pro-homine**

*Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations. The provisions included in the present Declaration are to be understood in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights 3 and relevant international and regional instruments ratified by States (article 5)*

The Inter American Commission observed in the case *Azocar v. Chile* that in case of doubt, the ambiguity should be interpreted in favor of the victims' rights. This principle of *pro-homine*, as the Inter-American Court has stated, is a controlling guideline for interpreting the Convention, and in human rights law in general<sup>693</sup>.

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<sup>693</sup> A.A. *Azocar v. Chile*, IACCommHR (1999), Report No. 137/99, Case 11,863, at para. 146, available at: [www.cidh.oas.org/annualrep/99eng/Merits/Chile11.863.htm](http://www.cidh.oas.org/annualrep/99eng/Merits/Chile11.863.htm) (last visited 15 Dec. 2009). On the Vienna Convention and the *pro homine* principle see the Separate Opinion of García-Ramírez in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, IACtHR (Ser. C), No. 79 (2001), at para. 2.

The *pro homine* or *pro persona* principle is a very new Latin maxim, never used in international law before, and not even mentioned in Roman law. The interpretation obtained by the application of this principle is similar to that obtained by means of other, traditional Latin maxims<sup>694</sup>.

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694 VILLAREAL, A., 'El principio pro homine: interpretación extensiva vs. el consentimiento del estado', 5 *Int'l L Rev colombiana der. int.* (2005) 337; Pinto, 'El principio *pro homine*. Criterios de hermenéutica y pautas para la regulación de los derechos humanos', in C. Abregú and M. Courtis, *La aplicación de los tratados sobre derechos humanos por los tribunales locales* (2nd edn, 1998), at 163. A reference to this principle can be read in some separate opinions of the Inter American Court: see, e.g., *Bámaca-Velásquez v. Guatemala*, Merits, IACtHR (2000) Ser. C, No. 70, Concurring Opinion of García Ramírez, at para. 3.

## Section II

### In pursuit of future agreements

#### 1. Opportunities

In the 17<sup>th</sup> session of the UNGA (1962), several delegates expressed concern about submitting the conclusions of the Assembly to the mechanical process of majorities and also emphasized the importance of allowing all delegations to be heard and therefore, adopting the conclusions by consensus. Currently, the notion of consensus is being emphasized in all aspects of the work of the United Nations. In fact, the rule of consensus has been included in the Rules of Procedure of the UNGA in its Article 104 with regards to financial issues, as follows:

*The Special Committee considers that the adoption of decisions and resolutions by consensus is desirable when it contributes to the effective and lasting settlement of differences, thus strengthening the authority of the United Nations....*

According to the doctrine and the UN practice, instruments adopted by the UNGA are usually based on broad agreement. Consensus is important when legal principles are developed, but especially vital for approval of a new legal instrument, since it is the basis of the validity of that law.

The adoption by consensus of peace instruments in the UNGA has been a clear tendency since the creation of the United Nations. In particular, it should also be recalled that the *Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples* of 1965, the *Declaration on the Protection of Women and Children in Emergency and Armed Conflict* of 1974, *Declaration on the Participation of Women in Promoting International Peace and Co-operation* of 1982 and the *Political Declaration on the Peaceful Resolution of Conflicts in Africa* of 2013, were adopted by consensus.

Neither the *Declaration on Preparation on Societies to Life in Peace* of 1978, the *Declaration on the Right of Peoples to Peace* of 1984 nor the *Declaration and Programme of Action on Culture of Peace* of 1999

were adopted by the UNGA with the opposition of regional groups. In fact, both the *Declaration on Preparation on Societies to Life in Peace* and the *Declaration and Programme of Action on Culture of Peace* were adopted by consensus, with the exception of the first instrument, which was adopted with only one abstention. On the other hand, the *Declaration on the Right of Peoples to Peace* obtained the abstention from all Western and European States, but never the vote against.

The problem arises when there are important substantive differences among delegations and the possibility of a broad agreement seems a chimera. A Declaration adopted by consensus may even contain contentious elements, which are usually left open to continue working on them in the future. However, this consensus cannot be achieved if sufficiently ambiguous language has not previously been used and States did not express their position on those elements in which it was not possible to reach agreement through a political statement.

Although the UNGA Third Committee of the UNGA adopted the *Declaration on the Right to Peace* by majority of its Member States, and not by consensus as desirable, the interpretation of some particular provisions could help to approach positions in the future. In light of previous processes, those elements which could really serve to interpret positively the title and article 1 are the following: political will, dialogue, cooperation, realism, flexibility and tolerance and preservation of the common good of humankind.

An agreement among States and regional groups could not finally be achieved within the HRC and the Third Committee, exclusively because of the lack of agreement on the title and Article 1. However, as indicated by some Group of States, the Declaration has some value because it develops the New Agenda 2030 and also reinforces the three UN pillars - peace and security, development and human rights-.

It is strongly desirable for the promotion of peace worldwide to strengthen the positive trend on this matter already initiated in the times of the UN Commission on Human Rights. In particular, some Latin American, African and Asian States, which currently support the right to peace in the United Nations, abstained on this topic at the Commission<sup>695</sup>. Additionally, it should be taken into account that

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695 Res. E/CN.4/2002/L.90, August 2002: Argentina, Brazil, Guatemala, India and Senegal; Res. E/CN.4/2003/L.76, May 2003: Argentina, Chile, Costa Rica and

although some other important States abstained on the right to peace within the HRC –India and Mexico, 2008-, their positions positively changed in the past years by supporting the *Declaration on the Right to Peace* recently adopted by the UNGA Third Committee.

Currently, the Latin American, the African and the Asian group – with the exception of some particular States: Japan and South Korea- positively support the right to peace, which was never the case in the past. In addition, it should be taken into account that an important number of Western States abstained for the first time ever on this topic in the adoption of the *Declaration on the Right to Peace* in the HRC, the Third Committee and the plenary of the UNGA.

In order to strengthen the positive trend and to move towards a more consensual and inclusive approach using a more ambiguous and vague language in article 1, the ASEAN States and many civil society organizations, have always proposed the notion of the right to enjoy peace, human rights and development. By using the notion of “right”, the legislator desired to stress the idea that everyone is entitled to enjoy and access the benefits stemmed from peace, human rights and development, founding pillars of the whole UN system. Denying this access to the three pillars is to deny the same existence of the United Nations.

Over the last years many delegations have advocated for the idea that the right to peace is closely connected to peace, human rights and development. An explanation of position or an interpretation by States of this particular point on that direction could be one of the possible solutions on this matter.

The problem of the title leads us to the wise reflection contained in William Shakespeare’s play *Romeo and Juliet*, in which Juliet seems to argue that it does not matter that Romeo is from her rival’s house of Montague and that he is named «Montague.» The poem says:

“Tis but thy name that is mine enemy:  
What’s Montague? It is not hand nor foot,  
Nor arm, nor face, nor any other part.  
What’s in a name? That which we call a rose,  
By any other name would smell as sweet”.

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India; Res. E/CN.4/2005/56, April 2005: Argentina, Armenia, Costa Rica, Honduras, India and Mexico.

This reference of universal literature is often used to imply that the names of things do not affect what they really are. In the case of the *Declaration on the Right to Peace*, the name of this Declaration should not impede its development by consensus, taking into account that the full text was properly negotiated and could obtain the support from all delegations. Therefore, in reference again to Romeo's house, Juliet said that the name of Montague means nothing and they should be together.

In the pursuit of broad agreements in the next future of the *Declaration on the Right to Peace* within the United Nations, we should recall that for this endeavor there is another personage in international literature, Moliere's bourgeois gentilhomme, who discovered too late that he was speaking prose without knowing. Let no one discover too late that we are making history without knowing it<sup>696</sup> (A/PV. 2231, para. 124).

In preparation of the Fourth Session of the Intergovernmental Working Group on the UN Draft Declaration on the Right to Peace, to be held in Geneva on 11-15 July 2016, 677 civil society organizations worldwide have reviewed the draft declaration on the human right to peace that will be submitted to the Working Group, requesting that it be taken as the basis for negotiation. The Panel shall review the components of the human right to peace. In preparation of the Fourth Session of the Intergovernmental Working Group on the UN Draft Declaration on the Right to Peace, to be held in Geneva on 11-15 July 2016, 677 civil society organizations worldwide have reviewed the draft declaration on the human right to peace that will be submitted to the Working Group, requesting that it be taken as the basis for negotiation. The Panel shall review the components of the human right to peace. In preparation of the Fourth Session of the Intergovernmental Working Group on the UN Draft Declaration on the Right to Peace, to be held in Geneva on 11-15 July 2016, 677 civil society organizations worldwide have reviewed the draft declaration on the human right to peace that will be submitted to the Working Group, requesting that it be taken as the basis for negotiation. The Panel shall review the components of the human right to peace.

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696 Art. 5 (f), A/RES/60/251, 3 April 2006, on the Human Rights Council.

## 2. Consensus within the General Assembly

Although an agreement among States and regional groups could not finally be achieved within the HRC and the Third Committee, exclusively because of the lack of agreement on the title and Article 1 of the text, some opposing Member States to the notion of the right to peace pointed out that the Declaration has some added value.

As recognised by some Groups of States<sup>697</sup>, the *Declaration on the Right to Peace* correctly reinforces the Global Agenda 2030 and its goal 16 on the promotion of peaceful and inclusive societies for sustainable development for all. In addition, this Declaration reaffirms that peace and security, development and human rights are the pillars of the United Nations system and the foundation for the collective security and well-being as well as that development, peace and security and human rights are interlinked and mutually reinforcing.

Another Group of States<sup>698</sup> stressed that one of the key contributions to promote peace is therefore to complement the provisions of the Charter of the United Nations, which regulates the legality of the use of force with provisions that establish individual criminal responsibility for the crimes of aggression. Therefore, they called upon all Member States, in particular the supporters of the *Declaration on the Right to Peace* to ratify the Rome Statute and the Kampala amendments to ensure that the perpetrators of crimes of against peace are held accountable.

Consequently, in the line of the voice raised by many civil society organisations, today much more than ever it is necessary that a serious assessment be conducted by all as to whether the international community is in a position to further develop the *Declaration on the Right to Peace* adopted by the UNGA Third Committee in a more consensual manner within the United Nations.

