

**“Analysis of the international debate
on the right to peace
in the context of the human rights and
intergovernmental bodies of the United Nations”**

Mr. David Fernández Puyana

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Tutor:

Dr. Santiago Ripol Carulla

**(Professor of international law at the University of Pompeu Fabra,
Barcelona)**



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Abstract

Since the inception of the United Nations in 1945 the international community has been actively engaged in the promotion and strengthening of world peace through the adoption of different peace laws and resolutions. In particular, the Charter of the United Nations and the International Bill of Rights are considered relevant legal instruments whose main purpose is the realisation of peace and consequently, the progressive elimination of war and armed conflict across the earth. Following these precedents, some Member States and stakeholders are currently promoting the adoption by the Human Rights Council and General Assembly of a new instrument on the right to peace. This thesis will analyze the ongoing debate and its legal background in accordance with international law and human rights. The thesis proposes the concept of the right to live in peace, human rights and development as a means to further elaborate the right to peace in the context of the human rights paradigm.

Introduction

This thesis proposes the right to live in peace, human rights and development as a means to reinforce the linkage between the right to life and 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 should elaborate this fundamental right in connection to these latter notions in order to improve the conditions of life of humankind. The right to live in peace 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 not still 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. Therefore, taking into account that we have two possible options, right to live in peace or right to peace, both of them recognized by different soft law instruments, I prefer the first one because in this case peace is more linked to human rights. In addition, as we will see in this research, we should recall that the Human Rights Council 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. Particularly, the contribution of the General Assembly, Commission on Human Rights and the Human Rights Council of the United Nations to the ongoing discussion process will be carefully analyzed in light of key international human rights instruments. To reach this aim, the thesis will be divided into four main chapters:

The first chapter will be focused on the relationship between peace and human rights under international law. In particular, the concept of peace and security and the human rights approach in the Charter of the United Nations will be studied. Afterwards, the main principles of international law will also be analyzed in light of the different international, regional and domestic instruments. As indicated by the General Assembly and other important legal sources, international law is a means to promote peace and human rights in the world. In regard to the analysis of the Universal Declaration of Human Rights, the thesis will be exclusively focused on the concept of peace and human rights in its negotiation process, the discussion about its legal form, the concept of peace and human rights in its Preamble and its impact in the field of peace and human rights. Afterwards, other human rights instruments and the regulation of peace and human rights in the regional human rights instruments and national Constitutions will also be studied in the context of the latest developments of international law.

The second chapter will be focused on the notion of the right to peace under international law. The elaboration of the right to peace within the UN mandates, in particular, international solidarity and the democratic and equitable international order, will be analyzed. In addition, both the historical approach, legal analysis and follow-up of the *Declaration on the Preparation of Societies for Life in Peace* of 1978 and the *Declaration on the Right of Peoples to Peace* of 1984 will later be studied by taking into account the main resolutions adopted by the human rights bodies of the United Nations. In addition, the leading role played by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the promotion of peace, tolerance and friendship among nations will also be analyzed. In particular, the initiative of the human right to peace and the Declaration and Programme of Action on a Culture of Peace will be studied in order to recall the importance of human rights in the

promotion of peace. In addition, the right to peace has been recognized in both the national constitutions and regional instruments and jurisprudence. However, most of the constitutional and regional texts have elaborated a concept of the right to peace by taking only into account a conception based on the relationship between States and without referring properly to human rights issues.

The third chapter will be focused on the sources of international law and the legal status of peace. The General Assembly is intended to adopt a declaration whose main purpose is to generate widespread and consistent state practice and/or provide evidence of *opinio juris* of a customary rule. The current debate and content of the right of peoples to peace will be analyzed. In particular, the outcome of this lively discussion will be analyzed principally by taking into account the main inputs proposed by different stakeholders in the following bodies, working groups and workshops: Human Rights Council, its Advisory Committee, the Workshop on the right of peoples to peace, the first session of the Intergovernmental Open-Ended Working Group on the right to peace and the informal consultations on the right to peace. Many governmental delegations have constantly indicated that a stand-alone “right to peace” does not exist under international law. Afterwards, the research will study the main points of concurrence expressed by the different stakeholders in this debate: firstly, war and armed conflict are outlawed by international law; secondly, human rights and fundamental freedoms are massively violated in a context of war and armed conflict; thirdly, the principles of cooperation and protection of human rights are really important in the prevention of war and armed conflict; fourthly, the right to life is closely linked to the notion of peace and fifthly, the legal basis of the human rights legal system is the concept of human dignity. In addition, the different competences between the Security Council and Human Rights Council in the field of human rights and peace and security will also be studied.

The fourth chapter will be focused on the elaboration on the right to live in peace, human rights and development and its linkage with the notion of human dignity. The legal standards proposed by the Advisory Committee in its draft Declaration will be studied in light of the three main principles of human dignity (i.e. equality and non-discrimination; justice and rule of law; and freedom from want and fear). In addition, the different legal sources and comments by stakeholders about each standard will be also studied, in particular the Vienna Convention and Culture of Peace Declaration and the Programme of Action. Afterwards, the positive measures to realize the right to live in peace, human rights and development will be also studied. In particular, the measures and rights to be adopted and implemented by States (i.e. disarmament, private military and security companies, peace education, fight against racism and human security, peacekeeping, right to development, environment, rights of victims and vulnerable groups and refugees and migrants) and those other rights to be exercised by individuals or groups (i.e. right to conscientious objection to military services and resistance and opposition to oppression) will be analyzed.

When the international community progressively elaborates the notion of the right to live in a context of peace, human rights and development through a new declarative instrument adopted by the General Assembly, then it will have arrived at the moment when everyone can 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 will be invested in alleviating hunger and diseases; the effective culture of peace will be made 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 will be replaced by tolerance and respect towards those who are different; the racial hatred will 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 will be considered brothers and sisters able together to build a fairest 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 in 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 live in a context of 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!!

Gex (France), 22 April 2014

List of abbreviations

CHR	Commission on Human Rights
CELAC	Community of the Latin American and Caribbean States
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
UNICEF	United Nations Children's Fund
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNCIO	United Nations Conference on International Organization
ECOSOC	United Nations Economic and Social Council
HRC	Human Rights Council

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Chapter I

The relationship between peace and human rights under the international law

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1. The Charter of the United Nations

1.1. Historical introduction

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”¹.

The 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 Nations². 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 peace³ and the need for a postwar international organization to succeed the League of Nations⁴.

1See in <http://www.ibiblio.org/pha/policy/1945/450425a.html>

2Conclusions of the Washington Conversations on International Peace and Security Organization. 7 October 1944.

See in <http://www.ibiblio.org/pha/policy/1944/441007a.html>

3Paragraph 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>

4Paragraph 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>

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....”⁵.

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 force⁶.

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 countries⁷. It entered into force on 24 October 1945, after being ratified by the five permanent members of the Security Council - the Republic of China⁸, France, the Union of Soviet Socialist Republics⁹, the United Kingdom, and the United States- and a majority of the other signatories. Today, the 193 member States of the United Nations¹⁰ have undertaken “...to save succeeding generations from the scourge of war...”¹¹.

At the closing ceremony of the Conference, **Lord Halifax**, Chairman of the United Kingdom’s delegation, delivered the following remarks about the incipient creation of the United Nations¹²:

“We cannot indeed claim that our work is perfect or that we have created an unbreakable guarantee of peace. For ours is no enchanted palace to spring into sight at once, by magic touch or hidden power. But we have, I am convinced, forged an instrument by which, if men are serious in wanting peace and are ready to make sacrifices for it, they may find means to win it”.

Later, on 19 April 1946, at the final (21st) session of the League of Nations’ Assembly, another British diplomat **Viscount Robert Cecil**, who was deeply involved in the efforts to convert the League in the first world peace organization, ended his speech with the famous words: “The League is dead. Long live the United Nations”¹³.

5See in <http://www.ibiblio.org/pha/policy/1944/441007a.html>

6LIVA TEHINDRAZANARIVELO, D. and KOLB, R., “Peace, Right to, International Protection”, *Max Planck Encyclopedia of Public International Law*, December 2006, p. 12

7Argentina, 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 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

8Currently by the People’s Republic of China

9Later replaced by the Russian Federation

10See in <http://www.un.org/en/members/index.shtml>

11Preamble, para. 1

12FREDERIK LINDLEY WODD, E. (ed), *The American speeches of the Earl of Halifax*, Oxford University Press, New York, 1947, p. 407

13WALTERS, F.P., *A History of the League of Nations*, Oxford University Press, London, 1952, p. 815

1.2. The concept of peace and security within the UN Charter

The United Nations is a response to the two world wars and the intention of the member States to suppress war¹⁴. The maintenance of international peace and security is the most important goal of the United Nations in accordance with Art. 1.1¹⁵. Chapter VII grants the Security Council extensive powers in this field. The conditions to use these powers remain very vague, mainly due to the very broad notions used in Art. 39¹⁶. The Security Council enjoys considerable discretion in the determination whether a threat to the peace, a breach of peace, or an act of aggression exists¹⁷. Although the International Criminal Tribunal for the former Yugoslavia has recognized the Council's broad discretion, it has also emphasized that it is not unlimited¹⁸.

The Charter 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 peace¹⁹.

After a lively debate during the negotiation process of the Charter²⁰, 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"²¹.

Recent practice has stressed the strong linkage and interdependence of peace and security with broader conditions of social development. As indicated by the Security Council 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"²².

14SIMA, 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. 102

15Art. 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".

16Art. 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".

17SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 1.275

18Prosecutor v. Dusko Tadic, para. 28

19SYMONIDES, J., "Towards the Universal Recognition of the human right to peace", *International Affairs Review*, 2006, No. 1 (153), p. 6

20The 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

21MACLAURIN, J., *The United Nations and Power Politics*, George Allen and Unwin Ltd, 1951, p. 10

22UNSC Presidential Note (31 January 1992), UN Doc. S/23500, 5

While social, economic, development, and human rights matters are primarily the domain of the General Assembly (hereinafter: GA) and the United Nations Economic and Social Council (hereinafter: ECOSOC), the scope of the Council's action is limited to issues of peace and security. Therefore, broader policies for social and economic development and human rights promotion should not be seen as part of the Council powers. This latter body will be more focused in some form of organized violence²³.

1.3. The human rights approach in the UN Charter

The four powers had already introduced a demand to include a provision for respect of human rights in the Charter²⁴. The outcome was a Charter with no fewer than seven references to human rights²⁵. In addition, some Latin American countries (i.e. Cuba, Mexico and Panama) actively advocated so that the human rights provisions of the Charter were strengthened. The Inter-American Conference held in Mexico had called for the adoption of a *Declaration of the International Rights and Duties of Man*. Additionally, Chile and Cuba urged that a *Declaration of the essential rights of men* was attached to or incorporated in the Preamble of the Charter²⁶. However, this later idea was abandoned because of the objection raised by the United Kingdom and the Soviet Union.

Nevertheless, the Committee 1/1 of the San Francisco Conference decided to leave the elaboration of a human rights charter to the UNGA²⁷. The vigorous lobby of the Latin American countries effectively influenced the atmosphere in San Francisco to include the provision of human rights in the Charter and to trust more forcefully this task to the UNGA.

Although the Preamble is an integral part of the Charter, it does not set forth any basic obligation of the member States²⁸. It only serves as an interpretative guideline for the provisions of the Charter²⁹. The first part of the Preamble contains basically two ideas: maintenance of peace and international security³⁰ and respect for human rights³¹. Additionally, it refers to some but not all of the purposes of the organization (i.e. equal rights of nations or peoples³², enhancement of the friendly relations among States³³ and the limitation of the use of

23SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 1.277

24UNCIO III, Doc. 2, G/29, 622

25Preamble, art. 1 (purposes and principles); art. 55 and 56 (International economic and social cooperation); art. 13 (functions and powers of the General Assembly), art. 62 (ECOSOC) and art. 76 (Trusteeship System)

26UNCIO III, Doc. 2, G/7 (g) (2), 365 f. See also in David Weissbrodt & Mattias Hallendorff, *Travaux Préparatoires of the Fair Trial Provisions--Articles 8 to 11--of the Universal Declaration of Human Rights*, *Human Rights Quarterly* 21.4 (1999) 1061-1096

27UNCIO VI, Doc. 343, 1/1/16, 296

28SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 105

29Report 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).

30Art. 2.2: "... to unite our strength to maintain international peace and security..."

31 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..."

32Art. 1.2: "...to reaffirm faith ... in the equal rights ... of nations large and small..."

33Art. 2.1: "...to practice tolerance and live together in peace with one another as good neighbours..."

force³⁴). In the second part, it declares that governments of these peoples have agreed to the Charter, which addresses the contractual element of the Charter³⁵.

On the other hand, 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)³⁶.