To respond to this question, we should take into account that in accordance with the doctrine, many times the use of consensus can also be a way of covering up with ambiguities in the text the failure to reach specific agreements on a particular subject. This technique

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697 Australia, Liechtenstein, New Zealand, Norway, Switzerland and Iceland

698 Austria, Belgium, Costa Rica, El Salvador, Estonia, Iceland, Latvia, Lithuania, Luxembourg, Poland, Slovenia, Switzerland and Liechtenstein

avoids deepening the existing differences among all actors with the pretext of protecting the general interests of all parties implied in the negotiation process. The oral statements delivered by parties prior to the adoption of the text could even be used as evidence of the lack of international custom<sup>699</sup>.

It should be recalled that this technique was successfully used by States in the adoption of Resolution 3201 (S-VI) on the *Establishment of a New International Economic Order* in 1974. This resolution was adopted without a vote by the UNGA, but the statements made by 38 delegates showed clearly and explicitly what was the position of each main group of countries. It follows that despite enormous differences among all regional groups consensus could be achieved.

This important precedent intended to obtain an agreement based on dialogue, transparency, consensus, inclusiveness and objectivity could serve as a good model or practice for other similar processes, whose positions can seem absolutely irreconcilable at certain points. A clear example on that is the lack of agreement on the title and article 1 of the Declaration on the Right to Peace.

In the context of the discussion about the *Establishment of a New International Economic Order*, the Latin American Group said that consensus, as it has always been understood in the Assembly means that the delegations, in the spirit of compromise, have agreed to a certain degree of sacrifice of the respective positions of their countries in order to arrive at a common agreement<sup>700</sup>.

Consensus is not unanimity within the UNGA<sup>701</sup>. In light of this approach what conflicting parties can achieve could be described as a collective acquiescence in most of the documents approved. They can avoid confrontation or even the vote, and to that extent they are together. But it would be wrong for anyone to assume that the avoidance of a vote is necessarily the same thing as total agreement<sup>702</sup>.

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699 JIMENEZ CORTES, C. and BONDIA GARCIA, D. (2010), *Actos normativos de las organizaciones internacionales. Actos unilaterales del Estado*, p. 105, in: *Derecho internacional: curso general* (eds.) Remiro Brotons, R, Riquelme Cortado, R and Orihuela Calatayud, E., Valencia, Tirant lo Blanch

700 Doc. A/PV. 2231, 2 May 1974, para. 122

701 Doc. A/PV. 2230, 2 May 1974, para. 182.

702 Doc. A/PV. 2231, para. 30

However, despite the reservations expressed by delegations, the adoption by consensus of an international instrument marks an important step to obtain substantial agreements on a set of guidelines for future action that would give the United Nations a central role<sup>703</sup>. Consequently, consensus can be arrived at in the Assembly on the procedures adopted for their preparation and approval<sup>704</sup>.

Those reservations could tend not only to reduce the effectiveness of this hard-worked for consensus but to render it inoperative<sup>705</sup>. However, these reservations and clarifications can many times be seen as an accessory way, with the idea that the international community would achieve a final grand consensus<sup>706</sup>. In this sense, what is intended in this type of process is a consensus procedure, but delegations are also aware that objections at the last second would only serve to exacerbate the divisions that delegations have worked to the best of their ability to bridge during the past weeks, months or years<sup>707</sup>.

Thanks to this consensual approach, Member States can demonstrate a spirit of co-operation that is greatly encouraging. They make sacrifices with the aim of creating a solid foundation for the forthcoming efforts to design a more just and equitable relationship between nations<sup>708</sup>. Additionally, consensus constitutes a very real encouragement for the future and gives reason to hope that the international community can achieve in the United Nations a genuine international solidarity on those fundamental problems with which this UNGA has had to deal<sup>709</sup>.

These broad agreements do not exclude that the hard work can continue long after the process is over. Those legal instruments adopted by consensus constitute an important foundation upon which to continue the process of the creation of a more just international order in keeping with the general interests of mankind<sup>710</sup>.

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703 Doc. A/PV.2231, para.93

704 Doc. A/PV. 2231, para. 52

705 Doc. A/PV. 2230, para. 149

706 Doc. A/PV. 2230, para. 165

707 Doc. A/PV. 2230, 1 May 1974, para. 79-80

708 Doc. A/PV. 2230, para. 124

709 Doc. A/PV. 2230, para. 174

710 Doc. A/PV. 2231, para. 56

In light of this relevant precedent, the two key compelling elements necessary to work in a more consensual manner on those conflicting issues, in which the international community is today still strongly divided, would be the following: 1. Explanation of position of States. 2. The use of ambiguous or vague language in those controversial issues.

### **3. Elements to work in a more inclusive manner**

UNGA Resolution 3201 (S-VI) on the *Establishment of a New International Economic Order* of 1974, adopted by the UNGA without a vote, is an important precedent intended to obtain more agreeable solutions in the future based on dialogue, transparency, consensus, inclusiveness and objectivity in very conflicting matters. This case is a good model for other similar processes, such as the right to peace.

Despite that positions can seem absolutely irreconcilable at certain points, delegations could overcome in that time their differences taking into account the following principles, which could be duly taken into account in the future development on the right to peace within the United Nations:

#### **3.1. Political will**

It is precisely through such a common political will that the international community can adopt by consensus important documents before the UNGA, documents that are the product of long hours of consultations, negotiations, compromises and co-operation. A genuine political engagement will be a landmark in the development of true international co-operation<sup>711</sup>.

These decisions are an expression of the political will of the international community to work together for the establishment of a more balanced and just world<sup>712</sup>. In this type of process, in which there exists a collective political will to tackle the genuine problems of development, the United Nations is more than ever now emerging as the proper instrument to the solution of the great problems of the day<sup>713</sup>.

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711 Doc. A/PV. 2231, 2 May 1974, para. 94

712 Doc. A/PV. 2230, 2 May 1974, para. 93

713 Doc. A/PV. 2230, para. 187

### **3.2. Leadership and Dialogue**

The role played by the Chairperson entrusted with drafting a new declarative instrument within the UNGA is fundamental to progress in the deliberations and to achieving an agreement among all stakeholders based on consensus. To deny that such efforts were constantly preceded by a desire to arrive at a consensus and that the consensus was in fact the result of the session would be to blink away the reality of the lengthy hours of discussions held in the United Nations during weeks preceding formal sessions<sup>714</sup>.

### **3.3. Cooperation**

All reservations and differences can in time be ironed out through a spirit of justice and mutual understanding and in that true cooperation which is in the common interest in our world today. In this type of situation the challenge is to accept our mutual dependence and to agree on an agenda for common action to improve the quality of life across the globe. Success cannot be determined by one nation or by one group of nations seeking to impose its will<sup>715</sup>.

In this type of agreements some delegations will want to dissociate because the text will seem weak and diluted. Nevertheless, in an effort to cooperate, delegations feel that a consensus should be the result of the joint work rather than a confrontation<sup>716</sup>.

### **3.4. Realism**

Too often in the past the United Nations has been the forum for unrealistic promises and unfulfilled commitments. The ideal has been substituted for the attainable, and the results have been often no more than increased frustration and disappointment<sup>717</sup>.

In other words, the international community must relentlessly distinguish between that which is possible and that which is not, so as to proceed in accordance with stages truly accepted by those that have the means to implement them. This simple appeal or, rather, reminder of the laws of genuine international progress does not imply

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714 Doc. A/PV. 2231, para. 54

715 Doc. A/PV. 2229, 1 May 1974, para. 85

716 Doc. A/PV. 2231, para. 13

717 Doc. A/PV. 2229, para. 86

that the international community can disregard the notion of that which is desirable. It is clearly necessary for the United Nations to continue to be a centre for active thought in determining those ideals that are to guide Member States not only in the fields of peace, security and disarmament but also, and increasingly, in determining the conditions in which a more satisfactory economic order ought to be established<sup>718</sup>.

### **3.5. Flexibility and tolerance**

Throughout these proceedings the spirit of moderation and conciliation should guide the work. On all sides, the partners to the dialogue, in spite of the reservations of some, displayed their political will to achieve consensus reflecting in its broadest form their agreement on the essential principles for future action and on the ways in which the international community should tackle their future tasks jointly<sup>719</sup>.

### **3.6. Common good of humankind**

This type of consensual processes leading to the adoption of new instruments by the UNGA signifies a milestone in the history of the United Nations. Member States demonstrate a spirit of co-operation that is greatly encouraging. They have, from sometimes strongly conflicting positions of interests, made sacrifices with the aim of creating a solid foundation for the forthcoming efforts to design a more just and equitable relationship between nations<sup>720</sup>.

The vision of the current world, which is shared by the vast majority of the membership of the Organization, can be seen reflected in the consensus of the UNGA, for that consensus is the consensus of mankind. Anyone denying that consensus not only seems to be far away from the feelings of the immense majority of the membership of this Organization but also to be wandering even further afield from what is daily becoming world-wide opinion<sup>721</sup>.

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718 Doc. A/PV. 2229, para. 176

719 Doc. A/PV. 2231, para. 181

720 Doc. A/PV. 2229, para. 124

721 Doc. A/PV. 2229, para. 61

#### 4. Challenges

Despite the current lack of dialogue between those delegations, which support the right to peace, and those others, which deny the existence of this right, a minimum agreement on the title and article 1 would be desirable.

Overcoming the current situation will be a very difficult exercise, taking into account that Western and European countries regretted and did not support the extension of the mandate of the Working Group. It should also take into account that if in 2012 all European member States of the HRC abstained in resolution 20/15, on 2 October 2015 all European States did not support the extension of the Working Group. Therefore, at this stage the political environment to approach positions could be much more difficult.

In case of that an agreement cannot be achieved within the next future, the consequences on a future Declaration on the right to peace would be twofold:

**Firstly**, the implementation of the future *Declaration on the Right to Peace* by many States at the UNGA will possibly be very limited.

To know the current situation of the right to peace within the UNGA, we should study the resolution 69/176 entitled *Promotion of peace as a vital requirement for the full enjoyment of all human rights by all* adopted on 23 January 2015 by which the Assembly elaborates the right of peoples to peace and consequently, “welcomes the decision of the HRC, in its resolution 20/15, to establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace” (art. 9).