The International Court of Justice (hereinafter: ICJ) stated in the Advisory Opinion on *certain expenses*³⁷ 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...”

Article 1 (2) of the UN Charter 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 peace³⁸. 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...”³⁹.

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 peace⁴⁰,

34Art. 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...”

35“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.

36SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 108-109

37Case *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>

38SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 109-110

39In *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/>

40 HAYDEN, P., “Constraining war: human security and the human right to peace”, *Human Rights Review*, 6(1)

it could safely be concluded that the broader meaning of peace deals with the generic causes of conflict⁴¹. 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”⁴². Thus, an integrated approach to human security would be related to the deepest causes of war, such as economic despair, social injustice and political oppression⁴³.

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 justice⁴⁴. 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 fundamental freedoms within the United Nations system⁴⁵, the political rights of women⁴⁶, the question of racial conflict in South Africa resulting from apartheid⁴⁷, the elimination of racial discrimination⁴⁸, the elimination of all forms of intolerance and discrimination based on religion and beliefs⁴⁹, enhancement of international cooperation in the field of human rights⁵⁰, and the strengthening of the rule of law⁵¹.

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

Oct./Dec. 2004, p. 46

⁴¹ LINARELLI, J., “Peace-building”, *Denver Journal of International Law and Policy*, Vol. 24, 1996, p. 253-83

⁴² CORNISH, P., “Terrorism, Insecurity and Underdevelopment”, *Journal of Conflict, Security and Development*, Vol. 30, 2001, p. 147-52

⁴³ 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

⁴⁴ MCFARLANE, H. and FOONG KHONG, Y., *Human security and the UN: A critical history*. Bloomington, Ind. : Indiana University Press, 2006, p. 151

⁴⁵ 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)

⁴⁶ 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)

⁴⁷ 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)

⁴⁸ UNGA Res. 1904 (XVIII) (20 November 1963) (Declaration on the Elimination of All Forms of Racial Discrimination) and Res. 2647 (XXV) (17 December 1970)

⁴⁹ UNGA Res. 36/55 (25 November 1981)

⁵⁰ 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)

⁵¹ UNGA Res 48/132 (20 December 1993)

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”⁵² and the “... respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”⁵³.

Arts. 55⁵⁴ and 56⁵⁵ 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 end⁵⁶. 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”⁵⁷.

This kind of positive concept of peace governs major sections of the Charter and the UN activities (i.e. Chapter IX on *International economic and social cooperation* and Chapter X on the *Economic and Social Council*). On the other side, the negative concept of peace understood as the absence of the use of force is reflected in other important sections of the Charter (i.e. Chapter VI on the *Pacific settlement of disputes* and Chapter VII on *Action with respect to threats to the peace, breaches of the peace, and acts of aggression*).

The provisions of Art. 55 (c) distinguishes between “universal respect for” and “observance of”. Although the early UN practice did not find any legal difference between both concepts, the main differences should be found in the drafting process. The term “observance” was regarded as too strong and was therefore deleted. However, the term was later reinserted in order to strengthen the provision. Both the political and judicial organs of the United Nations have consistently reaffirmed that Art. 55 (c) creates legal binding obligations addressed to the States and the United Nations as a whole⁵⁸.

The non-discrimination clause at the end of the sentence of Art. 55 (c) only declared illegitimate four criteria – namely, race, sex, language and religion-. Nevertheless, the Universal Declaration of Human Rights⁵⁹ and the International Covenant on Economic, Social and Cultural Rights⁶⁰ (hereinafter: ICESCR) recognized additionally criteria in the non-discrimination clause.

52Art. 1 (2)

53Art. 1 (3)

54Art. 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”

55Art. 56: “All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”.

56SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 1537

57SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 1540

58SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 1573

59Art. 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs...”

60Art. 2 (1): “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Finally, Art. 56 on cooperation of the Charter was introduced at the initiative of a number of States (i.e. Canada and Australia) in order to reach a commitment of member States in regard to the activities of the United Nations in the field of economic and social matters, health, culture, education, and human rights. This article contains two elements. Firstly, it contains a pledge of members to take action jointly and separately for the purposes set forth in Art. 55. Secondly, this pledge will be performed “in cooperation with the organization”.

The protection and promotion of human rights are crucial to reach a sustainable peace. Both concepts are mutually interdependent and reinforcing, since peace without human rights could be considered a weak peace. The relationship between human rights and conflicts is dynamic, complex, and powerful, constantly shaping and reshaping the course of both peace and war.

The UNGA solemnly reiterated from its fifty-seventh session (2002) to its sixty-second session (2007) that peace is a vital requirement for the promotion and protection of all human rights for all. It also emphasized that the preservation and promotion of peace demand that States’ policies be directed towards the elimination of the threat of war.

In September 2005 the second Summit of Heads of State and Government held in New York at the occasion of the UNGA, recognized in the Outcome document the close relationship existing among international peace and security, social and economic development, and the respect for human rights⁶¹. This was reiterated by the UNGA when it established the current Human Rights Council (hereinafter: HRC)⁶². In addition, the resolution 60/251 on the Human Rights Council also reaffirmed the close linkage between the friendly relations among nations and the promotion and respect of human rights⁶³.

2. International human rights instruments

2.1. International law as means to promote peace and human rights

Since the creation of the United Nations, the UNGA has adopted several key Declarations⁶⁴ and resolutions⁶⁵, by which it solemnly appeals to all States so that they resolve conflicts and disputes by peaceful means and it also reminds them of their obligations under the Charter.

61 Para. 9: “We acknowledge 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. We recognize that development, peace and security and human rights are interlinked and mutually reinforcing”. See in: <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>

62 Preamble, para. 6, UNGA Res. 60/251, 3 April 2006, Human Rights Council: “Acknowledging 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”.

63 Preamble, para. 1, UNGA Res. 60/251, supra note n. 58: “Reaffirming the purposes and principles contained in the Charter of the United Nations, including developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and achieving international cooperation in solving international problems of an economic, social cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all”

64 UNGA Res. 37/10 *Manila Declaration on the Peaceful Settlement of International Disputes* (15 November 1982). Art. I.2: “Every State shall settle its international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered”.

65 UNGA Res. 40/9 *Solemn appeal to States in conflict to cease armed action forthwith and to settle disputes*

In the report on *Prevention of armed conflict*⁶⁶, the former UN Secretary-General Kofi Annan stated that the United Nations should move from a culture of reaction to a culture of prevention and that conflict prevention lies at the heart of the mandate of the United Nations in the maintenance of international peace and security. This conviction was again reiterated by the whole international community in the *World Summit Outcome document*⁶⁷. In addition, the former Secretary-General stressed that “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”⁶⁸.

The UNGA solemnly proclaimed in the *Declaration on the Prevention and Removal of Disputes and Situations* that “States should act so as to prevent in their international relations the emergence or aggravation of disputes or situations, in particular by fulfilling in good faith their obligations under international law”⁶⁹. To reach this aim the UNGA will be able to “... initiate studies and make recommendations for the purpose of promoting international co-operation in the political field and encouraging the progressive development of international law and its codification...”⁷⁰.

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 freedoms⁷¹.

On 24 October 1970, on the recommendation of the Sixth Committee⁷², the UNGA adopted, without a vote, resolution 2625 (XXV), by which it approved the *Declaration of international law friendly relations and co-operation among States in accordance with the Charter of the United Nations*. In its Preamble, the UNGA recalled that “the peoples of the United Nations are determined to practice tolerance and live together in peace with one another as good neighbours”⁷³. Furthermore, it proclaims that “States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance”⁷⁴.

between them through negotiations (8 November 1985). Art. 1: “Addresses a solemn appeal to States in conflict to put an end to armed action forthwith and to proceed to the settlement of their disputes by negotiations and other peaceful means”.

66UN Doc. A/55/985-S/2001/574 on *Prevention of armed conflict* (7 June 2001)

67 Para. 74: “We stress the importance of prevention of armed conflict in accordance with the purposes and principles of the Charter and solemnly renew our 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, as well as to strengthen the capacity of the United Nations for the prevention of armed conflict”. Doc. A/Res/60/1 *World Summit Outcome*, 24 October 2005

68Para. 94, supra n. 60

69 Art. 1 (2) of the *Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field*, A/RES/43/51 (5 December 1988)

70 Art. 13 (1.a) of the *Charter of the United Nations*

71Preamble, para. 7. In addition, it should be recalled other GA resolutions recognizing this linkage between the progressive development of international law and human rights, namely: 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966, 2327 (XXII) of 18 December 1967, 2463 (XXIII) of 20 December 1968 and 2533 (XXIV) of 8 December 1969.

72A/8082, 28 September 1970

73 Preamble, para. 2

74 Dispositive section, b.

The principle of peaceful settlement of disputes occupies a central position within a world order whose main achievement is the ban on force and coercion⁷⁵. At the end of the nineteenth⁷⁶ and the first half of the twenty century⁷⁷, outstanding endeavours were undertaken by the international community to create an international order free of wars through the strengthening of mechanisms aimed to promoting the pacific settlement of disputes.

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 co-operative relations among the nations, settling disputes by peaceful means and advancing economic and social progress throughout the world”⁷⁸.

The UNGA reaffirmed in its resolution 54/27 of 19 January 2000⁷⁹ 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 world⁸⁰.

On 1st December 1949 the UNGA adopted resolution 290 (IV) on *essentials of peace*, by which it declared that the UN Charter, the most solemn pact of peace in history, lays down basic principles necessary for an enduring peace, such as the full respect of fundamental rights expressed in the Universal Declaration of Human Rights. Additionally, GA resolution 380 (V) on *peace through deeds*, adopted on 17 November 1950, stated that “if all States faithfully reflect this desire and observe their obligations under the Charter, lasting peace and security will be established”.

All measures tending to silence or distort the activities of the United Nations in favor of peace should be considered as propaganda against peace in accordance with the resolution 381 (V)⁸¹.

75SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 184

76Art. 1 of the *Convention for the Pacific settlement of International Disputes* (29 July 1899): “With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences”.

77Art. 12 (1) of the *Covenant of the League of Nations* (1919): “The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration or judicial settlement and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or judicial settlement”.

Art. II of the Kellogg-Briand Pact (27 August 1928): “The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means”.

78Preamble, para. 1, Doc. UNGA Res. 1505 (XV), *Future work in the field of the codification and progressive development of international law*, 12 December 1960

79Doc. 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.

80UNGA 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).

81Doc. UNGA Res. 381 (V), *Condemnation of propaganda against peace*, 17 November 1950

As stated by UNGA resolutions 2817 (XXVI)⁸² and 3065 (XXVIII)⁸³, both on *scientific work on peace research*, fundamental research on the foundations of and conditions for peace, can contribute considerably to the peace mission of the United Nations and build peace, security and cooperation in the world.

2.2. The Universal Declaration of Human Rights⁸⁴

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations 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 Universal Declaration of Human Rights, the ICESCR, and the International Covenant on Civil and Political Rights (hereinafter: ICCPR) and its two Optional Protocols.

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”⁸⁵.

2.2.1. The concept of peace and human rights in its negotiation process

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 acclamation⁸⁶.

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 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

82Doc. UNGA Res. 2817 (XXVI), *Scientific work on peace research*, 14 December 1971

83Doc. UNGA Res. 3065 (XXVIII), *Scientific work on peace research*, 9 November 1973

84SCHABAS, W.A., *The Universal Declaration of Human Rights : the travaux préparatoires*, New York, Cambridge University Press, 2013.

85EIDE, 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

86JOHNSON, 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

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”⁸⁷.

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”⁸⁸.

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”⁸⁹.

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 war, and, if the first aim of the United Nations was to be attained, the observance of human rights must be guaranteed”⁹⁰.

As indicated by the Chairman Mrs. **Roosevelt** in her inaugural speech, the main purpose of the nine members of the Nuclear Commission is “to help the United Nations achieve its primary objective of keeping the peace of the world by helping human beings to live together happily and contentedly”⁹¹. Mr. **Feonov** (URSS) also supported this idea by stating that “the establishment and observance of human rights was, with justification, placed first in the Charter among the objectives of the United Nations”⁹².

With regard to the purpose of the Charter in the field of human rights and peace, the representative of Mexico clearly said that “the Charter’s provisions on human rights correspond to one of the functions of the United Nations, namely to create the essential conditions of stability and well-being which are necessary for peaceful and friendly relations among nations. Amongst these conditions the Charter expressly mentions the economic ones and universal respect for, and observance of, human rights and fundamental freedoms”⁹³.