This resolution was adopted with the opposition of 53 Western, European and a majority of Eastern countries<sup>722</sup> and clearly responds

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<sup>722</sup> Albania, Andorra, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Micronesia, (Federated States of), Monaco, Montenegro, Netherlands, New Zealand, Norway, Palau, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland,

to four other resolutions<sup>723</sup> adopted by the UNGA since 2003 entitled *Promotion of peace as a vital requirement for the full enjoyment of all human rights by all*. All of them were adopted by around 120 votes to 53 –principally, from developed countries–, and recognized the importance of respect of the right of peoples to peace, the elimination of nuclear war and the promotion of the right to development.

In particular, neither the *Declaration on Preparation on Societies to Life in Peace* of 1978, the *Declaration on the Right of Peoples to Peace* of 1984 nor the *Declaration and Programme of Action on Culture of Peace* of 1999 were never adopted by the UNGA with the opposition of regional groups. In fact, both the *Declaration on Preparation on Societies to Life in Peace* and the *Declaration and Programme of Action on Culture of Peace* were adopted by consensus, with the exception of the first instrument, which was adopted with only one abstention. On the other hand, the *Declaration on the Right of Peoples to Peace* obtained the abstention from all Western and European States, but never the vote against.

The adoption by consensus of peace instruments in the UNGA has been a clear tendency since the creation of the United Nations. In particular, it should also be recalled that the *Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples* of 1965, the *Declaration on the Protection of Women and Children in Emergency and Armed Conflict* of 1974, *Declaration on the Participation of Women in Promoting International Peace and Co-operation* of 1982 and the *Political Declaration on the peaceful resolution of conflicts in Africa* of 2013, were adopted by consensus.

In conclusion, in the current environment within the Council, a *Declaration on the right to peace* obtained the opposition of important regional groups at the UNGA, which means that for the first time in the history of the United Nations, a Declaration on peace issues was adopted with a large number of States opposing a peace initiative. Consequently, if the main promoters of the other peace instruments passed to the world UN history for having promoted a successful peace Declarations, it would not be the case for the current one, which

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United States of America

723 Doc. A/Res/67/173, 22 March 2013; A/Res/65/222, 21 December 2010; A/Res/60/163, 16 December 2005; A/Res/58/192, 22 December 2003

would negatively affect to peace in general. The political, cultural and social price paid by humankind as a whole is too much high.

**Secondly**, the adoption of a *Declaration on the Right to Peace* by the UNGA in the current context, without reaching a minimum agreement, also negatively affects to the promotion of all human rights for all, including the right to peace, because of the high number of States opposing the future text.

Therefore, this situation not only could be contrary to the objective and spirit of the title of the resolution “promotion of peace as a vital requirement for the full enjoyment of all human rights by all”, but also it would be seen as another step backwards in the promotion and protection of human rights and fundamental freedoms.

It should be noted that most of Declarations, Rules and Guidelines on human rights adopted by the UNGA since 1945 were adopted by consensus<sup>724</sup>. In particular, the UNGA has adopted around thirty

<sup>724</sup> Declaration of the Rights of the Child, United Nations Declaration on the Elimination of All Forms of Racial Discrimination; Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples; Declaration on the Elimination of Discrimination against Women; Declaration on the Rights of Mentally Retarded Persons ; Declaration on the Protection of Women and Children in Emergency and Armed Conflict ; Declaration on the Rights of Disabled Persons ; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ; Political declaration on Africa’s development needs ; United Nations Declaration on Human Rights Education and Training ; Political declaration of the high-level meeting of the General Assembly to commemorate the tenth anniversary of the adoption of the Durban Declaration and Programme of Action “United against racism, racial discrimination, xenophobia and related intolerance” ; Political declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases ; Political Declaration on the peaceful resolution of conflicts in Africa ; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ; Political Declaration on HIV/AIDS ; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) ; United Nations Rules for the Protection of Juveniles Deprived of Their Liberty ; Basic Principles for the Treatment of Prisoners, The protection of persons with mental illness and the improvement of mental health care ; Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities ; Declaration on the Protection of All Persons from Enforced Disappearance ; Standard rules on the equalization of opportunities for persons with disabilities ; Declaration on the Elimination of Violence against Women ;

Declarations in different fields of human rights, such as children rights, racial discrimination, persons with disabilities, women, enforced disappearance, development, among others, after all different regional groups reached relevant agreements. Only three important Declarations on human rights were adopted with some oppositions, such as *Declaration on the Right to Development*<sup>725</sup> or *Indigenous Peoples*<sup>726</sup>, or abstentions, such as the *Universal Declaration of Human Rights*<sup>727</sup>. But the rest of Declarations have been adopted by consensus.

In the United Nations only the *Declaration on the International Right of Correction* (A/RES/630, 1952) and the *United Nations Declaration on Human Cloning* (A/RES/59/280, 2005) were respectively adopted with a huge number of States opposing the instrument<sup>728</sup>. Like both instruments, the impact in real life of the future *Declaration on the Right to Peace* would be absolutely minimum, by taking into account that more than one third of the world population could not enjoy this right by not becoming an universal right.

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Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms ; Declaration and Programme of Action on a Culture of Peace ; Millennium declaration ; United Nations Declaration on the New Partnership for Africa's Development ; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power ; Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally ; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

725 1 vote against and 8 Abstentions

726 4 vote against and 11 Abstentions

727 8 Abstentions

728 Declaration on the International Right of Correction (22 Against and 10 Abstentions) and the United Nations Declaration on Human Cloning (34 Against and 37 Abstentions)

### Section III

#### Role of the Human Rights Council in elimination of root causes of conflicts

##### 1. Human Rights Council and peace

In accordance to the Preamble of resolution 60/251 of the HRC, development, peace and security and human rights are interlinked and mutually reinforcing<sup>729</sup>. However, the UNGA clearly decided that the Council should address situations of gross and systematic violations of human rights<sup>730</sup> and also contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies<sup>731</sup>.

Because of human rights violations in conflict situation, the HRC has convened several special sessions at the request of one third of the membership of the Council<sup>732</sup>. Most of these sessions have finished with the adoption upon consensus of a resolution, by which the Council decided to dispatch a Fact-Finding Mission or independent commission of inquiry with the mandate to assess the human rights situation in the specific country in conflict. These missions are usually comprised by one or several highly qualified persons, whose are appointed by the President of the HRC after consulting with the members of the Council.

In particular, the HRC has created upon consensus in its special sessions some human rights mechanisms to monitor the implementation of the respective resolutions in Darfur<sup>733</sup>, Myanmar<sup>734</sup>, Democratic Republic

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729 Para. 6: "peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing". Doc. A/RES/60/251 on the Human Rights Council, 3 April 2006

730 Doc. A/RES/60/251 on the Human Rights Council, 3 April 2006. Art. 3

731 Doc. A/RES/60/251, *op. cit.*, note 730. Art. 5.f

732 Doc. A/RES/60/251, *op. cit.*, note 730. Art. 10

733 Doc. A/HRC/S-4/101, situation of human rights in Darfur, 13 December 2006

734 Doc. A/HRC/S-5/1, situation of human rights in Myanmar, 2 October 2007

of the Congo<sup>735</sup>, Cote d'Ivoire<sup>736</sup>, Libyan Arab Jamahiriya<sup>737</sup> and Central African Republic<sup>738</sup>...

The positive added value of the HRC, and in particular its special sessions, is to focus on those who truly suffer in a conflict: human beings and people. It is a forum for dialogue, not confrontation, which always works, by and for the victims<sup>739</sup>. Its primary objective is to safeguard the human rights of all persons<sup>740</sup> and to address the desperate human rights crisis<sup>741</sup>. It follows that the obligation of the Council is to respond, examine, denounce, intervene and react to egregious human rights violations in concert with other UN bodies, putting an immediate end to ongoing violence<sup>742</sup> and finding a peaceful and durable solution to the specific conflict<sup>743</sup>. Furthermore, it is imperative of the Council to have a greater understanding of

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735 Doc. A/HRC/S-8/1, situation of human rights in the east of the Democratic Republic of the Congo, 1 December 2008

736 Doc. A/HRC/S-14/1, situation of human rights in Cote d'Ivoire in relation to the conclusion of the 2010 presidential election, 23 December 2010

737 Doc. A/HRC/S-15/1, situation of human rights in the Libyan Arab Jamahiriya, 25 February 2011

738 Doc. A/HRC/S-20/1, situation of human rights in the Central Africa Republic and technical assistance in the field of human rights, 20 January 2014

739 Statement delivered by Spain, HRC special session on Darfur, 12 December 2006; Chile on Democratic Republic of the Congo, 28 November 2008

740 Statement delivered by Sierra Leone, HRC special session on the Central African Republic, 20 January 2014; Philippines, Peru on Myanmar, 2 October 2007; Mexico and Chile on Cote d'Ivoire, 23 December 2010; Nigeria on behalf of African Group and Spain on Libyan Arab Jamahiriya, 25 February 2011

741 Statement delivered by the European Union, African Group, Pakistan, France, New Zealand, Latvia on Myanmar, 2 October 2007; Netherland and Republic of Korea on Democratic Republic of the Congo, 28 November 2008; Jordan, European Union, Sweden, Spain and Austria on Cote d'Ivoire, 23 December 2010; France, Norway, Chile, Bulgaria, Honduras, Denmark, Belgium, Republic of Korea, Slovakia, United States of America, Thailand and United Kingdom on Libyan Arab Jamahiriya, 25 February 2011; Israel on the Central African Republic, 20 January 2014

742 Statement delivered by Germany, Republic of Korea, Switzerland, Greece, Denmark, Liechtenstein, on Myanmar, 2 October 2007; Pakistan, the United Kingdom, Switzerland, Bolivia and Italy on Democratic Republic of the Congo, 28 November 2008; Peru, Republic of Korea and United Kingdom on Cote d'Ivoire, 23 December 2010; Iran and Canada on Libyan Arab Jamahiriya, 25 February 2011; Latvia, Liechtenstein and Thailand on the Central African Republic, 20 January 2014

743 Statement delivered by Niger, HRC special session on the Central African Republic, 20 January 2014

the causes and consequences of conflict in order to decrease and alleviate the suffering of victims<sup>744</sup> through the adoption of particular recommendations<sup>745</sup>.