87Doc. E/HR/6, 1 May 1946 - 1st Meeting held on Monday, 29 April 1946, p. 1-3

88Doc. 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

89Doc. 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

90Doc. E/CN.4/SR.50, 4 June 1948, 50th Meeting, Held on Thursday, 27 May 1948, p. 4

91Supra note 77, p. 3

92Doc. E/PV.5, 31 May 1946, 2nd session, 5th meeting, Friday, 31 May 1946, p. 2

93Doc. E/CN.4/82/ADD.1, 16 April 1948, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, p. 3

During the drafting process of the Universal Declaration of Human Rights, Panama stated that “upon the freedom of the individual depends the welfare of the people, the safety of the state and the peace of the world”⁹⁴. The Philippines also stressed that the “world peace and freedom can be maintained only by a determined, well-informed and enlightened world public opinion”⁹⁵. After, the United Kingdom pointed out that “the establishment of human rights all over the world was essential to democracy in all its forms if peace were to be maintained”⁹⁶.

However, Cuba stated that “the Charter made it clear that, when living conditions of different countries were unequal, a situation was created where it was difficult to preserve peace and security. Such inequalities created psychological conditions in which aggressive countries were encouraged to launch aggression upon the weaker ones”⁹⁷.

The Chairman proposed that a clause on the observance of human rights should be included in all peace treaties⁹⁸. Members of the Commission unanimously stressed the importance of the acceptance of the principle of including provisions for basic human rights in international treaties, particularly peace treaties⁹⁹. In addition, Colonel Hodgson (Australia) informed that various peace treaties were to be signed (i.e. territorial claims)¹⁰⁰. Finally, the CHR adopted 21 June 1946 the following resolution¹⁰¹:

“Pending the adoption of an international bill of rights, the general principle shall be accepted that international treaties involving basic human rights, including to the fullest extent practicable treaties of peace, shall conform to the fundamental standards relative to such rights set forth in the Charter”

2.2.2. Discussion about its legal form

Regarding the legal form, the United States suggested that “the Commission should first prepare it in the form of a Declaration on Human Rights and Fundamental Freedoms to be adopted as a UNGA Resolution. This Declaration should be of such a character as to command the respect of people throughout the world and should be framed with a view to speedy adoption by the UNGA”¹⁰².

The **United States** proposal to prepare the bill in the forms of a declaration on human rights and fundamental freedoms to be adopted as a UNGA resolution was strongly supported by

94Doc. E/HR/3, 26 April 1946 - Statement of Essential Human Rights, presented by the Delegation of Panama, p. 1

95Doc. E/HR/4, 25 April 1946, Draft Resolution Concerning the Calling of An International Press Conference, submitted by the Delegation of the Philippine Commonwealth to the 1st Part of the 1st Session of the General Assembly, p. 1

96Doc. E/PV.5, 31 May 1946, 2nd session, 5th meeting, Friday, 31 May 1946, p. 7

97Doc. E/PV.6, 31 May 1946, 2nd session, 5th meeting, Friday, 31 May 1946, p. 48

98Doc. E/38/Rev.1, 21 May 1946 - Report of the Commission on Human Rights to the 2nd Session of the Economic and Social Council, p. 1-2

99Supra note 79, p. 4

100Doc. E/CN.4/SR.9, 1 February 1947, Record of the 9th Meeting held at Lake Success, New York, on Saturday, 1 February 1947, p. 4

101Doc. E/RES/9(II), 21 June 1946, Resolution: Commission on Human Rights, adopted 21 June 1946, p. 521

102Doc. E/CN.4/4, 28 January 1947, United States Proposals Regarding An International Bill of Rights, p. 1-2

India. In addition, the Indian delegate stated that “this bill should eventually become an integral part of the Charter and a fundamental law of the United Nations”¹⁰³.

The Chairman Mrs. **Roosevelt** suggested that there were several alternatives to be used in the drafting process of the international Bill of Human Rights: “1. To prepare a general Declaration, to be followed by a number of conventions; 2. To write an “Act of Parliament”, including perhaps fewer items spelling out the provisions more completely and carefully; 3. To draft a general Declaration, then put the substance of the Declaration as nearly as possible into the form of a convention”¹⁰⁴.

On the other hand, Professor **Cassin** (France) felt that there might be two extreme positions: “1. To prepare something that would immediately strike public opinion and serve as a guide to the future policies of States; this would be a Declaration or Manifesto which might not be accompanied by a convention or by any other measure; 2. To make immediately an enumeration of the rights of man, that enumeration to be in the form of an international convention obligatory for all States, to create immediately, under the auspices of the United Nations”. In his opinion, the Committee should first formulate principles¹⁰⁵.

After, Dr. **Malik** (Lebanon) stated that he agreed with Professor Cassin that “both attempts ought to be made at the same time. The first attempts would be to lay down the fundamental principles to be enunciated, which would then be passed upon by the UNGA in the form of Resolution. These principles would constitute the Manifesto or credo of the United Nations concerning human rights”. In addition, Dr. Chang (China) stated “at this stage the Committee could only hope to draw up a list of general principles and rights, putting them into the form of a draft Declaration for consideration by the UNGA”¹⁰⁶.

Later, Dr. **Malik** (Lebanon) felt that the Declaration should be very brief but should include all the basic principles of a Bill of Human Rights. In addition, according to him, “it should be a fundamental matrix of doctrine from which positive law might be elaborated, a battle cry for freedom, for liberty; a Credo embodying the basic philosophy of the United Nations regarding human rights. From this declaration, there might flow one or more conventions”¹⁰⁷. Furthermore, later on he also said that “the Declaration would proclaim and list those rights which human reason at the present stage of development of society considered inseparable from the conception of the human person. The Covenant, on the other hand, was the product of the will of States, and its provisions would be determined less by reason than by practical considerations”¹⁰⁸.

Prof. **Cassin** (France), summing up the discussion, said that “he understood that the Drafting Committee had decided it would have to prepare a Declaration. It had also decided that this Declaration would have to be accompanied by one or several Conventions dealing with fundamental points in the Declaration”¹⁰⁹.

103Doc. E/CN.4/SR.7, 31 January 1947, Summary Record of the 7th Meeting held at Lake Success, New York, on Friday, 31 January 1947, p. 2

104Doc. E/CN.4/AC.1/SR.5, 17 June 1947, 5th Meeting, Thursday, 12 June 1947, p. 1-2

105Doc. E/CN.4/AC.1/SR.5, *op. cit.*, note 104, p. 1-2

106Doc. E/CN.4/AC.1/SR.5, *op. cit.*, note 104, p. 3-5

107Doc. E/CN.4/AC.1/SR.7, 19 June 1947, 7th Meeting, Tuesday, 17 June 1947, p. 4

108Doc. E/CN.4/SR.48, 4 June 1948, 48th Meeting, Held Wednesday, 26 May 1948, p. 9

109Doc. E/CN.4/AC.1/SR.7, *op. cit.*, note 107, p. 5

The representative of the **United Kingdom** at the CHR stated that “the Declaration is designed to promote the progressive extension and refinement of human rights and freedoms. It must therefore, of necessity, be expressed in terms of general principles which answer to the aspirations of all men everywhere. These principles represent the goal towards which mankind is striving, and it may be hoped that their definition by the United Nations will hasten the day when they will be generally accepted and universally applied... The Declaration therefore creates no legal obligations, and none of its provisions can be enforced. It must rely for its efficacy, on teaching and education and on the progressive realization of man’s social and economic well-being”. In addition, the British delegate said that “other parts of the Declaration may from time to time be embodied in the form of Conventions”¹¹⁰.

The character of the future Declaration was then considered. The representative of the **URSS** observed that it was not a question of drawing up a short or a long declaration, but clear, straightforward and complete one, such as would give real practical help in protecting the democratic rights of individuals. The UK representative thought that the Declaration should be drawn up in quite a different form from the Convention; whereas the Convention was a statement of general principle which it would be best to make brief. According to the French representative the essential difference between the Declaration and the Convention lay in their general character. The Declaration was a synthesis, a general view, whereas the Convention or Conventions defined something more precise¹¹¹.

In the same line, the representative of the **Netherlands** said that “The Declaration gives a great number of general directions, whereas the Covenant contains those provisions which in the present stage of international development will probably be acceptable to a number of States as provisions of a formal treaty. In conformity with the Commission the Government assumes the Declaration having only a moral importance, to be adopted by the UNGA, whereas the Covenant which will be a legally binding instrument and will have to be ratified or accepted in a formal way by the States”¹¹².

In addition, the representative of **Australia** added that “the Declaration should be an instrument of popular appeal and persuasion, and the present text should be replaced by a more concise statement of general principles”¹¹³.

The same ideas about the form of the Declaration were also repeated by the representative of the **United States** in the following terms: “The Declaration is envisaged as properly fulfilling two functions: firstly, to serve as basic standards to guide the United Nations in achieving, within the meaning of the Charter, international cooperation in promoting and encouraging respect for and observance of human rights and fundamental freedoms for all and secondly, to

110Doc. 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. 4

111Doc. E/CN.4/57, 10 December 1947, Report of the Working Group on the Declaration on Human Rights : Commission on Human Rights, 2nd Session : 10/12/ 1947, p. 4 and Doc. E/CN.4/82/ADD.9, 10 May 1948, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, p. 4

112Doc. E/CN.4/82/REV.1, 23 April 1948, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation : Memorandum / by the Secretary-General, p. 3-4

113Doc. E/CN.4/82/REV.1, *op. cit.*, note 112, p. 16

serve as a guide and inspiration to individuals and groups throughout the world in their efforts to promote respect for and observance of human rights”¹¹⁴.

In reply to the US position, the representative of **URSS** stated that the basic requirements of a Declaration to be satisfied are: “firstly, a Declaration on Human Rights should first of all guarantee respect for human rights and fundamental freedoms for all in accordance with the principles of democracy, State sovereignty, and the political independence of States. Secondly, a Declaration on Human Rights must not only proclaim rights but guarantee their realization. And thirdly, a Declaration must not only define the rights but also the obligations of citizens toward their country, people and State”¹¹⁵.

After, the representative of **France** pointed out that the Declaration should be a guide. For this reason, the French delegation envisaged a “document shorter than the Covenant, without the legal value of a convention, but which would have the function of keeping the fullest possible list of human rights in everybody’s mind.... It would be left to the Covenant more precisely to define the scope and the methods of application of human rights, both on the national and on the international plane”¹¹⁶.

Later, the representative of **New Zealand** pointed out that “the Declaration cannot in itself impose any legal obligation on states or call for any measures of implementation, although it may, with reference to the rights and freedoms not dealt with in detail in the Covenant, provide a guide to the interpretation of the relevant provisions of the UN Charter”¹¹⁷. Furthermore, the delegate added later that the rights and freedoms included in the Declaration should be progressively elaborated and defined in detail in a form suitable for an international treaty¹¹⁸.

Finally, the Drafting Committee made the following summary of the principle observations held during the discussion: “firstly, that a Declaration of Human Rights and Fundamental Freedoms in a resolution of the UNGA would in itself have considerable moral weight. Secondly, that a more effective method for establishing human rights would be to embody them in a Convention in which the signatories would recognize them as international law. And thirdly, that the signatories of such a Convention should also accept the obligation to ensure that these rights be enforceable by domestic courts”¹¹⁹.

On 15 December 1947, the CHR resolved on *Preparing a Shortened form of the Declaration on Human Rights* the following resolution¹²⁰:

114Doc. E/CN.4/82/REV.1, *op. cit.*, note 112, p. 16

115Doc. E/CN.4/AC.1/29, 11 May 1948, Speech by Representative of the Union of Soviet Socialist Republics In the Drafting Committee of the Commission on Human Rights, 4 May 1948 - Lake Success, New York / a . N. Pavlov

116Doc. E/CN.4/SR.48, 4 June 1948, 48th Meeting, Held Wednesday, 26 May 1948, p. 8-9

117Doc. E/CN.4/82/ADD.12, 3 June 1948, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, p. 4

118Doc. E/CN.4/82/ADD.12, 3 June 1948, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, p. 4

119Doc. E/CN.4/AC.1/SR.18, 25 June 1947, 18th Meeting, Held At Lake Success, 25 June 1947, p. 4

120Doc. E/CN.4/72, 15 December 1947, Proposed Resolution by the Commission on Human Rights [on Preparing a Shortened form of the Declaration on Human Rights], submitted by the United States Delegation

“That the Drafting Committee of the Commission on Human Rights is directed at its second session to prepare a shortened form of a Declaration on Human Rights which will be readily understood by all peoples”.

2.2.3. The concept of peace and human rights in its Preamble

The Preamble of the Declaration serves as an introduction to the reader. It states the reasons why the drafters felt it necessary to proclaim the list of rights they did. Each paragraph starts with the word “whereas”, which means “since” or “because”, the seven occurrences of this word introduce the seven reasons for drafting the proclamation¹²¹. In general terms, the final Preamble expresses many of the central ideas of the liberal Enlightenment¹²².

During the drafting process, Mr. **Chang** (China) emphasized that “the bill should include a preamble propounding the philosophy on which the bill was based”. Furthermore, Mr. **Cassin** (France) pointed out that “the bill should include a preamble emphasizing the permanency of the qualities common to mankind”. After Mr. **Cassin** considered that “the preambles to the Charter of the United Nations and other international organizations such as the United Nations Educational, Scientific and Cultural Organization (hereinafter: UNESCO) constituted a useful basis and form of universal philosophy from which to seek inspiration”¹²³. Colonel **Hodgson** (Australia) also pointed out that “the preamble would indicate and govern the substance of the bill”¹²⁴.

In turn, Mr. **Tepliakov** (URSS) believed that “the Commission should first discuss the preamble thoroughly, in order to determine the objectives of the bill, and then proceed to examine and formulate particular points with the guidance of the Preamble”.

Dr. **Malik** (Lebanon) stated that the suggestion of the beginning with the Preamble worried him slightly. In his opinion, he stated that “the preamble comes last in the logical sequence of construction, and should be formulated only after the Committee had the concrete articles of the bill before it”. The Chairman agreed that the preamble should not be written until a later stage¹²⁵.

The Secretariat of the Drafting Committee and the Division on Human Rights prepared a first outline of the draft Preamble, in which the concept of peace and protection of human rights occupied a central role. According to them the Preamble should refer to the four freedoms and to the provisions of the Charter relating to human rights. In addition, it should enunciate the following principles:

121MORSINK, J., *The Universal Declaration of Human Rights: origins, drafting and intent*, University of Pennsylvania, Philadelphia, 1999, p. 313

122KOSKENNIEMI, M., “The Preamble of the Universal Declaration of Human Rights”, 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. 30

123Doc. E/CN.4/SR.7, 31 January 1947, Summary Record of the 7th Meeting held at Lake Success, New York, on Friday, 31 January 1947, p. 3-4

124Doc. E/CN.4/SR.7, 31 January 1947, Summary Record of the 7th Meeting held at Lake Success, New York, on Friday, 31 January 1947, p. 5

125Doc. E/CN.4/AC.1/SR.1, 10 June 1947, 1st Meeting, Monday 9 June 1947, p. 6-7

“firstly, that there can be no peace unless human rights and freedoms are respected; secondly, that man does not have rights only; he owes duties to the society of which he forms part; thirdly, that man is a citizen both of his State and of the world and fourthly, that there can be no human freedom or dignity unless war and the threat of war is abolished”¹²⁶.

Afterwards, **France** submitted a more elaborated text of the draft Preamble, in which it also insisted in the relationship between the protection of human rights and fundamental freedoms and the progressive elimination of war in the world. In addition, the French delegate recalled the principles on human rights contained in the Charter. The suggestions proposed by France were the following:

“Whereas:

1. Ignorance and contempt of human rights have been among the principal causes of the sufferings of humanity and particularly of the massacres which have polluted the earth in the two world wars;
2. There can be no peace unless human rights and freedoms are respected and, conversely, human freedom and dignity cannot be respected as long as war and threat of war are not abolished;
3. It was proclaimed as the supreme aim of the recent conflict that human beings should enjoy freedoms of speech and worship and be free from fear and want;
4. In the Charter of 26 June 1945 we reaffirmed our faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women”¹²⁷.

Later, France proposed two other new paragraphs to be included in the Preamble. One of them about the role of the United Nations in the field of cooperation and human rights and the other about the protection of fundamental freedoms against the oppressive regimes:

“Whereas one of the objects of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

Whereas it is essential, if mankind is not to be compelled, as a last resource, to revolt against tyranny and oppression, that human rights should be protected by the community of nations and guaranteed both by international and by national law”¹²⁸.

Afterwards, the **United States of America** in its proposal stressed the idea that the “recognition of the inherent dignity and the equal rights of all the persons is the foundation of freedom,

126Doc. E/CN.4/21, 1 July 1947, Drafting Committee on An International Bill of Rights, 1st Session: Report of the Drafting Committee to the Commission on Human Rights, p. 69; Doc. E/CN.4/AC.1/3, 4 June 1947, Draft Outline of International Bill of Rights, prepared by the Division of Human Rights, p. 2.

127Doc. E/CN.4/21, *op. cit.*, note 126, p. 49.

128Doc. E/CN.4/82/ADD.8, 6 May 1948, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, p. 2

peace and justice in the world” and that “Member of the United Nations have declared their purpose to promote and encourage respect for human rights and fundamental freedoms”¹²⁹.

The first proposal tells the reader that 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 world¹³⁰.

Lebanon endorsed the US inclusion of the concepts of peace, freedom and justice in the first recital of the Preamble and also supported the French proposals about the contempt for human rights and the purposes of the Charter in the field of cooperation and human rights. However, Lebanon proposed to re-draft the Preamble in the following terms:

“Whereas recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of peace, freedom and justice in the world, and

Whereas ignorance and contempt for human rights have before and during the last world war resulted in barbarous acts which outraged the conscience of mankind, and

Whereas the opening lines of the Charter reaffirm faith in fundamental rights, in the dignity and worth of the human person and in the equal rights of men and women, and

Whereas it is a purpose of the United Nations to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all, and

Whereas this purpose can be attained only on the basis of a common understanding of the nature of these rights and freedoms”¹³¹

In addition, other Member States and stakeholders further elaborated the draft Preamble of the Declaration proposing a new wording or even concepts. In particular, the **Union of Soviet Socialist Republics** (i.e. the non-discrimination clause¹³² and principle of friendly relations among the nations¹³³), **United Kingdom** (i.e. principles of international co-operation¹³⁴ and

129Doc. E/CN.4/119, 10 June 1948, Proposed Alternative For the Preamble of the Draft International Declaration on Human Rights, United States of America, p. 1

130MORSINK, J., *op.cit.*, note 121, p. 313

131Doc. E/CN.4/132, 14 June 1948, Suggested Preamble For the Draft International Declaration on Human Rights, Lebanon, p. 1

132“ In accordance with the principle of respect for human rights and fundamental freedoms for all without distinction of race, sex, language and religion, and for the dignity and worth of the human person, proclaimed by the Charter of the United Nations” in Doc. E/CN.4/139, 15 June 1948, Draft Preamble to the Draft International Declaration on Human Rights, p. 1

133“With the aim of guaranteeing the observance for all the said rights and freedoms, and of promoting the common progress and the improvement of the living conditions of the people and the development of friendly relations among the nations” in Doc. E/CN.4/139, 15 June 1948, Draft Preamble to the Draft International Declaration on Human Rights, p. 1

134“ Whereas it is a purpose of the United Nations to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all” in Doc. E/CN.4/124, 10 June 1948, Draft Preamble to the International Declaration on Human Rights, p. 1

common understanding¹³⁵) and the **American Federation of Labor** (i.e. happiness¹³⁶, co-operation and human rights¹³⁷ and proclamation of the four freedoms¹³⁸) made a positive contribution to the drafting process of the Preamble.

After considering all comments and suggestions, the CHR proposed the following draft Preamble for its final adoption¹³⁹:

“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,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement

135“And whereas this purpose can be attained only on the basis of a common understanding of the nature of these rights and freedoms” in Doc. E/CN.4/124, 10 June 1948, Draft Preamble to the International Declaration on Human Rights, p. 1

136“Whereas indifference toward the happiness and the welfare of the individual in any part of the world makes possible the spreading of suffering and of conflict between peoples” in Doc. E/CN.4/129, 11 June 1948, Suggestions For a Preamble to the Draft International Declaration on Human Rights, p. 1

137“Whereas it is obvious that international co-operation can be effective for the peace of the world only when based on the respect for the human person” in Doc. E/CN.4/129, 11 June 1948, Suggestions For a Preamble to the Draft International Declaration on Human Rights, p. 1

138“ Whereas it is the purpose of the United Nations to assist the people of the world in obtaining freedom from fear, freedom from want, freedom of thought and religion and freedom of speech and of the press” in Doc. E/CN.4/129, 11 June 1948, Suggestions For a Preamble to the Draft International Declaration on Human Rights, p. 1

139Doc. E/CN.4/138, 15 June 1948, Preamble [of the Draft International Declaration on Human Rights] / the Committee on the Preamble, Composed of the Officers of the Commission on Human Rights, p. 1

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.

On 10 December 1948, the first recital of the preamble was adopted, with 2 abstentions. On the other hand, the second, third, fourth, fifth, sixth and seventh recitals of the preamble were adopted unanimously¹⁴⁰.

2.2.4. Its impact in the field of peace and human rights

On 9 December 1948, the Chairman Mrs. **Roosevelt** stated that “the declaration was inspired by a sincere desire for peace. The Declaration was based on the conviction that man must have freedom in order to develop his personality to the full, and have his dignity respected”¹⁴¹.

After, Mr. **Cassin** (France) stated that the declaration was the most vigorous and the most urgently needed of humanity’s protests against oppression. The last war had taken on the character of a crusade for human rights...The Declaration was a development of the Charter which had brought human rights within the scope of positive international law.... It was only a potential instrument... and it must pave the way for the covenant, to which States would consign their undertakings in order to make them legally binding”¹⁴².

General **Romulo** (Philippines) added that “the declaration’s greatest interest lay in the fact that it would prevent the recurrence of the recent atrocities by ensuring human rights the protection of the law... The declaration, it should be borne in mind, constituted the first step towards a universal bill of human rights. The covenant would constitute the next step; then there would be measures of implementation which would reinforce the declaration”¹⁴³.

The idea of promulgating a Covenant was also shared by Mr. **Van Roijen** (the Netherlands): “... the adoption of the declaration placed a moral obligation on the different countries to find ways and means of giving effect to the rights proclaimed therein, and more especially to draft without delay a covenant on human rights and the necessary measures of implementation”¹⁴⁴.

Afterwards, Mr. **Carton de Wiart** (Belgium) pointed out that “In certain circles, it had been said that the declaration of human rights was a purely academic document. That statement was erroneous, for the declaration not only had an unprecedented moral value; it had also the beginnings of a legal value. The man in the street who appealed with the authority of the unanimous decision of the peoples and Governments of the United Nations”¹⁴⁵.

140Doc. A/PV.183, 10 December 1948, 183rd Plenary Meeting, held on Friday, 10 December 1948, p. 932

141Doc. A/PV.180, 9 December 1948, 180th Plenary Meeting, held on Thursday, 9 December 1948, p. 863

142Doc. A/PV.180, *op. cit.*, note 141, p. 864-867

143Doc. A/PV.180, *op. cit.*, note 141, p. 867-868

144Doc. A/PV.180, *op. cit.*, note 141, p. 873

145Doc. A/PV.181, 10 December 1948, 181st Plenary Meeting, held on Friday, 10 December 1948, p. 880

Mr. **Campos Ortiz** (Mexico) said that “his delegation considered that the universal declaration of human rights was a truly fundamental document. Although it was not a legal document with binding force, that declaration would serve as the basis for the realization of one of the highest aims of the United Nations, that of developing and encouraging universal respect for human rights... It would mark a step towards the establishment of a lasting peace”¹⁴⁶.

In regards to the linkage between the Charter and the Declaration, Mr. **Ugon** (Uruguay) stated that “declaration was a natural complement of the Charter, and thus its enforcement and respect for its provisions would become one of the obligations of Member States”¹⁴⁷.

Afterwards, Mr. **Aikman** (New Zealand) pointed out that “the Preamble of the Charter had established a strong bond between peace and justice and the rights of the human being... It was true that the universal declaration of human rights, as a statement of principles, had moral force only. It imposed no legal obligations. It was for that reason that the New Zealand delegation had insisted on the draft resolution according to which the CHR should continue to give priority to the preparation of a covenant on human rights and measures of implementation”¹⁴⁸.

As to women’s rights and peace, Mrs. **Begtrup** (Denmark) indicated that “each time the declaration mentioned the word everyone, it should be remembered that it alluded to the rights and responsibilities of women as well as of men, in the work of peace”¹⁴⁹.

In turn, Mrs. **Menon** (India) expressed “the hope that the declaration paves the way to a new era of international solidarity, because the basis of rights was neither the State nor the individual, but the social human being, participating in social life, and striving for national and international co-operation”¹⁵⁰.

Despite the wide support that received the Declaration, other Member States (i.e. socialists) were very skeptical and reluctant with the current text proposed to the delegations because of its lack of implementation, different philosophical conceptions about law, the respect of sovereign rights in accordance with the Charter and weak emphasis on the economic and social rights.

Mr. **Katz-Suchy** (Poland) stated that “it was not enough to state rights; their observance had to be ensured. Society had to stand behind those freedoms it had to establish and guarantee them, and to make a reality of a declaration which, without its help, would remain a dead letter”¹⁵¹.

Afterwards, Mr. **Andrews** (Union of South Africa) also said that “if the declaration was not intended to entail any obligation, it would be lacking in all practical value. The adoption of the declaration would entail certain legal obligations for the Governments subscribing to it...”¹⁵².