On the other hand, the SC is the only competent body to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to make recommendations, or decide what measures to be taken<sup>746</sup>. Although the SC has recognised the increasing linkage between human rights and peace and security, the operative section of resolutions in Darfur<sup>747</sup>, Democratic Republic of the Congo<sup>748</sup>, Cote d'Ivoire<sup>749</sup>, Libyan Arab Jamahiriya<sup>750</sup> and Central African Republic<sup>751</sup> has not focused on specific matters of human rights, with the exception of a reference to the obligation of States to protect women and children in armed conflict, or even the population in general. The main purpose of the above resolutions is to make a call for all parties to the conflict to end violence, strengthen dialogue, sign a peace agreement, foster a transition process or create humanitarian corridors to assist population.

As indicated by the HRC, in a context of war and armed conflict, there is always a gross and systematic violation of all human rights and fundamental freedoms, including extrajudicial killings, summary executions, sexual violence, looting, forced displacement, large-scale of arrest, abductions, forced recruitment of children, beatings, disappearance, torture, arbitrary detention, forced labour practices or lack of fundamental economic rights (i.e. food, water, medicines). In particular, the right to life and security of people and their fundamental dignity is always under threat, even violated, in this type of dreadful situation. To achieve a genuine peace and stability, the country in conflict should firstly immediately cease all type of violence (i.e. cease-fire). Secondly, States should re-establish again the full respect and implementation of fundamental rights and freedom and thirdly, to

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744 Statement delivered by Mexico, HRC special session on Democratic Republic of the Congo, 28 November 2008

745 Statement delivered by Argentina on Myanmar, 2 October 2007

746 Art. 39 of the UN Charter

747 Doc. S/RES/1714 (2006), 6 October 2006

748 Doc. S/RES/1857 (2008), 22 December 2008

749 Doc. S/RES/1962 (2010), 20 December 2010

750 Doc. S/RES/2016 (2011), 27 October 2011

751 Doc. S/RES/2134 (2014), 28 January 2014

identify the most appropriate solutions for a peaceful settlement of the crisis and to promote a national dialogue and reconciliation.

Additionally, the HRC has stressed that the roots of conflicts which have recently shaken some specific countries, where population live below poverty, are not new. In accordance with the statements delivered by the different stakeholders during the Special Sessions, States should apply long-term strategies for development, reduce poverty, finish with the impunity/rule of law and strengthen international cooperation with the human rights mechanism and among nations in order to reduce the cycle of violence and consolidate universal peace.

In accordance with Article 5 of the Resolution 60/251 on the HRC adopted by the UNGA on 15 March 2006, the HRC shall contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies.

The *Vienna Declaration and Programme of Action* included a provision in which the Conference on Human Rights calls upon the UN Centre for Human Rights to provide technical assistance and qualified expertise in the field of prevention and resolution of disputes<sup>752</sup>. Afterwards, in its resolution 48/141 of 1993, the *UNGA* requested the Office of the United Nations High Commissioner for Human Rights to play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world<sup>753</sup>.

In the report on the *Follow-up to the World Conference on Human Rights* presented before the CHR, the High Commissioner stressed the importance of strengthening preventive strategies in many different areas of human rights (i.e. genocide, racism and racial discrimination, development, civil and political rights, slavery, impunity, women and children). In its concluding observations, the High Commissioner stated that "... the universal implementation of human rights, economic, social and cultural as well as civil and

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752 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, p. 25

753 Doc. UNGA 48/141 on the High Commissioner for the promotion and protection of all human rights, 20 December 1993, p. 4 (f)

political, is the surest preventive strategy and the most effective way of avoiding the emergence of conflict”<sup>754</sup>.

Among the possible preventive measures in the field of human rights, the High Commissioner highlighted the following: urgent appeals by special Rapporteurs and thematic mechanisms; requests by treaty bodies for emergency reports; the indication of interim measures of protection under petition procedures for which treaty bodies are responsible; the urgent dispatch of personal envoys of the Secretary-General, the High Commissioner for Human Rights, or of other organizations; the urgent dispatch of human rights and humanitarian observers or fact-finders; the establishment of international courts; and proposals for the establishment of a rapid reaction force<sup>755</sup>.

The special procedures of the Council are a useful way “...to monitor the human rights situation in the countries and take all action to avoid a repetition of past patterns when conflicts ravaging a country have made international headlines, only to be forgotten until a new crisis emerges”<sup>756</sup>. Human rights violations are often a root cause of conflict and human rights are always an indispensable element in achieving peace and reconciliation. It follows that the failure to adequately address the root causes of the conflict will risk leading to further outbreaks of large-scale violence<sup>757</sup>. The priority of the special procedures is that the interests of justice are served and to assist in ensuring that all human rights are protected<sup>758</sup>.

By virtue of their independence and the nature of their mandates, the different mandate holders are “well placed to function as early warning

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754 Doc. E/CN.4/2000/12, Report of the United Nations High Commissioner for Human Rights and follow-up to the World Conference on Human Rights, 28 December 1999, p. 92

755 Doc. E/CN.4/2000/12, *op. cit.*, note 754, p. 94

756 Statement by Chaloka Beyani, Chairperson of the Coordination Committee of Special Procedures, Twentieth Special Session of the Human Rights Council on the situation of human rights in the Central African Republic, 20 January 2014

757 Statement by Manuela Carmena Castrillo, Chairperson of the Coordination Committee of Special Procedures, Eight Special Session of the Human Rights Council on the situation of human rights in the East of the Democratic Republic of Congo, 28 November 2008

758 Statement by Jose Luis Gomez del Prado, Chairperson of the Coordination Committee of Special Procedures, Eight Special Session of the Human Rights Council on the situation of human rights in the Libyan Arab Jamahiriya, 25 February 2011

mechanisms, as alarm bells,” according to the High Commissioner for Human Rights, Navi Pillay<sup>759</sup>. Since those special procedures cover all types of human rights, they are able to help defuse tensions at an early stage. The mandates focus on specific situations and make recommendations to governments to address problems, wherever they occur in the world.

Finally, on 21 February 2014, the UNGA adopted *upon consensus* the resolution 68/160 on enhancement of international cooperation in the field of human rights, by which considered that “international cooperation in the field of human rights, in conformity with the purposes and principles set out in the Charter of the United Nations and international law, should make an effective and practical contribution to the urgent task of preventing violations of human rights and fundamental freedoms”<sup>760</sup>.

The maintenance of international peace and security is the most important goal of the United Nations in accordance with Art. 1.1<sup>761</sup>. Chapter VII grants the SC extensive powers in this field. The conditions to use these powers remain very vague, mainly due to the very broad notions used in Art. 39<sup>762</sup>. The SC enjoys considerable discretion in the determination whether a threat to the peace, a breach of peace, or an act of discretion exists<sup>763</sup>. Although the International Criminal Tribunal for the former Yugoslavia has recognized the Council’s broad discretion, it has also emphasized that it is not unlimited<sup>764</sup>.

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759 In <http://www.ohchr.org/EN/NewsEvents/Pages/KeyRoleEarlyWarning.aspx>

760 Doc. UNGA Resolution 68/160 on enhancement of international cooperation in the field of human rights, 21 February 2014, p. 6

761 Art. 1.1: “To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.

762 Art. 39: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”.

763 SIMA, B., KHAN, D.E. and PAULUS, A., *The Charter of the United Nations, A commentary*, Oxford Commentaries on international law, third edition, Volume II, November 2012, p. 1.275

764 Prosecutor v. Dusko Tadic, para. 28

Unlike the SC, the HRC is not the competent body to deal with matters linked to the maintenance of international peace and security in the world. In accordance with Art. 1 of the UN Charter, the purpose of the United Nations - in particular, the SC and subsidiary the UNGA-, is “to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.

In accordance with the resolution 60/251, the HRC is trusted to work in some of the purposes and principles contained in the UN Charter (i.e. friendly relations among nations, self-determination of peoples, international cooperation and promotion of human rights and fundamental freedoms for all)<sup>765</sup>, but never on matters related to breach of peace, the use or threat of force or the crime of aggression.

The HRC is exclusively focused on those who truly suffer in a conflict: human beings and peoples. It is a forum for dialogue, not confrontation, which always works by and for the victims. In accordance to its Preamble of the above-mentioned resolution, development, peace and security and human rights are interlinked and mutually reinforcing. However, the UNGA clearly decided that the Council should address situations of gross and systematic violations of human rights and also contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies. Additionally, in accordance with the operative section of the resolution, the mandate of the HRC is to promote and protect human rights, but not directly peace. Therefore, peace should be elaborated in light of some fundamental human right, which has already been recognised by the international community as a whole, such as the right to life. It follows that the Chairperson-Rapporteur’s text is exclusively focused on human rights and never on issues related to the maintenance of international peace and security in the line of the Chapter VI<sup>766</sup> or VII<sup>767</sup> of the UN Charter.

765 Preamble, paragraph 1, UNGA res. 60/251 on the Human Rights Council

766 Pacific settlement of disputes

767 Action with respect to threats to the peace, breaches of the peace, and acts of aggression

The Report of the Seminar on the Relations that exist between Human Rights, Peace and Development concluded that the latter concepts are interrelated and interdependent and that the fostering of one promotes the enhancement of the others (ST/HR/SER.A/10, New York, 1980).

## **2. Implementation of the Declaration on the Right to Peace**

As indicated, the *Declaration on the Right to Peace* is exclusively focused on those who truly suffer in a conflict: human beings and peoples. In the definition of the right to peace, the legislator desired to stress in its article 1 the idea that everyone has the right and is entitled to enjoy and access the benefits stemmed from peace, human rights and development, founding pillars of the whole UN system.

The Special Procedures of the HRC are independent human rights experts with mandates to report and advice on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social.

One of the most relevant figures in the recent UN history is Mr. Fernando Volio Jiménez of Costa Rica (1924-1996). He was Vice-Chairman of the Special Committee on the South African government's policies of apartheid (1963-65) and UN Rapporteur on the situation of Human Rights in Equatorial Guinea (1980-1992) and Chile (1985-1990).

His viewpoint about the role played by dialogue, tolerance, mediation, assistance and cooperation in the performance of his mandate is still nowadays a clear example about how the HRC should work. In accordance with resolution 60/251, the UNGA decided that the HRC could "... contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies".