In turn, Mr. **Radovanovic** (Yugoslavia) pointed out that “the text before the Assembly was based on individualistic concepts which considered man as an isolated individual having rights

146Doc. A/PV.180, *op. cit.*, note 141, p. 885-886

147Doc. A/PV.180, *op. cit.*, note 141, p. 887

148Doc. A/PV.180, *op. cit.*, note 141, p. 887-888

149Doc. A/PV.182, 10 December 1948, 182nd Plenary Meeting, held on Friday, 10 December 1948, p. 893

150Doc. A/PV.180, *op. cit.*, note 141, p. 895

151Doc. A/PV.180, *op. cit.*, note 141, p. 907

152Doc. A/PV.180, *op. cit.*, note 141, p. 911

only as an individual, independently of the social conditions in which he was living and of all forces which acted upon his social status”¹⁵³.

Mr. **Vyshinsky** (URSS) stated that “the URSS delegation had pointed out that a number of articles completely ignored the sovereign rights of democratic Governments, moreover, that the draft contained provisions directly contradicting those of the Charter, which prohibited interference in the internal affairs of States”¹⁵⁴.

On the other hand, Mr. **Carrera Andrade** (Ecuador) stated that “from time immemorial, man had sought an international standard which would make peace and the universal concept of human rights a reality. ... The United Nations should strive for a new democratic internationalism which would have as its objective not war or conflicts, but the establishment of a lasting peace....The document could be considered as a further step on the road to peace”¹⁵⁵.

Mr. **Katz-Sughy** (Poland) requested that the draft universal declaration of human rights be put to the vote article by article.

The President stated that he would then put to the vote by roll-call the draft universal declaration of human rights as a whole. A vote was taken by roll-call as follows: 48 in favour¹⁵⁶ and 8 abstentions¹⁵⁷. Therefore, the draft Universal Declaration of Human Rights was approved.

After the vote, Mr. **Evatt** (Australia), President, said that “the adoption of that very important Declaration by a big majority without any direct opposition was a remarkable achievement. As had been pointed out, however, the Declaration only marked a first step since it was not a convention by which States would be bound to carry out and give effect to the fundamental human rights; nor would it provide for enforcement; yet it was a step forward in a great evolutionary process. It was the first occasion on which the organized community of nations had made a declaration of human rights and fundamental freedoms”¹⁵⁸.

As indicated by Mr. **Morsink**, “while the drafters surely thought that proclaiming this Declaration would serve the cause of the world peace, they did not think of human rights they proclaimed as only or merely a means to that end. Regardless of the consequence for the world peace, these rights have an independent grounding in the members of the human family to whom they belong and who possess them as birthrights”¹⁵⁹.

153Doc. A/PV.183, 10 December 1948, 183rd Plenary Meeting, held on Friday, 10 December 1948, p. 914

154Doc. A/PV.180, *op. cit.*, note 141, p. 923

155Doc. A/PV.180, *op. cit.*, note 141, p. 918-920

156Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam, Sweden, Syria, Turkey, United Kingdom, United States of America, Uruguay, Venezuela, Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil.

157Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, Saudi Arabia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, Yugoslavia

158Doc. A/PV.183, 10 December 1948, 183rd Plenary Meeting, held on Friday, 10 December 1948, p. 934

159MORSINK, J., *op.cit.*, note 121, p. 320

2.3. Other human rights instruments

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”¹⁶⁰.

The “Universal Bill of Rights” was completed with the adoption of the two Covenants of 1966, the ICESCR and the ICCPR. As of 2013, they have been ratified by 160 and 167 States, respectively¹⁶¹.

Both Covenants textually adopted in their respective Preambles the first recital contained in the Preamble of the Universal Declaration of Human Rights. In addition, it expressly recognized the linkage between the UN Charter and the concept of peace and human rights understood in the line of the contributions received during the drafting process of the Charter and Declaration:

“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”

Additionally, it should be recalled that the *International Convention on the Elimination of All Forms of Racial Discrimination*¹⁶² stated in its preamble that discrimination between human beings on the grounds of race, colour or ethnic origin was an obstacle to friendly and peaceful relations among nations and was capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State.

Furthermore, the *Convention on the Elimination of All Forms of Discrimination against Women*¹⁶³ provided that the full and complete development of a country, the welfare of the world and the cause of peace required the maximum participation of women on equal terms with men in all fields.

Finally, the *Convention on the Rights of Persons with Disabilities*¹⁶⁴ also reaffirmed the crucial role that human rights in general played in creating fair and equal societies founded upon freedom, justice, development and peace.

160EIDE, A., *op.cit.*, note 85, p. 597-604

161See at <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

162Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969

163Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981

164 Res. UNGA A/RES/61/106 of 24 January 2007

3. The regulation of peace and human rights in the regional human rights instruments and national Constitutions

The principles codified in Art. 2 of the Charter¹⁶⁵ 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 matters¹⁶⁶.

The seven principles of international law recognised by the UN Charter 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...”¹⁶⁷.

The relationship between the full respect of principles enshrined in Art. 2 of the UN 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”¹⁶⁸.

165In 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.

166Art. 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.
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”

167Doc. 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

168Full text appears in the annex to General Assembly resolution 375 (IV) of 6 December 1949.

Additionally, the promotion of human rights¹⁶⁹ and peace¹⁷⁰ 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 community¹⁷¹. It follows that all countries have included this perspective in both national constitutions and regional instruments.

3.1. Africa

In traditional African societies peace is not an abstract poetic concept, but rather a down-to-earth and practical concept. Peace is conceived not only in relation to conflict and war, but also as a purpose or objective to be progressively realized in connection to freedom, justice, equality, dignity, security and stability¹⁷². In addition, it is also a moral value since good conduct is required of human beings if the order, harmony and equilibrium are to be maintained.

The African Union adopted the *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* in Durban (South Africa)¹⁷³ by which it created the *Peace and Security Council* in order to enforce union decisions. It is patterned somewhat after the United Nations Security Council. Members are elected by the Assembly of the African Union so as to reflect regional balance within Africa, as well as a variety of other criteria, including capacity to contribute militarily and financially to the union, political will to do so, and effective diplomatic presence at Addis Ababa.

As indicated in its Protocol¹⁷⁴, the *Peace and Security Council* shall be guided by the principles enshrined in the Constitutive Act, the Charter of the United Nations and the Universal Declaration of Human Rights. In particular, it will be guided by the following principles: peaceful settlement of disputes and conflicts; early responses to contain crisis situations so as to prevent them from developing into full-blown conflicts; respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law; the interdependence between socio-economic development and the security

169Art. 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”.

170Art. 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”

171FASSBENDER, *The UN Charter as Constitution of the International Community*, Leiden/Boston: Martinus Nijhoff Publishers/Koninklijke Brill NV, 2009

172On 10 June 1998, the African Union adopted the **Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights** in Ouagadougou (Burkina Faso). Preamble, par. 2: “Considering that the Charter of the Organization of African Unity recognizes that freedom, equality, justice, peace and dignity are essential objectives for the achievement of the legitimate aspirations of the African Peoples”.

On 2 March 2001, the African Union adopted the **Treaty Establishing the African Economic Community Relating to the Pan-African Parliament** in Sirte (Libya). Art. 3.5: “The objectives of the Pan-African Parliament shall be to ...promote peace, security and stability”.

173It was adopted on 10 July 2002

174Art. 4 of the **Protocol Relating to the Establishment of the Peace and Security Council of the African Union**

of peoples and States; respect for the sovereignty and territorial integrity of Member States; non interference by any Member State into the internal affairs of another; sovereign equality and interdependence of Member States; inalienable right to independent existence and the respect of borders inherited on achievement of independence.

As to the principle of prohibition of intervention in international affairs of any State, the *Protocol on Amendments to the Constitutive Act of the African Union*¹⁷⁵ recognized¹⁷⁶ the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity, as well as a serious threat to legitimate order to restore peace and stability to the Member States of the Union upon the recommendation of the Peace and Security Council.

On the other hand, the principle of prohibition of the threat or use of force against the territorial integrity or political independence of any State was elaborated in the *Non-Aggression and Common Defense Pact*¹⁷⁷. It declared that the main principles and objectives¹⁷⁸ of the treaty are the following: the promotion of cooperation among the Member States in the areas of non-aggression and common defence; the peaceful co-existence; the prevention of conflicts of inter-State or intra-State nature, and the obligation to solve the disputes by peaceful means. In addition, it stated that States Parties solve any differences by peaceful means, in order to avoid endangering peace and security and to refrain from the use of force or threat to use force in their relations with each other and in any manner whatsoever incompatible with the UN Charter¹⁷⁹. Finally, article 15 stated that States Parties involved in any dispute shall first seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or resort to regional and continental mechanisms or arrangements, or other peaceful means.

The *Charter of the Organisation of the African Union*¹⁸⁰ affirmed its adherence to the principle of the peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration¹⁸¹ and also decided to establish a Commission of Mediation, Conciliation and Arbitration¹⁸². This important principle enshrined in the Charter was further elaborated in the context of the control of trans-boundary movement and management of hazardous wastes¹⁸³, economic development¹⁸⁴ and the African Energy Commission¹⁸⁵ as a means to enforce the obligation to

175It was adopted on 11 July 2003

176Art. 4.h

177It was adopted by the African Union in Abuja (Nigeria) on 31 January 2005

178Art. 2

179Art. 3

180On 25 May 1963, the African Union adopted the **Charter of the Organisation of the African Union** in Addis Ababa (Ethiopia)

181Art. 3.4 of the Charter: "...peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration"

182Art. 19 of the Charter: "Member States pledge to settle all disputes among themselves by peaceful means and, to this end decide to establish a Commission of Mediation, Conciliation and Arbitration, the composition of which and conditions of service shall be defined by a separate Protocol to be approved by the Assembly of Heads of State and Government. Said Protocol shall be regarded as forming an integral part of the present Charter".

183On 30 January 1991, the African Union adopted the **Bamako Convention on the Ban of the Import into Africa and the Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa** in Bamako (Mali). Art. 20.1: "In case of dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any Protocol thereto, the Parties shall seek a settlement of the dispute through negotiations or any other peaceful means of their own choice".

184On 3 June 1991, the African Union adopted the **Treaty Establishing the African Economic Community** in Abuja (Nigeria). Art. 3.f: "Peaceful settlement of disputes among Member States, active co-operation between neighbouring countries and promotion of a peaceful environment as a pre-requisite for economic development".

settle all disputes happening in Africa in a peaceful manner. In addition, it has become an important element of the non-aggression principle¹⁸⁶.

Finally, some purposes contained in the UN Charter, such as peace, human rights and development, were expressly included in different African legal instruments. In particular, these were elaborated in the context of the prevention and combat against corruption¹⁸⁷ and terrorism¹⁸⁸, the protection of cultural rights in times of war¹⁸⁹, the cooperation in the elimination of nuclear weapons¹⁹⁰ and the elimination of mercenarism¹⁹¹.

3.1.1. African constitutions

3.1.1.1 African French-speaking States

The main purposes and principles recognised in international law which currently inspire the whole legal system at the national level were also included in the African French-speaking Constitutions. In particular, the aspiration to achieve a more peaceful society based on the concept of justice, freedom, equality, international cooperation, liberty, solidarity and

185On 11 July 2001, the African Union adopted the **Convention of the African Energy Commission** in Lusaka (Zambia). Art. 3.f: “For the purpose of this Convention, the Member States solemnly affirm and declare their adherence to the following principles peaceful settlement of disputes”.

186**Non-Aggression and Common Defense Pact**, art. 15: “State Parties involved in any dispute shall first seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or resort to regional and continental mechanisms or arrangements, or other peaceful means”.

187On 11 July 2003, the African Union adopted in Maputo (Mozambique) **the African Union Convention on Preventing and Combating Corruption** which recalled in its Preamble that the Constitutive Act of the African Union recognized that freedom, equality, justice, peace and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.

188On 8 July 2004, the African Union adopted in Addis Ababa (Ethiopia) the **Protocol to the AU Convention on the Prevention and Combating of Terrorism** by which it re-stated in the Preamble the conviction that terrorism constitutes a serious violation of human rights and a threat to peace, security, development, and democracy. Moreover, article 4 (“Mechanism for implementation”) stated that the Peace and Security Council shall be responsible for harmonizing and coordinating Continental efforts in the prevention and combating of terrorism.

189On 5 July 1976, the African Union adopted the **Cultural Charter for Africa** in Port Louis, (Mauritius) by which the African governments should have to adopt national laws and inter-African regulations governing the protection of cultural property in times of peace and in the event of war (art. 27).

190On 4 July 1995, the African Union adopted the **African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty)** adopted in Addis Ababa (Ethiopia) by which it recalled in its Preamble that the African nuclear-weapon-free zone will constitute an important step towards strengthening the non-proliferation regime, promoting cooperation in the peaceful uses of nuclear energy, promoting general and complete disarmament and enhancing regional and international peace and security; it reaffirmed the importance of the Treaty on the Non-Proliferation of Nuclear Weapons and the need for the implementation of all its provisions and was determined to promote regional cooperation for the development and practical application of nuclear energy for peaceful purposes in the interest of sustainable social and economic development of the Africa continent.

191On 3 July 1977, the African Union signed the **Convention for the Elimination of Mercenaries from Africa** in Libreville (Gabon) by which any person, natural or juridical who commits the crime of mercenarism as defined in paragraph 1 of this article commits an offence considered as a crime against peace and security in Africa and shall be punished as such (art. 3.1).

friendship has been elaborated in the Preamble of some Constitutions¹⁹². In addition, the protection of human rights as a basis of peace, fraternity, unity and justice in the world have been also recognized in other Constitutions¹⁹³. Furthermore, some other domestic constitutions have recognised that the preservation of peace, national cohesion, social justice and democracy is a duty of everyone¹⁹⁴.

Moreover, the African French-speaking States have progressively elaborated in its constitutional system the content and scope of peace. As a main legal standards of peace, the African Constitutions have recognized the education on peace, rights of peoples to self-determination, prohibition of terrorism, right to resistance, abolition of all forms of domination, disarmament, peaceful solution of conflicts, prohibition of propaganda of war, respect for sovereignty, the economic and social development of peoples, national independence, non-interference into internal affairs, the realization of mutual benefits and peaceful coexistence between States¹⁹⁵.

192 **Benin** - "...Affirm our will to co-operate in peace and friendship with all peoples who share our ideals of liberty, of justice, of human solidarity..."; **Madagascar** - "... convinced that the growth of their personality and identity is basic to their harmonious development, the essential conditions of which are recognized to be ...dedication to peace and fraternity"; **Mali** - "reaffirm their attachment to the formation of the African Union, to the promotion of peace, to regional and international cooperation, to peaceful resolutions..."; **Mauritania** - "... towards the realization of the unity of the Grand Maghreb, the nation Arab and African and consolidation of peace in the world"; **Morocco** - "...its attachment to the Rights of Man such as they are universally recognized, as well as its will to continue to work to preserve peace and security in the world..."; **Niger** - "... Express our willingness to cooperate in friendship, equality and mutual respect with all peace-loving peoples, justice and freedom..." and **Togo** "affirm our commitment to work together in peace, friendship and solidarity with the peoples of the world in love with the democratic ideal, based on the principles of equality, mutual respect and sovereignty..."

193 **Central African Republic** - "... recognizes the existence of human rights as the basis of every community in peace and justice in the world - (art. 1); **Senegal** - ... recognise the existence of sacred and inalienable human rights as the basis of any human community, of peace and of justice in Senegal and the world..." (art. 7) and **Seychelles** - "... inalienable rights of all members of the human family as the foundation for freedom, justice, welfare, fraternity, peace and unity ..." (Preamble).

194 **Benin** - "Each ... has the duty to respect and to consider his own kin without any discrimination and to keep relations with others that shall permit the... dialogue and reciprocal tolerance with a view to peace and to national cohesion" (art. 36); **Burundi** - "Everyone has a duty to contribute to the preservation of peace, democracy and social justice" (art. 73); **Equatorial Guinea** - "all ... shall have the obligation to live peaceful, respect the rights and obligations and contribute to the building of a just and fraternal society" (art. 17) and **Togo** - "Citizen has the obligation to preserve the national interest, social order, peace and national cohesion" (art. 48).

195 **Cameroon** - 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" (art. 26.2) and "... their territories shall not be used as bases for subversive or terrorist activities against the people..." (art. 23)-; **Cape Verde** - "... shall be guided ... by the principles of national independence, ...the nonintervention in the internal affairs, ... the cooperation with all other peoples and peaceful coexistence" (art. 10.1), " ... shall uphold the rights of peoples to self-determination and independence and support the struggle of peoples against colonialism or any other form of domination or political or military oppression" (10.2), "... shall advocate the abolition of all forms of domination, oppression and aggression, disarmament and the peaceful solution of conflicts ... (art. 10.3)" and "...shall refuse the installation of military bases in its territory ... " (art. 10.4); **Chad** - "... solemnly proclaim our right and duty to resist and disobey ... (Preamble) and "... the propaganda with ethnic, tribalist, regionalist or confessional character tending to undermine national unity or the secular state is prohibited "(Article 5)-; **Cote d'Ivoire** - "... all propaganda aimed at or having the effect of making one social group superior to another or encouraging racial or religious hatred, is forbidden" (art. 10); **Djibouti** - "... shall permit the participation of the Republic in regional and international organizations, in respect for sovereignty, with a view to the building of peace and international justice and the economic, cultural and social development of peoples" (art. 9); **Guinea Bissau** - "... shall establish and develop relations with other nations on the basis of international right and on the

In addition, some African Constitutions have strongly condemned political regime based on dictatorship and groups whose aim is to overthrow through violent means an established regime, support the national, racial or religious hatred and encourage discrimination, hostility or violence against individuals and peoples¹⁹⁶. Other African Constitutions have also recognized the need to promote the value of peace, reconciliation, dignity, unity, prosperity and human rights after an armed conflict¹⁹⁷ and the prohibition of war through an anti-war clause¹⁹⁸.

3.1.1.2. African English-speaking States

Like the African French-speaking States, the *States of English tradition* have also included the principle of peace based on freedom, stability, solidarity, dignity, justice, good government and human rights in the Preamble of their Constitutions¹⁹⁹. Moreover, they recognised that the

principles of national independence, equality among states, non-interference into internal affairs, and the realization of mutual benefits, peaceful coexistence, and non-alignment" (art. 18.1) and "... shall defend the right of the people to self-determination and independence and support the fight of the people against colonialism, imperialism, racism, and all other forms of oppression and exploitation; recognize peaceful solutions to international conflicts; and participate in efforts to assure peace and justice in relationships among states and the establishment of a new international economic order" (art. 18.2); **Niger** - "Audiovisual, written, electronic and printing communication and its distribution is free, subjected to respect for public order, freedom and dignity of citizens" (art. 158) and **Algeria** - "... It puts forth its efforts to settle international disputes through peaceful means" (art. 26), "... for the right of self-determination and against any racial discrimination" (art. 27) and "... reinforcement of international cooperation and to the development of friendly relations among States, on equal basis, mutual interest and non interference in the internal affairs..." (art. 28).

196**Benin** - "... opposition to any political regime founded on arbitrariness, dictatorship, injustice, corruption, misappropriation of public funds, regionalism, nepotism, confiscation of power, and personal power"; **Central African Republic** - "strongly opposed to the seizure of power by force and all forms of dictatorship and oppression, as well as any act of division and maintenance of hatred" and **Niger** - "absolute opposition to any political regime based on dictatorship, arbitrariness, impunity, injustice, corruption, extortion, regionalism, ethnocentrism, nepotism, personal power and the cult of personality".

197**Burundi** - "reaffirming our faith in the ideals of peace, reconciliation and national unity in accordance with the Arusha Agreement for Peace and Reconciliation..." and **Chad** - "the institutional and political crisis in Chad, for over three decades has not provided the determination of the Chadian people to achieve the building of a nation, dignity, peace and prosperity....".

198The Constitution of **Algeria** included the clause *anti-war* in its article 26, which states that "... does not resort to war in order to undermine the legitimate sovereignty and the freedom of other peoples....".

199**Eritrea** - "Aware that it is the sacred duty ... to build a strong and developed Eritrea on the bases of freedom, unity, peace, stability and security ..."; **Ghana** - "in a spirit of friendship and peace with all peoples of the world" - ; **Kenya** - "proud of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation"-; **Liberia** - "exercising our natural, inherent and inalienable rights to establish a framework of government for the purpose of promoting unity, liberty, peace, stability, equality, justice and human rights under the rule of law ..."; **Namibia** - "whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace"; **Nigeria** - "we... having firmly and solemnly resolved, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation..."; **Somaliland** - "recognizing that lasting stability and peace can be achieved through a synergy between the economic system and the aspirations of the nation" and **Swaziland** - "whereas as a Nation we desire to march forward progressively under our own constitution guaranteeing peace, order and good government, and the happiness and welfare of all our people".

concept of peace as a supreme value of the constitutional law should be implemented at the international level through the promotion of peaceful co-existence among nations, international co-operation, enhancement of independence and sovereignty, the strengthening of settlement of disputes by peaceful means and the fully respect of international law²⁰⁰.

In addition, some Constitutions of the African English-speaking States have also progressively elaborated in its constitutional system the content and scope of peace. As to the main legal components, the African Constitutions have recognized the rights of peoples to self-determination, the traditional settlement of disputes, right to development, prohibition of terrorism, multiculturalism, abolition of all forms of domination, peaceful solution of conflicts, prohibition of propaganda of war, respect for sovereignty, non-interference into internal affairs and the peaceful co-existence between States²⁰¹. Finally, other African Constitutions have

200**Eritrea** - "... is based on respect for the independence and sovereignty of countries and on promoting the interest of regional and international peace, cooperation, harmony and development..." (art. 13); **Gambia** - "... shall be a democratic state dedicated to freedom, peace, progress, prosperity and justice" (art. 214.1); **Ghana** - "...shall ... seek the establishment of a just and equitable international economic and social order and promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means" (art. 40); **Namibia** - "... shall endeavor to ensure that in its international relations it adopts and maintains a policy of non-alignment; promotes international co-operation, peace and security; creates and maintains just and mutually beneficial relations among nations;... encourages the settlement of international disputes by peaceful means..." (art. 96); **Nigeria** - "... objectives shall be...the promotion of international co-operation for the consolidation of universal peace and mutual respect among all nations and elimination of discrimination in all its manifestations..." (art. 19); **Sierra Leone** - "... the security, peace and welfare of the people ... shall be the primary purpose and responsibility of Government" (art. 5.2) and "... objectives ... shall be ...the promotion of international co-operation for the consolidation of international peace and security and mutual respect among all nations; ... and respect for international law and treaty obligations, as well as the seeking of settlement of international disputes by negotiation, conciliation, arbitration or adjudication" (art. 10); **Somaliland** - "the political system ... shall be based on peace, co-operation, democracy and plurality of political parties (art. 9.1); **South Sudan** - "...all levels of government shall promote and consolidate peace and create a secure and stable political environment for socio-economic development; initiate a comprehensive process of national reconciliation and healing that shall promote national harmony, unity and peaceful co-existence among the people of South Sudan; inculcate in the people a culture of peace, unity, cooperation, understanding, tolerance and respect for customs, traditions and beliefs of each other..." (art. 36) and "...foreign policy... shall serve ... to achieving ... the promotion of international cooperation...for the purposes of consolidating universal peace and security, respect for international law, treaty obligations and fostering a just world economic order;... the promotion of dialogue among civilizations and establishment of international order based on justice and common human destiny; the respect for international law and treaty obligations, as well as the seeking of the peaceful settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication..." (art. 53). In addition, it should be noted that both **Sudan** (art. 61), **Swaziland** (art. 25) and **Uganda** (art. 28) have incorporated the same article in their respective Constitutions, which states that - "... shall actively participate in international and regional organizations that stand for peace and for the well-being and progress of humanity.... ".

201**Eritrea** - "the State shall encourage out-of-court settlement of disputes through conciliation, mediation or arbitration" (art. 8) -; **Kenya** - "the right to freedom of expression does not extend to propaganda for war; incitement to violence; hate speech; or advocacy of hatred" (art. 33.2) -; Malawi - "all persons and peoples have a right to development and therefore to the enjoyment of economic, social, cultural and political development..." (art. 30.1) -; **Somaliland** - "... accepts the principles of the self-determination of the nations of the world;... political disputes which arise shall be settled through dialogue and peaceful means;... shall oppose terrorism (and similar acts), regardless of the motives for such acts" (art. 10); South Sudan - "... it is a multi-ethnic, multi-cultural, multi-lingual, multi-religious and multi-racial entity where such diversities peacefully co-exist" (art. 1.4) - and **Swaziland** - "... promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means..." (art. 61) and "observe and promote the policy of non-interference in the internal affairs of other nations (art. 236) -.

strongly condemned the oppressive regimes and claimed the enhancement of reconciliation among people²⁰².

3.2. Europe and others Western States

In Europe, traumatized and bankrupt due to the effects of the Second World War, politicians and intellectuals contributed to affirm that a similar tragedy shall not be repeated and that in the future the construction of peace should be the essential aim of the European States (Winston Churchill, University of Zurich, 19 September 1946).

The valuable legal-political precedent of the UN Charter inspired the **Statute of the Council of Europe** adopted in The Hague Congress held on 7 May 1948.