In light of the legacy left by Mr. Volio Jiménez, the *Declaration on the Right to Peace* could positively contribute to improve the efficiency and credibility of the HRC and special procedures by reinforcing the UN pillars -peace and security, human rights and development-. Those

Mr. Volio's main principles, which are firmly rooted in the UNESCO experience and that were later included in the *Declaration on the Right to Peace*, are the following

### **2.1. Human rights**

The foundational text of UNESCO openly recognised the existing close linkage between the notions of human rights, components of human dignity (i.e. justice, rule of law, fundamental freedoms, equality and non-discrimination) and peace. The *Declaration and Programme of Action on a Culture of Peace* also recognised in its Article 1 the interlinkage between the notions of peace, fundamental freedoms and life.

Taking into account the critical role played by human rights in the promotion of peace, the *Declaration on the Right to Peace* recalled in its Preamble the need for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs.

In this line, Mr. Volio underscored that human rights constitute a factor of supreme importance for the establishment of a democratic political system based on popular consent and aimed at elevating the dignity of the individual and the promotion of general well being. Therefore, the Government and all sectors of society should pay the greatest possible attention to the observance of those values<sup>768</sup>.

### **2.2. Tolerance**

In accordance with UNESCO tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace.

Since tolerance makes peace possible, the *Declaration on the Right to Peace* also recalled in its Preamble that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding, are among the best guarantees of international peace and security.

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768 Doc. E/CN.4/1988/7, 5 February 1988, par. 82

Acknowledging that tolerance decisively contributes to the replacement of the culture of war by a culture of peace, Mr. Volio stressed that both the Government and diverse sectors of society must make a special effort to combat violence, whatever its source, and to lessen the destructive impact of the bitterness aroused by recent or distant causes. Radicalism deepens divisions and prevents societies from voicing their differences democratically in the quest for reasonable solutions to the political problems that assail any country. Reckless radicalism or extremism, twins that detest the word tolerance, is natural and powerful adversaries of the cause of human rights<sup>769</sup>.

### 2.3. Assistance

The fourth recital of the Preamble of the UNESCO Constitution proclaims that “... the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern”. In this line, the human rights tools and architecture of the United Nations can provide significant assistance to preventive-diplomacy and mediation efforts.

The notion of assistance is a key element in the *Declaration on the Right to Peace* by affirming in its Preamble that development assistance and capacity-building based on the principle of national ownership in post-conflict situations should restore peace through rehabilitation, reintegration and reconciliation processes.

In a spirit of mutual assistance, Mr. Volio stressed that it is a matter of urgency for the international community to assist people of post-conflict societies in its task of reconstructing the country in all respects, if it is to attain a state of well-being as rapidly as possible. The assistance should basically be channelled through the United Nations, UNESCO, WHO, the ILO and other similar organizations<sup>770</sup>.

As part of the international community’s efforts to co-operate with the concerned State in the full restoration of human rights by means of the multilateral assistance channelled through the United Nations in general, donor countries should draw up, on the basis of broad criteria

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769 Doc. A/43/624, 14 October 1988, par. 82

770 Doc. E/CN.4/1371, 12 February 1980

adapted to the particular needs of the concerned State, fellowship schemes for the training of professional staff. Bilateral assistance too is desirable, especially from those countries which for historical, cultural, geographical and political reasons can best understand the tragic situation of the country and co-operate with special generosity and effectiveness in the efforts being made by the people of the State, to attain decent levels of living in a political regime respectful of human rights<sup>771</sup>.

#### 2.4. Cooperation

The *UNESCO Declaration of Principles of International Cultural Cooperation* of 1966 recalls in its Preamble that the Constitution of the Organization declares that 'since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed' and that the peace must be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind. This cooperation shall be laid on ideas and values conducive to the creation of a climate of friendship and peace (art. VII).

The *Declaration on the Right to Peace* recalls its Preamble that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities should contribute to the strengthening of friendship, cooperation and peace among peoples and States.

The principle of cooperation in the field of human rights should be applied in two levels: national and international, said Mr. Volio.

As to the national level, the important change in a State is the result of the efforts of the their people and also of the more open attitude taken by the Government, including its very satisfactory co-operation with the Special Rapporteur in the performance of his mandate<sup>772</sup>.

In regards to the international level, the main objective of Special Procedures is to improve the human rights standards of a country through dialogue between Government and civil society and other actors. In particular, the mandate holders of Special Procedures should be not seen as simple intruders in the following terms:

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771 Doc. E/CN.4/1371, 12 February 1980

772 Doc. L/ 44/ 635, 17 October 1989, par. 111

« Naturally, there are still people who do not understand the Special Rapporteur's mission and therefore regard them as an intruder, although he has repeatedly told the media that his mission constitutes a means of assisting the Government and people in seeking ways of solving the human-rights problems besetting the country. The Special Rapporteur has also stressed that his interest lies only in the well-being of the ordinary people, whom the results of his observations should reach »<sup>773</sup>.

It follows that he also stated that from the standpoint of the UNGA, Special Rapporteurs are useful in helping them to perform their function of protecting human rights and hence, complying with of the foremost purposes and principles of the *Charter of the United Nations*. It's therefore in the interest of the cause of human rights to avoid having Special Rapporteurs lose credibility and effectiveness not for what they do not do but, ironically, because they are not given adequate support in what they do. The blame here lies with interests which are, in fact, opposed to the cause of human rights<sup>774</sup>

## 2.5. Dialogue

The resolution 53/22 on the *United Nations Year of Dialogue among Civilizations* of 1988, in which UNESCO is the leading agency, emphasizes in its Preamble the importance of tolerance in international relations and the significant role of dialogue as a means to reach understanding, remove threats to peace and strengthen interaction and exchange among civilizations.

The last Preambular paragraph of the *Declaration on the Right to Peace* stresses the need of promoting dialogue worldwide as follows: “inviting solemnly all stakeholders to guide themselves in their activities by recognizing the high importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace...”.

As indicated by Mr. Volio, in order to promote human rights in a country, dialogue and positive attitude by Government and social groups is always needed. In particular, he believes that with perseverance further progress can be made in promoting the cause of

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773 Doc. E/CN.4/1988/7, 5 February 1988, par. 80

774 Doc. A/43/624, 14 October 1988, par. 35

human rights, if a positive attitude is maintained by the Government, in the first place, and by all social groups which want to establish a society willing to pursue the general good without hatred or strife. To that end it is essential and a matter of urgency that there should be a national consensus on the problems it has to face in protecting freedoms and how it is to take united action on those problems<sup>775</sup>.

Polarization is absolutely destructive and not arrive at none place. Therefore, to ensure that this destructive polarization gives way to a saving consensus where the right to disagree is respected (Sir Ivor Jennings has said that a genuine democrat is one who always suspects that he might not be right), the first thing to be done is to see that everyone in the concerned State knows what the facts are. Consequently, there are many times two different visions for a single State, not so much as regards the standard of living among different social groups, but because of the way every major social group is led to see the enjoyment of human rights in a different way<sup>776</sup>.

## 2.6. Mediation

Since the culture of peace and non-violence is a commitment to peace-building and mediation, UNESCO carried out a project for intercultural mediation in the Balkans. This project aspired to create the conditions needed for a better acknowledgment of the plurality of cultural traditions and for a more peaceful cohabitation amongst communities in a zone that has suffered from interethnic conflicts.

In light of this spirit of dialogue and cooperation, the *Declaration on the Right to Peace* recalls the principle, which proclaims that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.

In the context of human rights, Mr. Volio stated that the relationship with the Special Rapporteur is worth maintaining because it affords, among other things, in the person of the Special Rapporteur, an important intermediary between the government and opposition sectors who can help and co-ordinate efforts to ensure respect for human rights, as in fact occurs, and he can attempt to resolve

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775 Doc. E/CN.4/1988/7, 5 February 1988, par. 122

776 Doc. E/CN.4/1988/7, 5 February 1988, par. 124

individual cases by using his good offices with the government, as is also frequently the case<sup>777</sup>.

There is no need to underscore the difficulties that will confront the new post-conflict societies, alien in nature to any form of dogmatism. Neither is there any need to stress the repercussions of the grave and tragic events experienced by some states in recent years. However, it is worth bearing in mind two quotations from “Troilus and Cressida” by William Shakespeare. According to the first of them, “Those wounds heal ill that men do give themselves” (Act III, 3,229), while the second reminds us that “The end crowns all; and that old common arbitrator, time, will one day end it” (Act IV, 5,224)<sup>778</sup>.

### 3. Conclusions

After the collapse of the system in 1989, UNESCO invited Member States in 1997 to discuss a draft *Declaration on the Human Right to Peace*, initiative which was definitely postponed for the lack of agreement. As a visionary of the right to peace, Mr. Federico Mayor Zaragoza, former Director-General of UNESCO, underscored in 1997 “...we must, then, for the sake of both principle and self-interest, redouble in every field the fight against exclusion and marginalization.... We must all work to ease the great transition from the logic of force to the force of reason; from oppression to dialogue; from isolation to interaction and peaceful coexistence”.

Inspired by the UNESCO contribution on the right to peace, the international community made four critical steps forward on this specific topic:

Firstly, on 14 September 2011, the Foreign Affairs Commission of the Congress of the Deputies of Spain approved a Non-legislative motion on the human right to peace (N. 161/002295). This proposal had a twofold merit: it was the last one that was approved by the Commission before the dissolution of the Chambers, but above all, it had the merit of having achieved a consensus, even before its debate, by all the parliamentary groups represented in the Congress.

Secondly, on 29 October 2011, under the leadership of Costa Rica the Ibero-American Summit adopted by consensus in Asuncion (Paraguay)

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777 Doc. A/43/624, 14 October 1988, par. 36

778 Doc. E/CN.4/1990/5, 30 January 1990, par. 30

a resolution on the right to peace by which urged the Member States of the Ibero-American Conference to support the codification of the right to peace, paving the way to its progressive development, as well as, it recognised the important contribution of civil society organizations to promote the right to peace.

Thirdly, on 18 November 2012, the ASEAN adopted the *Human Rights Declaration*, which article 38 recognised that “every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realized”.

And fourthly, on 19 December 2016, the plenary of the UNGA ratified in its resolution 71/189 by a majority of its Member States the *Declaration on the Right to Peace*. Although the intergovernmental negotiation process was led by Costa Rica, the advocacy of this right in both the Commission on Human Rights and the Human Rights Council came from Cuba along with other States.

The *2016 Declaration on the Right to Peace* positively became an important landmark in the field of human rights and fundamental freedoms. This Declaration updates the *Declaration on the Right of Peoples to Peace* adopted in 1984 by including a human rights perspective. As studied, Member States have traditionally understood that the right of peoples to peace should be linked to principles contained in Article 2 of the *Charter of the United Nations*. Additionally, they stressed that the respect of these principles should help to eliminate the scourge of war. The 1984 Declaration is principally devoted to the relationship among countries and the condemnation of war.

During the process, the Chairperson-Rapporteur’s text was elaborated in light of the HRC resolutions 14/3 and 17/16 on the promotion of the right of peoples to peace. In particular, the text made clear references to the principles of the *Charter of the United Nations*, the elimination of the threat of war, the three pillars of the United Nations, the eradication of poverty and promotion of sustainable development, education on peace and the *Declaration and Programme of Action on a Culture of Peace*. However, the text introduced some new topics, which were not included in the resolutions on the right of peoples to peace, such as the notion of human dignity as a foundation of peace, the role played by women in the construction of peace, the importance

of prevention of armed conflict and the contribution of the HRC towards the prevention of human rights violations.

The new human rights instrument makes a balance between the principles of the *Charter of the United Nations* and the protection of all human rights - civil, political, economic, social and cultural rights-. Taking into account that in a context of war all human rights are violated, the Declaration has a clear victim orientated approach, by stressing the right of everyone to enjoy the three UN pillars –peace, human rights and development –.

Since the HRC is exclusively focused on those who truly suffer in a conflict in light of the existing linkage between peace and security, development and human rights, the *Declaration on the Right to Peace* has some value because it develops the New Agenda 2030 and also reinforces the three UN pillars. In this context, the *2016 Declaration on the Right to Peace* has positively reinforced the human rights machinery in its linkage of peace as a vital requirement for the full enjoyment of all human rights by all.

On the basis of the notion of human dignity, the *Declaration on the Right to Peace* has elaborated in its article 2 the principles of equality and non-discrimination, justice and the rule of law, and guarantee freedom of fear and want as a means to build peace within and between societies.

In light of these precedents, the 2016 Declaration requires that all stakeholders work on the basis of dialogue, inclusiveness, transparency and consensus. In order to evolve from a culture of conflict to a culture of peace, human rights and development, it is strongly desirable for the promotion of peace worldwide to strengthen the positive trend on this matter already initiated in the times of the UN Commission on Human Rights and positively followed by the HRC and the UNGA.

The message of the 2016 Declaration for the succeeding generations is that only through humanity can peace be achieved and that the main aspiration of men and women in the XXI century is to create a world free of war and conflict. For this reason, in the New Millennium, denying the right of every human being to access and enjoy the three

pillars –peace, human rights and development- is to deny the same existence of the United Nations.

The aspiration to create a society in which war plays little or no part in the life of our fellows has fired the human imagination throughout the history of humankind. The champions of peace have only obtained half-triumphs in their attempts at reaching a more peaceful world, because “peace has always conduced to a war”.

The *Declaration on the Right to Peace* will surely contribute to the strengthening of international cooperation and multilateralism and will also influence the current objectives of the United Nations as a fundamental step towards the promotion of some principles, such as human rights, peace, tolerance, friendship and cooperation among all peoples. Recently, the international community has heard the voice of victims, which strongly demanded the right to enjoy peace, human rights and development in a world free of wars and conflicts.

This Declaration is also the result of the longstanding efforts on this matter displayed by many UN entities in the past years. Member States decided to invite UNESCO, among others, in its article 3 to support and assist in the implementation of the present Declaration.

Additionally, Member States agreed to focus attention in the Declaration’s article 4 on the need of promoting education for peace in order to strengthen among all human beings the spirit of tolerance, dialogue, cooperation and solidarity. To this end, this provision also declares that “the University for Peace should contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge”.

The adoption by large agreements of peace instruments in the UNGA has been a clear tendency since the creation of the United Nations. A full agreement among States and regional groups could not finally be achieved within the HRC and the Third Committee of the UNGA, exclusively because of the lack of agreement on the title and Article 1.

In this ongoing debate about the notion of consensus and dissent in the adoption of international instruments within the United Nations, it is relevant to recall Alberoni when he affirmed in his article “Democracy Means Dissent” published in *Corriere della Sera* on 9 January 1997,

that “Democracy is a political system which presupposes dissent ... if we cannot accept unanimous consent as a more perfect form of consent, and hence recognize that a system founded on consent inevitably contains dissent”.

Norberto Bobbio added in his paper “The future of Democracy” that “Freedom of dissent presupposes a pluralistic society, a pluralistic society allows a greater distribution of power, a greater distribution of power opens the door to the democratization of civil society, and eventually democratization of civil society extends and integrates political democracy”. The problem arises when there are important substantive differences among delegations and the possibility of a broad agreement looks like a chimera.

In the pursuit of possible broad agreements in the near future of the Declaration on the Right to Peace within the United Nations, we should recall that for this endeavor there is personage in international literature, Moliere’s *Le Bourgeois Gentilhomme*, who discovered too late that he was speaking prose without knowing.

Although the existence of broad agreements can often be a chimera regarding the right to peace, the Deputy Mr. Pedret i Grenzner stressed in the Foreign Affairs Commission of the Congress of the Deputies of Spain that utopias are necessary. He added that «in reality, utopia is nothing more than an advanced truth, when there is a political will to put all the means so that what is considered utopian today can be possible tomorrow. Politics is the art or the technique of modifying objective conditions so that what now seems impossible is possible and certain in the future”.

This new human rights instrument goes along the line of Humanism, in which the right to peace is strongly linked to the movement known as “Renaissance”. Erasmus of Rotterdam was the pre-eminent representative of this new intellectual and ethical advancement of humankind. In his book “The Complaint of Peace”, Erasmus openly called for the recognition of the right to peace<sup>779</sup>.

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779 <http://pazsinfronteras.org/en/el-derecho-a-la-paz-de-los-ideales-a-la-realidad-por-erasmo-de-rotterdam/>

On the basis of this Humanism, other well-known philosophers, poets and thinkers positively contributed to elaborate in their works the right to peace, such as Hugo Grotius, Immanuel Kant, Rousseau, Schiller, Victor Hugo, Voltaire and Ortega y Gasset<sup>780</sup>.

In the period of the League of Nations, several relevant and well-known jurists elaborated important manuals on international law and extensively developed the principles and rules of the right to peace. In particular, Charles Dupuy<sup>781</sup>, Stelio Seferides<sup>782</sup>, Maurice Bourquin<sup>783</sup>, Louis Le Fur<sup>784</sup> and Erich Kaufmann<sup>785</sup> deeply developed these ideas in the “Le Recueil des Cours de l’Académie de Droit International de La Haye (RCADI)”. All of them agreed to recognize the importance of international law to promote peace, cooperation and dialogue.

These important ideas, legal systems and thoughts inspired and effectively influenced the Intergovernmental Open-Ended Working Group on the Right to Peace (2012-2015), of which the final outcome reflects a more comprehensive and inclusive notion of peace, human rights and development. Consequently, the traditional approach on the right to peace, which was limited to the notion of peaceful co-existence among nations, was transformed thanks to a common effort carried out by some civil society organizations<sup>786</sup> and Member States

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780 <http://pazsinfronteras.org/en/noticias/>

781 Dupuy, Charles: “Règles générales du droit de la paix”, RCADI, t. 32 (1930–II), pp. 5–287

782 Seferides, Stélio: “Principes généraux du droit international de la paix”, RCADI, t. 34 (1930–IV), pp. 182–487

783 Bourquin, Maurice: “Règles générales du droit de la paix”, RCADI, t. 35 (1931–II), pp. 5–227

784 Le Fur, Louis: “Règles générales du droit de la paix”, RCADI, t. 54 (1935–IV), pp. 5–304

785 Kaufmann, Erich: “Règles générales du droit de la paix”, RCADI, t. 54 (1935–IV), pp. 313–613

786 Alongside Foundation Peace without Borders, the International Association of Democratic Lawyers (IADL), Comunità Papa Giovanni XXIII (APG23), UN Network of United Network of Young Peacebuilders (UNOY) and Japanese Committee for the Human Right to Peace (JCHRP) prepared in 2016 an Open Letter addressed to the International Community, which was supported by:

Foundation Culture of Peace, International Society for Human Rights (ISHR), Finn Church Aid (FCA), International Federation of Settlements and Neighbourhood Centers (IFS), Commission Africaine des Promoteurs de la Santé et des droits de l’homme (CAPSDH), Cultura de Solidaridad Afro-Indígena, International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Universal Esperanto Association (UEA), Mother’s Legacy Project, International

from all regional groups. This important shift clearly responds to the new international context created after the Cold War.

In the XXI century, the *Declaration on the Right to Peace* should contribute to the strengthening of international cooperation, multilateralism, human rights, peace, tolerance, friendship and cooperation among all peoples. After many years of work, the UNGA has definitively heard the voice of all victims, which strongly demands the right to enjoy peace, human rights and development in a world free of wars and conflicts.

The future of peace deserves our efforts and imagination. For global problems affecting peace and stability, we need global solutions based on cooperation and multilateralism. For the maintenance and perpetuation of humankind, we need to concentrate our thoughts in the present and future generations. For the promotion of agreements and dialogue, we need to liberate peace from the chains of war, incomprehension and hate. Today our responsibility is to advance the world agenda for peace.

“Peace is a never ending process... It cannot ignore our differences or overlook our common interests. It requires us to work and live together”

(Oscar Arias, Nobel Peace Prize Laureate and former President of Costa Rica)

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Federation of Women in Legal Careers (IFWLC), International Federation of Women Lawyers (IFWL), 3HO Foundation, Institute for Planetary Synthesis (IPS), Institute of Global Education, Lama Gangchen World Peace Foundation, Federation of Family Associations of Missing Persons from Armed Conflicts (*IF-FAMPAC*), Pax Christi International, Foundation for GAIA (GAIA), Planetary Association for Clean Energy (PACE), Global Eco-village Network (GEN), Institute of International Social Development at the United Nations (IISD), International Association of Peace Messenger Cities (IAPMC), International Peace Bureau (IPB), World For World Organization (WFWO), United Religions Initiative (URI), Lucis Trust-World Good Will Bangwe and Dialogue, Dzeno, Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco (IIMA), Foundation for the Refugee Education Trust (RET International), Graines de Paix, International Volunteerism Organisation for Women Education Development (V.I.D.E.S.), US Federation for Middle East Peace, ONG Hope International, World Association for Education as an Instrument of Peace, Commission Colombian of Jurist, General Arab Women Federation (GAWF), International Organization for Victim Assistance (IOVA), International Society for Traumatic Stress Studies (ISTSS), International Women's Year Liaison Group, Association Points-Coeur, Nonviolent Peaceforce, Association Centre Europe- Tiers Monde Cetim.