On 4 November 1950, the Council of Europe adopted the **European Convention on Human Rights**. In particular, paragraph 4 of its Preamble established a solid link among peace, justice and respect of human rights.

On 18 April 1951, Germany, Belgium, France, Italy, Luxembourg and the Netherlands signed in Paris the **Treaty establishing the European Coal and Steel Community** in order to create interdependence in coal and steel so that one country could no longer mobilise its armed forces without others knowing. As indicated by its Preamble, the signatories considered that the world peace can be safeguarded only by creative efforts commensurate with the dangers that threaten it; they affirmed that the contribution which an organised and vital Europe can make to civilisation is indispensable for the maintenance of peaceful relations; they recognised that Europe can be built only through practical achievements which will first of all create real solidarity and through the establishment of common bases for economic development; and they reaffirmed their commitment to help, by expanding their basic production, to raise the standard of living and further the works of peace.

On 25 March 1957, Belgium, France, Italy, Luxembourg and the Netherlands signed in Rome the **Treaty establishing the European Atomic Energy Community** by which affirmed in its Preamble that nuclear energy constitutes the essential resource for ensuring the expansion and invigoration of production and for effecting progress in peaceful achievement and committed to associate other countries with them in their work and of co-operating with international organisations concerned with the peaceful development of atomic energy. In accordance with article 2 the Community shall "establish with other countries and with international organisations any contacts likely to promote progress in the peaceful uses of nuclear energy".

Also on 25 March 1957, Belgium, Germany, France, Italy, Luxembourg and The Netherlands signed in Rome the **Treaty establishing the European Economic Community** by which they resolved in its Preamble to strengthen the safeguards of peace and liberty by establishing this

202 **Namibia** - "the practice of racial discrimination and the practice and ideology of apartheid...shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable..." (art. 23); **Uganda** - "recognizing our struggles against the forces of tyranny, oppression and exploitation..." (Preamble) and **South Africa** - "... The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society..." (art. 251).

combination of resources, and called upon the other peoples of Europe who share their ideal to join in their efforts. In addition, article 224 states that member States shall consult one another for the purpose of enacting in common the necessary provisions to prevent the functioning of the Common Market from being affected by measures which a Member State may be called upon to take in case of serious internal disturbances affecting public order, in case of war or of serious international tension constituting a threat of war or in order to carry out undertakings into which it has entered for the purpose of maintaining peace and international security.

On 25 September 1989, the **Parliamentary Assembly of the Council of Europe** adopted recommendation 1112 (1989) by which it stressed that the future cooperation between East and West must be based on “consolidation of peace, trustworthiness, security and freedoms in Europe”²⁰³.

On 28 April 1995, at the occasion of the 50th anniversary of the end of the Second World War, the **Parliamentary Assembly of the Council of Europe** reaffirmed its engagement in the defence of human rights recognizing that the peoples of Europe must choose the way of peace, as the founders of the European Council did before, throughout dialogue, debate, respect of human rights and cooperation of citizens of the European Continent.²⁰⁴ The relationship between peace and human rights was reaffirmed when the PA “urges future generations to live in peace, in a spirit of respect of human rights and fundamental freedoms”²⁰⁵. Furthermore, PA resolution 614 (1974) stated that “security and peace can only last if they are based on the universal respect of sovereign equality, the political independence and territorial integrity of each State, and the right of its peoples to forge their own fate and the prohibition of the menace of an exterior intervention”²⁰⁶.

On 2 October 1997, Member States signed in Amsterdam the **Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts** to reform the EU institutions in preparation for the arrival of future member countries and to reach a more transparent decision-making process (increased use of the co-decision voting procedure). In accordance with its Preamble, Member States resolved to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article J.7, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world. Moreover, article J.1 states that the Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, among them, to preserve peace and strengthen international security, in accordance with the principles of the Charter of the United Nations, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders.

On 11 October 1997, Heads of State and Government of forty Member States of the Council of Europe adopted the **Final Declaration of the Strasbourg Summit** by which they pledged to promote understanding and cooperation among citizens of North and South through mutual

203 Recommendation 1112 (1989) on the cooperation East-West in the proximities of the 20th century (general politics of the European Council), adopted on 25 September 1989

204 Written declaration n° 238 on the 50th Anniversary of the 8 May 1945, Doc. 7302,

205 Motion submitted by Mr. Beix and others for a recommendation on the memory of the two World Wars, 1403-3/2/93-5-E, Doc. 6760, on 3 February 1993

206 Recommendation 614 (1970) on the relations East-West, adopted on 24 September 1970

respect and solidarity of the peoples of both shores²⁰⁷. In accordance with the Parliamentary Assembly, the North-South dialogue must focus on strengthening the relationship between peace and migration, environmental protection, promotion of democracy, human rights and rule of law²⁰⁸.

On 7 December 2000, the European Parliament, the Council of Ministers and the European Commission solemnly proclaimed the **Charter of Fundamental Rights of the European Union**. In accordance with its Preamble, the peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

On 18 December 2007, Member States signed the **Treaty of Lisbon amending the Treaty of the European Union and the Treaty establishing the European Community** by which it gave more power to the European Parliament, it changed the voting procedures in the Council, it recognized the citizens' initiative and it established a permanent President of the European Council, a new High Representative for Foreign Affairs and a new EU diplomatic service. In accordance with article 3, the Union's aim is to promote peace, its values and the well-being of its peoples and to contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the UN Charter.

3.2.1. Nordic States

The Nordic Council is a geo-political inter-parliamentary forum for co-operation among the Nordic States that was established after World War II with the support of **Denmark, Finland, Iceland, Norway** and **Sweden**. Since 1952 there exist a common labour market and free movement across borders without passports for the countries' citizens. Afterwards, in 1971 the Nordic Council of Ministers, an intergovernmental forum, was established to complement the Nordic Council and to promote peaceful cooperation among Member States.

The Nordic States have played a major role in peace diplomacy during the last century. Nordic mediators and envoys have helped to negotiate peace agreements and facilitate peace processes among States in conflict and/or internal conflicts. Moreover, since the Nordic countries developed a modern democracy, the concept of **public or social peace** based on a culture of conflict resolution and solidarity was gradually spread. In accordance with Nordic States, every society consists of groups of human persons varying by nature from each other's social or professional position, but all of them respect the "social contract".

The Nordic States approach to the value of peace has decisively influenced the drafting process of the Nordic States Constitutions. In particular, several constitutions recognise that the maintenance of social peace should be always implemented through the respect of rule of law, human rights and freedom²⁰⁹. In addition, other Nordic Constitutions stressed that peace, human rights and rule of law are key elements in the enhancement of cooperation among States²¹⁰.

207 Final Declaration of the Strasbourg Summit

208 See "The Centre North-South of the Council of Europe and its contribution to development and cooperation in the 21st Century", Committee on Economic and Development Affairs, Rapporteur: Mr. Frey (Switzerland), Doc. 9879, 16 July 2003, p. 26

209 **Norway** -"the Government is not entitled to employ military force against citizens of the State, except in accordance with the forms prescribed by law, unless any assembly disturbs the public peace..." (art. 99)-;

3.2.2. Russian-speaking States

With the end of the Cold War in 1991, the "Soviet Bloc" collapsed and several ex-Soviet Republics became independent states. Nevertheless, the sphere of influence of the Russian Federation has revolved around Eastern Europe (ex. Ukraine and Belarus), the Caucasus (ex. Azerbaijan, Armenia and Georgia) and Central Asia (ex. Kazajastan, Uzbekistan, Kirgizstan, Turkmenistan and Tajikistan). Since then, many Russian diplomats have strongly advocated for the "civilizational unity", which there have existed since centuries between Russia and the countries of the post-Soviet Commonwealth of Independent States (CIS), to justify its power of influence in these countries.

During many decades the foreign policy of the Soviet Union was aimed at ensuring international conditions favourable for building communism in the USSR, safeguarding the state interests of the Soviet Union, consolidating the positions of world socialism, supporting the struggle of peoples for national liberation and social progress, preventing wars of aggression, achieving universal and complete disarmament, and consistently implementing the principle of the peaceful coexistence of states with different social systems. Moreover, in accordance with its Constitution, "the USSR steadfastly pursues a Leninist policy of peace and stands for strengthening of the security of nations and broad international co-operation" (art. 28) and "it is the internationalist duty of citizens of the USSR to promote friendship and co-operation with peoples of other lands and help maintain and strengthen world peace (art. 69). Finally, it should be noted that the USSR granted the right of asylum to foreigners persecuted for defending the interests of the working people and the cause of peace (art. 38).

After the collapse of the Soviet Union, the concept of peace lost weight and importance in the new constitutional process closed in the Russian Federation in 1993. In particular, the value of peace ceased to be among the priorities of the Russian foreign policy and it was only included in the Constitution as a general principle. The Preamble states that "we, the multinational people of the Russian Federation, united by a common fate in our land, establishing human rights and freedoms, civil peace and accord, preserving the historically established unity of the state....".

Like the Russian Federation, other former Soviet Republics of Eastern Europe, the Caucasus and Central Asia stressed in their Preambles that the ideals of peace, freedom and equality should be promoted in the line of rule of law, civil peace and peaceful relations²¹¹. In addition,

Denmark - "... open-air meetings may be prohibited when it is feared that they may constitute a danger to the public peace" (art. 79)-; **Iceland** - "...no person may disturb its peace or violate its freedom..." (art. 36) and **Sweden** - "the Government may authorize the defence forces to use force in accordance with international law and custom to prevent a violation of Swedish soil in time of peace or during a war between foreign States" (art. 9.3).

²¹⁰**Finland** - "... participates in international co-operation for the protection of peace and human rights and for the development of society" (art. 1) - and **Norway** - "in order to safeguard international peace and security or to promote the international rule of law and cooperation between nations..."

²¹¹**Kazajastan** - "we ... united by a common historic fate ... considering ourselves a peace-loving and civil society, dedicated to the ideals of freedom, equality and concord..." -; **Uzbekistan** - "... setting forth the task of creating a humane and democratic rule of law, aiming to ensure civil peace and national accord ..."; **Kirgizistan** - "acting on behest of our ancestors to live in peace and accord, in harmony with nature, hereby adopt the present Constitution" -; **Turkmenistan** - "... guaranteeing the rights and freedoms of every citizen and striving to provide civic peace and national accord, in order to affirm the foundations of popular power and the rule of law..." and **Georgia** - "... to enhance the state independence and peaceful relations with other people, bearing in mind the centuries-old traditions of the Statehood..."

other constitutions also advocated in their Preambles for the relevance of the concept to live in peace²¹².

Furthermore, some other States have rejected the use of force and the limitation of war as a means to settle peacefully the international conflicts and protect the independence of States²¹³. In addition, the Constitutions of the Eastern European, Caucasus and central Asian States have been progressively elaborated the content and scope of peace in connection with the prohibition of propaganda of war, the need to strengthen the cooperation and good-neighborly relations between states, inviolability of frontiers, the principle of non-interference, the self-determination of peoples and the peaceful settlement of international disputes²¹⁴.

3.2.3. Eastern European States

The Union of Soviet Socialist Republics (USSR) was formally dissolved on 26 December 1991. Additionally, the Warsaw Pact was officially dissolved in Prague in 1991, after

212 **Azerbaijan** - "...to remain faithful to universal human values, to live in peace and freedom with all the nations of the world and co-operate with them for this purpose..." -

213 **Kazajastan** - "... renounce the first use of the military force" (art. 8); **Kirguizistan** - "the right to wage war shall not be recognized except in cases of aggression against Kyrgyzstan and other States bound by obligations of collective defense..." (art. 14.1); **Uzbekistan** - "... non-use of force or threat of its use..." (art. 17) and **Azerbaijan** - "... shall reject a war as a means of encroaching on other States' independence and settling international conflicts" (art. 9).