## **Annex I**

### **Timeline of the phases of the Right to Peace alongside the History**

#### **1. Aspiration of the Right to Peace**

##### **Marsilio of Padua**

Defender of Peace (1324)

“The fruits of peace or tranquillity, then, are the greatest goods, as we have said, while those of its opposite, strife, are unbearable evils.

Hence we ought to wish for peace, to seek it if we do not already have it, to conserve it once it is attained, and to repel with all our strength the strife which is opposed to it. To this end individual brethren, and in even greater degree groups and communities, are obliged to help one another, both from the feeling of heavenly love and from the bond or law of human society”

##### **Erasmus of Rotterdam**

The Complaint to Peace (1521)

“Everyone should hear the voice of their Sovereign Lord, commanding them upon their duty, to seek peace and abolish war.

People should also be persuaded that the world, wearied with its long continued calamities, demands peace, and has a right to insist on this immediate compliance”

##### **Hugo Grotius**

The Rights of War and Peace (1625)

“The reasoning is the same in each case: a citizen who breaks the civil law for the sake of some immediate interest will thereby undermine his own and his descendants’ permanent interests, and a nation which violates the laws of nature and nations will have renounced its right subsequently to live in peace”

**Immanuel Kant**

Perpetual Peace: A Philosophical Sketch (1795)

“Reason is on the throne of the highest moral law giving power, absolutely condemns War as a mode of Right, and, on the contrary, makes the state of Peace an immediate duty. But the state of Peace cannot be founded or secured without a compact of the Nations with each other”

**Voltaire**

Treatise on Tolerance (1763)

“The human right should be based on this natural right, and the great principle of both is: Do not unto others what you would that they do not unto you. Now, in virtue of this principle, one man cannot say to another: “Believe what I believe, and what thou canst not believe, or thou shalt perish. The supposed right of intolerance is absurd and barbaric. It is the right of the tiger; nay, it is far worse, for tigers do but tear in order to have food, while we rend each other for paragraphs”

**Decree of Declaration of Peace in the World**

French Constituent Assembly (1790)

« The right to peace belongs to the nation....” (Art. 1)

**Friedrich Schiller**

William Tell (1804)

“When the oppressed for justice looks in vain, when his sore burden may no more be borne, with fearless heart he makes appeal to Heaven. And thence brings down his everlasting rights, which there abide indestructible as are the stars.... Our dearest treasures call to us for aid against violence»

«I cannot lay my hands upon the books; but by yon everlasting stars I swear, never to swerve from justice and the right”.

**Victor Hugo**

Statement delivered at the Peace International Congress (1849)

“An assembly—an assembly in which you shall all live—an assembly which shall be, as it were, the soul of all—a supreme and popular council, which shall decide, judge, resolve everything—which shall make the sword fall from every hand, and excite the love of justice in every heart—which shall say to each, ” Here terminates your right, there commences your duty. Lay down your arms!”.

**Ortega y Gasset**

“Concerning pacifism...”

in the journal *The Nineteenth Century* (1938)

“Based on this long aspiration of humankind, peace is the right as form of relationship among peoples. Pacifism seemed to suppose that such right existed, and that only the passions and instincts of violence induced us to ignore it. However, this is gravely opposed to the truth. In order that law or a branch of law can exist, it is necessary the following conditions: 1. That certain human beings, specially inspired, discover certain ideas or principles of law; 2. That propaganda and expansion of these ideas over the whole collectivity, or group, in question takes place; 3. That dissemination of these ideas becomes sufficiently dominant to consolidate these in form of public opinion”

## **2. Adoption of the Right to Peace**

### **League of Nations**

**Charles Dupuy, Stelio Seferides, Maurice Bourquin,  
Louis Le Fur and Erich Kaufmann**

Le Recueil des Cours de l'Académie de Droit International de La  
Haye (1930-1935)

They produced manuals entitled  
«Règles générales du droit de la paix»

### **United Nations**

#### **Declaration on the Preparation of Societies for Life in Peace**

United Nations General Assembly, Resolution 33/73 (1978)

“Every nation and every human being, regardless of race,  
conscience, language or sex, has the inherent right to life in peace.  
Respect for that right, as well as for the other human rights,  
is in the common interest of all mankind and an indispensable  
condition of advancement of all nations, large and small,  
in all fields” (Article .1.1)

#### **Declaration on the Right of Peoples to Peace**

United Nations General Assembly, Resolution 39/11 (1984)

“Solemnly proclaims that the peoples  
of our planet have a sacred right to peace” (Article 1)

#### **Declaration on the Right to Peace**

United Nations General Assembly, Resolution 71/189 (2016)

“Everyone has the right to enjoy peace such that all human rights  
are promoted and protected and development is fully realized”  
(Article 1)

## Annex II

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## **UN General Assembly**

### **Resolutions**

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**General Assembly Resolution A/RES/71/189, 19 December  
2016**

**Declaration on the right to peace**

The General Assembly,

*Guided by* the purposes and principles of the Charter of the United Nations,

*Recalling* the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Vienna Declaration and Programme of Action,

*Recalling also* the Declaration on the Right to Development, the United Nations Millennium Declaration, the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals, and the 2005 World Summit Outcome,

*Recalling further* the Declaration on the Preparation of Societies for Life in Peace, the Declaration on the Right of Peoples to Peace and the Declaration and Programme of Action on a Culture of Peace, and other international instruments relevant to the subject of the present declaration,

*Recalling* the Declaration on the Granting of Independence to Colonial Countries and Peoples,

*Recalling also* that the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations solemnly proclaimed the following principles:

that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered, the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, the duty of States to co-operate with one another in accordance with the Charter,

the principle of equal rights and self-determination of peoples, the principle of sovereign equality of States, the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

*Reaffirming* the obligations of all Member States, as enshrined in the Charter of the United Nations, to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered,

*Acknowledging* that the fuller development of a culture of peace is integrally linked to the realization of the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination enshrined in the Charter of the United Nations and embodied in the International Covenants on Human Rights, as well as in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960,

*Convinced* that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter, as stated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, contained in General Assembly resolution 2625 (XXV) of 24 October 1970,

*Recognizing* the importance of the settlement of disputes or conflicts through peaceful means,

*Deeply deploring* all acts of terrorism, recalling that the Declaration on Measures to Eliminate International Terrorism recognizes that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations and may pose a threat to international peace and security, jeopardize friendly relations among States, threaten the territorial integrity and security of States, hinder international cooperation and aim at the destruction

of human rights, fundamental freedoms and the democratic bases of society, and reaffirming that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed,

*Stressing* that all measures taken in the fight against terrorism must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law, as well as those enshrined in the Charter,

*Urging* all States that have not yet done so to consider, as a matter of priority, becoming parties to international instruments related to terrorism,

*Reaffirming* that the promotion and protection of human rights for all and the rule of law are essential to the fight against terrorism, and recognizing that effective counterterrorism measures and the protection of human rights are not conflicting goals but are complementary and mutually reinforcing,

*Reaffirming also* the determination of the peoples of the United Nations as expressed in the Preamble to the Charter to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, to promote social progress and better standards of life in larger freedom, and to practice tolerance and live together in peace with one another as good neighbours,

*Recalling* that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

*Recognizing* that peace is not only the absence of conflict, but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, as well as socio-economic development is ensured,

*Recalling* that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and recognizing that peace is promoted through the full enjoyment of all inalienable

rights derived from the inherent dignity of all human beings,

*Recalling also* that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized,

Recalling the world commitment to eradicate poverty and promote sustained economic growth, sustainable development and global prosperity for all and the need to reduce inequalities within and among countries,

Recalling the importance of prevention of armed conflict in accordance with the purposes and principles of the Charter and of the commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world,

Recalling that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

*Reaffirming* that since wars begin in the minds of human beings, it is in the minds of human beings that the defences of peace must be constructed and recalling the importance of the settlement of disputes or conflicts through peaceful means,

*Recalling* the need for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs,

*Recalling further* that development assistance and capacity-building based on the principle of national ownership in post-conflict situations should restore peace through rehabilitation, reintegration and reconciliation processes involving all those engaged, and recognizing the importance of peacemaking, peacekeeping and peacebuilding activities of the United Nations for the global pursuit of peace and security,

*Recalling* that the culture of peace and the education of humanity for justice and liberty and peace are indispensable to the dignity of

human beings and constitute a duty that all nations must fulfil in a spirit of mutual assistance and concern,

*Reaffirming* that the culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life, as identified in the Declaration on a Culture of Peace, and that all this should be fostered by an enabling national and international environment conducive to peace,

*Recognizing* the importance of moderation and tolerance as values contributing to the promotion of peace and security,

*Recognizing* also the important contribution that civil society organizations can make in building and preserving peace, as well as in strengthening a culture of peace,

*Stressing* the need for States, the United Nations system and other relevant international organizations to allocate resources to programmes aimed at strengthening the culture of peace and upholding human rights awareness through training, teaching and education,

*Stressing also* the importance of the contribution of the United Nations Declaration on Human Rights Education and Training to the promotion of a culture of peace,

*Recalling* that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding, are among the best guarantees of international peace and security,

*Recalling also* that tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human, as well as the virtue that makes peace possible and contributes to the promotion of a culture of peace,

*Recalling further* that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of a society as a whole and within a democratic framework based on the rule of law would contribute to the strengthening of friendship, cooperation and peace among peoples and States,

*Recalling* the need to design, promote and implement at the national, regional and international levels strategies, programmes and policies, and adequate legislation, which may include special and positive measures, for furthering equal social development and the realization of the civil and political, economic, social and cultural rights of all victims of racism, racial discrimination, xenophobia and related intolerance,

*Recognizing* that racism, racial discrimination, xenophobia and related intolerance, where they amount to racism and racial discrimination are an obstacle to friendly and peaceful relations among peoples and nations, and are among the root causes of many internal and international conflicts, including armed conflicts,

*Inviting* solemnly all stakeholders to guide themselves in their activities by recognizing the high importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace; to that end, present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war,

### **Article 1**

Everyone have the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.

### **Article 2**

States should respect, implement and promote equality and non-discrimination, justice and the rule of law and guarantee freedom from fear and want as a means to build peace within and between societies.

### **Article 3**

States, the United Nations and specialized agencies should take appropriate sustainable measures to implement the present Declaration, in particular the United Nations Educational, Scientific and Cultural Organization. International, regional, national and local organizations and civil society are encouraged to support and assist in the implementation of the present Declaration.

#### **Article 4**

International and national institutions of education for peace shall be promoted in order to strengthen among all human beings the spirit of tolerance, dialogue, cooperation and solidarity. To this end, the University for Peace should contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge.

#### **Article 5**

Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations. The provisions included in this Declaration are to be understood in the line of the Charter of the United Nations, the Universal Declaration of Human Rights and relevant international and regional instruments ratified by States.



## The UN-mandated University for Peace

The University for Peace has been training leaders for peace for the past 35 years. It is the world's leading educational institution in the field of peace and conflict resolution in its pursuit of the mandate given to it by the General Assembly in 1980, namely "to provide humanity with an international institution of higher education for peace and with the aim of promoting among all human beings the spirit of understanding, tolerance and peaceful coexistence, to stimulate cooperation among peoples and to help lessen obstacles and threats to world peace and progress, in keeping with the noble aspirations proclaimed in the Charter of the United Nations".

The University continues its pursuit of academic excellence through the systematic and critical study, understanding and analysis of the causes of multiple problems affecting human and global well-being; the exploration and formulation of strategies and practices in various contexts to address such problems and contribute to the processes of peacebuilding and peace formation; the cultivation of modes of thinking, inquiry and pedagogy that are critical, multidisciplinary, interdisciplinary, integrative, empowering and transformative; and the development of a diverse, inclusive, ethical, creative community of learning, sharing, networking and solidarity on campus and in the global environment.

The following 40 States have signed the International Agreement for the Establishment of the University for Peace: Argentina, Bangladesh, Bosnia and Herzegovina, Cambodia, Cameroon, Chile, Colombia, Costa Rica, Cuba, Cyprus, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, India, Italy, Liberia, Mexico, Monaco, Nicaragua, Pakistan, Panama, Peru, Republic of Korea, Russian Federation, Senegal, Serbia, Slovenia, Spain, Sri Lanka, St. Lucia, Suriname, Togo, Turkey, Uruguay, and Venezuela.

The Secretary-General of the United Nations is be the Honorary President of the University for Peace. The Council of the University for Peace is be the supreme authority of the University, and it is composed of 7 ex-officio members (the Rector of the University for Peace, two representatives designated by the Secretary-General

of the United Nations and by the Director-General of UNESCO, the Rector of the United Nations University, two representatives designated by the Government of the host country and the Chancellor of the University for Peace). The Council is further enriched by the presence of ten representatives of the academic community or other persons eminent in the field of peace and security, appointed by the Secretary-General of the United Nations in consultation with the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The academic offer of the University for Peace is divided into 5 departments: the Department of International Law, the Department of Peace and Conflict Studies, the Department of Environment and Development, the Distance Education Programme, and the Department of Regional Studies, for a total of ten resident M.A. programmes held at the UPEACE campus in San Jose, Costa Rica. Furthermore, UPEACE offers a Doctoral Degree Programme in Peace and Conflict Studies.

More than 2,000 alumni of the University, who originate from almost every Member State of the United Nations, are working for peace in every region of the world. The current international context demands an expansion of training and educating for peace, especially with regard to open and increasingly more complex conflicts, interrelations between local, national, regional and global spheres and strong but ominous links between politics and criminal activity. The University provides such a response through the ongoing academic training of future leaders of Governments, non-governmental organizations and the private sector on peaceful conflict resolution and the relationship between peace, development, human rights and environmental protection as the foundation for economic development and increased equality.

### **The University for Peace: A Global Institution**

The University for Peace is a global institution, currently present in four regions:

- Africa: UPEACE Africa Programme in Addis Ababa, Ethiopia
- Asia: Asian Peacebuilders Programme with offices in Manila, The Philippines

- Europe: UPEACE Centre-The Hague and Permanent Observer status before the U.N. in Geneva
- Latin America: UPEACE HQ in Costa Rica
- North America: Permanent Observer status before the U.N. at its Headquarters in New York.

UPEACE works with its regional offices implementing partnerships, projects and trainings around the world to enhance its mandate. The University is also looking to expand its mandate to other regions and countries.

### *Africa*

The University for Peace (UPEACE) has established itself as a leading Institution in building capacity for peace in Africa, through its Africa Programme based in Addis Ababa, Ethiopia. Over the last ten years UPEACE has organized short courses, developed M.A. programmes with partner universities across the continent and has supported doctoral research through awards and fellowships to African Ph.D. students registered with Universities in Sub-Saharan Africa and specializing in the areas of peace, conflict, governance, security and development. Close to a thousand academicians, researchers, policy makers and members of civil society organizations from 36 countries across the continent have benefited from these various undertakings.

### *Asia*

The Asian Peacebuilders Scholarship (APS), a Dual Degree Master of Arts Programme currently celebrating its 10th Anniversary, is a shared initiative of The Nippon Foundation, the UN-mandated University for Peace (UPEACE), and Ateneo de Manila University (AdMU). The objective of the programme is to train young Asian professionals to become peace building practitioners, ready to take up leading positions in organisations across the globe. In particular, the programme serves to strengthen the representation of Asian professionals with expertise in Asian issues.

### *Europe*

In cooperation with other academic and policy-oriented institutions in The Hague region, UPEACE The Hague provides innovative peace

education and research. Its focus is on two programmes: “Peace and Conflict Studies”, and “Water and Peace”. A third programme: “Business and Peace”, is under construction. In addition to these programmes, UPEACE The Hague also organises professional training courses, lectures, seminars and workshops. Its activities are characterised by synergy between theory and practice, contributing to policy innovation, and are appealing to academics as well as other professionals. Furthermore, UPEACE has Permanent Observer status at the U.N.’s regional office in Vienna through a permanent focal point located in that European city.

### ***Latin America***

UPEACE’s Rodrigo Carazo Campus, located in Costa Rica, is named after its founder, a former Costa Rican President whose vision and passion for training future leaders for peace materialized with the creation of the University for Peace in 1980. Located 30 kilometres Southwest of San Jose, its over 300 hectares sit within a natural reserve composed of a secondary forest, and the last remnant of primary forest in the Costa Rican Central Valley.

### ***Research and Publications***

The University for Peace carries out research on a continuous basis in an effort to effect change through expanding the body of knowledge on topics related to the fields of peace and conflict.

#### ***Our publications include:***

***Ideas for Peace:*** an academic paper series in which members of our Faculty focus on relevant topics on the international agenda, posing innovative solutions based on their personal and professional experience in the field of peace and conflict studies. View all issues at <http://www.upeace.org/research-publications/ideas-for-peace>.

***Peace and Conflict Review:*** a fully peer-reviewed, open-access journal published semi-annually by the University for Peace. Issues generally include a selection of scholarly articles, conference papers, and reviews of academic work. Please visit our homepage ([www.review.upeace.org](http://www.review.upeace.org)) for further information on our editorial policies and guidelines for contributors. Visit the Peace and Conflict Review at <http://www.review.upeace.org/>.

*Africa Peace and Conflict Journal*: the aim of the APCJ peer review process is to be rigorous and free of bias, ensuring that only high-quality, innovative work is published. The interdisciplinary emphasis of APCJ seeks to encourage the building of the field, combining the disciplines of peace and conflict studies, development, and human and social security in Africa. For more information, visit our website at [www.apcj.upeace.org](http://www.apcj.upeace.org).

***The Peace & Conflict Monitor***: is an online forum for informed debate and peace journalism. Drawing on contributions from the students, researchers, and journalists who make up the majority of its wide readership, the PCM offers unique perspectives on current events from around the world. To join in on the discussion, please contact [editor@monitor.upeace.org](mailto:editor@monitor.upeace.org).

***Open Knowledge Network***: The University for Peace (UPEACE), within its mandate given to it by the UN General Assembly to serve humanity as a whole, is committed to the ethos of sharing knowledge openly and proactively. In this spirit of openness and accessibility, UPEACE has launched the Open Knowledge Network. This open access network will serve as an online platform to distribute some of the most relevant and timely research as well as teaching materials and other learning resources produced by our students, resident and visiting faculty and collaborators, for all to be used for their own benefit under a Creative Commons license. In the future, we will seek to also make these contents more easily available in formats compatible with mobile devices and under circumstances of lower bandwidth capacities. The Open Knowledge Network can be found at <http://www.upeace.org/OKN/index.cfm>.

The ***UPEACE Africa Programme*** has published a variety of titles of interest to students, researchers, and practitioners in the field of peace and conflict studies, particularly those with an African focus. These include collections of critical essays, original research, and reference books on the key human rights documents of the African Union, common terms in the field of peace studies, etc. Stay up to date on the publications of the UPEACE Africa Programme by visiting <http://www.africa-upeace.org/>.

In July 2016, the Human Rights Council (HRC) of the United Nations in Geneva recommended to the General Assembly (UNGA) to adopt a *Declaration on the Right to Peace*, which occurred on 19 December 2016 by a majority of its Member States.

The *Declaration on the Right to Peace* invites all stakeholders to guide themselves in their activities by recognizing the great importance of practicing tolerance, dialogue, cooperation and solidarity among all peoples and nations of the world as a means to promote peace. To reach this end, the Declaration states that present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war. *Mr. Federico Mayor*

This book proposes the right to enjoy peace, human rights and development as a means to reinforce the linkage between the three main pillars of the United Nations. Since the right to life is massively violated in a context of war and armed conflict, the international community elaborated this fundamental right in the 2016 *Declaration on the Right to Peace* in connection to these latter notions in order to improve the conditions of life of humankind. *Ambassador Christian Guillermet Fernandez - Dr. David Fernandez Puyana*

*The Right to Peace: Past, Present and Future*, demonstrates the advances in the debate of this topic, the challenges to delving deeper into some of its aspects, but also the great hopes of strengthening the path towards achieving Peace. This plurinational, multidisciplinary, pluricultural reflection contributes effectively to the essential *leitmotiv* of UPEACE: *if you want Peace, work for Peace*. And thus, through this path, the world can achieve Peace without borders.



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