214 **Russian Federation** - " We, the multinational people of the **Russian Federation**, united by a common fate in our land, establishing human rights and freedoms, civil peace and accord... proceeding from the universally recognized principles of equality and self-determination of peoples..." (Preamble); **Kazajastan** - "...shall respect principles and norms of international law, pursue the policy of cooperation and good-neighborly relations between states, their equality and non-interference in each other's domestic affairs, peaceful settlement of international disputes..." (art. 8) and "propaganda of or agitation for the forcible change of the constitutional system ... undermining of state security, and advocating war... shall not be allowed" (art. 20.3) - ; **Uzbekistan** - "... shall have full rights in international relations. Its foreign policy shall be based on the principles of sovereign equality of the states.... inviolability of frontiers, peaceful settlement of disputes, non-interference in the internal affairs of other states, and other universally recognized norms of international law" (art. 17); **Kirguizistan** - "... has no goals of expansion, aggression or territorial claims to be resolved by military force. It rejects the militarization of state life and the subordination of the State and its activity to the purposes of waging a war..." (art. 14.1) and "... shall strive for universal and just peace, mutually beneficial cooperation and the resolution of global and regional problems by peaceful means" (art. 14.4); **Turkmenistan** - "we...based on our inalienable right to self-determination..." (Preamble); "...recognizes the primacy of generally recognized norms of international law, is fully ... and adheres in its domestic policies to the principles of peaceful coexistence, rejection of the use of force, and non-interference in the internal affairs of other governments" (art. 6) and "forbidden are the formation and activity of political parties and other social associations having as their goal violent change in the constitutional order...advocating war... or forming militaristic associations or political parties..." (art. 28); **Tayikistan** - "...the formation and operation of social associations which advocate racial, ethnic, social, or religious animosity or which incite violent overthrow of the constitutional system, as well as the organization of armed groups, are forbidden" (art. 8) and "... War propaganda is prohibited" (art. 11); **Azerbaijan** - "... propaganda inciting racial, ethnic or religious animosity or hostility shall be banned" (art. 47); Armenia - "...shall be conducted in accordance with the norms of international law, with the aim of establishing good neighborly and mutually beneficial relations with all states" (art. 9); **Ukraine** - "...is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial co-operation with members of the international community..." (art. 18) and "the establishment and activity of political parties and public associations are prohibited if their programme goals or actions are aimed at ... the propaganda of war and of violence..." (art. 37) and **Belarus** - "we ...founding ourselves on our inalienable right to self-determination..." (Preamble); "... shall proceed from the principles of the equality of states, the non use of force or the threat of force, the inviolability of frontiers, the peaceful settlement of disputes, non-interference in internal affairs of states...The Republic ... pledges itself to make its territory a neutral, nuclear-free state" (art. 18).

successive governments withdrew their support of the treaty. The dissolution of the world's first and largest Communist State also marked the end of the Cold War. Moreover, the breakup of the Socialist Federal Republic of Yugoslavia occurred as a result of a series of political upheavals and conflicts.

Significant peace movements have arisen in many Eastern European States during the early 1990s. What all peace movements have in common is their ability to express concerns for peace that differ from the views prevailing within their respective governments. Afterwards, the universal value of peace was incorporated in the national Constitutions of thirteen Eastern European States. In particular, the enhancement, strengthening and promotion of peace have strongly inspired the drafting constitutional process of some important countries²¹⁵.

Some States only refer to the right to life in their Constitutions (i.e. Czech Republic²¹⁶, Estonia²¹⁷, Latvia²¹⁸ and Poland²¹⁹). However, in accordance with the international human rights law, the right to life as recognized in Art. 6 ICCPR should be interpreted along with the General Comment 6 on the right to life adopted by the Human Rights Committee in 1982²²⁰.

In addition, the Constitution of Poland prohibits all type of totalitarianism and the use of violence to obtain power. Article 13 states that "political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of Nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power ... shall be prohibited".

Moreover, the rejection of violence of war, the human ideals of freedom, peace, humanism, equality, justice and tolerance and the enhancement of rule of law have strongly framed legal standards contained in the Preamble of some national Constitutions²²¹. In addition, other Constitutions have recognized that peace as a legal and binding principle of international law should be progressively developed, implemented and applied through new measures aimed at punishing crimes against peace, prohibiting non-aggression, strengthening the mutual collective security and protecting life and health of the people, public peace and order²²².

215 Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Lithuania, Macedonia, Moldova, Montenegro, Romania, Serbia, Slovakia and Slovenia

216 In accordance with art. 3.1 of the Charter of Fundamental Rights and Freedoms contained in the Constitution of the Czech Republic, "Everybody has the right to live...."

217 Art. 16: "Everyone has the right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life"

218 Art. 93: "The right to life of everyone shall be protected by law"

219 Art. 38: "The Republic of Poland shall ensure the legal protection of the life of every human being"

220 CCPR General Comment No. 6 on the right to life (art. 6) of 30 April 1982.

221 **Bosnia and Herzegovina** – «... rejecting the violence of war and wishing to contribute to peace promotion... »-; **Bulgaria** – «... declaring our loyalty to the universal human ideals of freedom, peace, humanism, equality, justice, and tolerance... »-; **Macedonia** –«...provision of peace and a common home for the Macedonian people... »-; **Montenegro** – «... the commitment of the citizens of Montenegro to live in a State in which the basic values are freedom, peace, tolerance, respect for human rights and liberties, multiculturalism, democracy and the rule of law »-; **Slovakia** – « we, the Slovak nation ... in the interest of lasting peaceful cooperation with other democratic States »- and **Republic of Moldova** –«... judging the rule of law, the civic peace, democracy, human dignity, the rights and freedoms of man, the free development of human personality, justice and political pluralism to be supreme political values»-.

222 **Albania** –«... for the maintenance of peace and national interests ... may take part in a system of security... » (art. 2.3); **Bulgaria** –«... there is no statute of limitations for the criminal prosecution and implementation of punishment for crimes committed against peace and humanity » (art. 32); **Croatia** – «... freedom, equal rights, national equality and equality of genders, love of peace, social justice, respect for human rights ... are the highest values of the constitutional order ... and the ground for interpretation of the Constitution » (art. 3); **Hungary** –«... will endeavor to cooperate with all peoples and countries of the world in the interest of establishing and preserving peace and security... » (art. P); **Lithuania** – « when a threat arises for the

3.2.4. English-speaking States

The legal basis of peace as a basic human right emanates, among other rights, from the human right to life of each individual person. Many scholars recognize either explicitly or implicitly that the right to life is the basis of peace. In particular, *John of Salisbury* recognized that a peaceful life is a necessity; and *Hiram M. Chittenden* stated that life is man's most sacred possession. Consequently, the promotion, strengthening and protection of the right to life and its connection with the enhancement of peace has been a driving principle in the drafting process of some English-speaking Constitutions²²³.

In accordance with some constitutions, peace is one of the most important topics at the international level. Therefore, countries are invited to adopt legal measures to strengthen peace over the earth²²⁴. Unlike the Australia, Ireland and New Zealand Constitutions, the universal value of peace has not been incorporated in other constitutions²²⁵. Nevertheless, they have declared in their Constitution that everyone is endowed with certain inalienable rights, and that among these are life or liberty²²⁶.

The concept of the right to life is central to debates on the issues of self-defense and war. As indicated by the Human Rights Committee in its general comment 6 on the right to life of 1982, "war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year...". Consequently, the HR Committee considered that "States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. 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".

In accordance with the *Charter of the Organization of the American States* signed by thirteen States (including *United States of America*) on 30 April 1948 in Bogotá (Colombia), the American States agreed to achieve an order of peace and justice (art. 1); it proclaimed as essential purposes to strengthen the peace and security of the continent (art. 2); it reaffirmed that social justice and social security are bases of lasting peace; and that the education of

constitutional system or social peace of the State, the Seimas may impose a state of emergency ... » (art. 144); **Montenegro** –« ...freedom to express religious beliefs may be restricted only if so required in order to protect life and health of the people, public peace and order ... » (art. 46); **Romania** –« ... fosters and develops peaceful relations with all States.. »- (art. 10); **Serbia** –« to the preserving of peace and welfare of all the citizens ... »- (art. 86); **Slovakia** –« ... may, with the aim of maintaining peace, security and democratic order, under the terms laid down by an international treaty, join an organization of mutual collective security »- (art. 7.3) and **Slovenia** – « ... in the provision of security the State proceeds principally from a policy of peace, and an ethic of peace and non-aggression»- (art. 124).

223 Australia, Canada, Ireland, New Zealand, United Kingdom of Great Britain and Northern Ireland and the United States of America

224 **Ireland**, the world peace and justice are the most important topics on earth; Art. 29 stated that "Ireland affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality". Moreover, the Constitution of **Australia** recognized that the "Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth" (Art. 51). Finally, the rules or practices of **New Zealand** proclaimed that the Government has as a purpose to develop public policy, propose legislation, coordinate the delivery of public services, and keep the peace.

225 Canada, United Kingdom of Great Britain and Northern Ireland, United States of America and the Netherlands

226 **Canada** states that "everyone has the right to life, liberty and security of the person..." (Art. 7); the **United States of America** declares that "... any State deprive any person of life, liberty, or property, without due process of law..." (Amendment 14 on Citizenship Rights of 1868) and the **Netherlands** states that "everyone shall have the right to inviolability of his person (art. 11).

peoples should be directed toward justice, freedom, and peace (Art. 3). Member States pledged themselves to a united effort to ensure international social justice in their relations and integral development for their peoples, as conditions essential to peace and security (Art. 30).

3.2.5. European French-speaking States

In *France* the *Decree of Declaration of Peace in the World* adopted by the Constituent Assembly of 1789 stated in its Article 1 that "the right to peace and war belongs to the nation". In addition, Article 4 affirmed that "the French nation shall it ever employ force against the freedom of any people". The French people solemnly proclaimed in the 1958 Constitution their attachment to human rights and the principles defined by the 1789 Declaration and the Preamble to the 1946 Constitution, which proclaims that the French Republic shall undertake no war aimed at conquest and consent to the limitations upon its sovereignty necessary to the organization and preservation of peace.

Furthermore, the 1793 Declaration of the Rights of Man and Citizen declared that "when the government violates the rights of the people, insurrection is for the people and for each portion of the people the most sacred of rights and the most indispensable of duties". Consequently, the Preamble of the 1956 Constitution proclaimed the right of peoples to self-determination, by which the "Republic offers to the overseas territories which have expressed the will to adhere to them new institutions founded on the common ideal of liberty, equality and fraternity and conceived for the purpose of their democratic development".

Moreover, some European French-speaking States have included the values of peace, democracy and justice as governing principles of their Constitutions and have also stressed the obligation to respect the UN Charter²²⁷.

3.2.6. European German-speaking States

A Constitution is a set of fundamental principles or established precedents according to which a state is governed. The universal value of peace is one of the main legal principles incorporated in the national Constitutions of nine Eastern²²⁸ and fourteen Western European States²²⁹. In particular, the enhancement, strengthening and promotion of peace have strongly inspired the drafting constitutional processes of all German-speaking States²³⁰. As stated by the German

227 The Federal Constitution of the **Swiss Confederation** renewed in its Preamble their alliance so as to strengthen liberty, democracy, independence and peace in a spirit of solidarity and openness towards the world; **Belgium** recognizes that "court hearings are public, unless such public access endangers morals or the peace" (art. 148); **Luxembourg** underlines the importance of promoting the social peace (art. 9); and **Monaco** proclaims that they are based on the principles of international law and the Charter of the United Nations, and share the same values of Peace, Democracy, Justice and Solidarity (Preamble of the treaty aiming at adapting and confirming friendship and cooperation relations between the Principality of Monaco and the French Republic, which is included in the Constitution of the Principality of Monaco de 1962).

228Albania, Bosnia-Herzegovina, Estonia, Hungary, Macedonia, Moldova, Romania, Slovakia and Slovenia,

229Andorra, Belgium, Finland, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Norway, Portugal, Spain and Switzerland

230Austria, Belgium, Germany, Liechtenstein, Luxembourg and Switzerland

philosopher Immanuel Kant, humankind is entitled to inborn and inalienable rights and that therefore, it is necessary to elaborate progressively the unwritten code of international law in order to achieve perpetual peace.

In accordance with the Constitution of the **Federal Republic of Germany**, peace and human rights are intrinsically linked with the dignity of human beings²³¹ and wars of aggression are illegal and unconstitutional²³². Consequently, the German constitution shall consent the limitations upon its sovereign powers as will bring about and secure a lasting peace in Europe and among the nations of the world²³³. Furthermore, the German constitution recognizes the right of resistance of all Germans²³⁴.

Moreover, the Constitution of **Austria** has expressly recognized that the Federation has powers of legislation and execution in the maintenance of peace, order and security²³⁵. Therefore, in order to promote peaceful societies, the Constitution solemnly proclaimed the love for freedom and peace and also states that the elementary values of the school will be democracy, humanity, solidarity, peace and justice as well as openness and tolerance towards people²³⁶. Additionally, the Federal Constitution of the **Swiss Confederation** renewed in its Preamble their alliance so as to strengthen liberty, democracy, independence and peace in a spirit of solidarity and openness towards the world. Consequently, the Confederation undertook to promote in its foreign relations the respect for human rights and democracy, the peaceful coexistence of peoples as well as the conservation of natural resources²³⁷.

Furthermore, other German speaking States have also included the value of peace, even social peace, as a governing principle of their Constitutions and legal system. Additionally, it stressed that everyone should life in peace and freedom²³⁸.

3.2.7. European Mediterranean States

The European political system, like those of many other Western nations, is profoundly influenced by ideas from ancient Greece and Rome. Their ideas about democracy and republican government come from these ancient governments. In addition, the Western culture is deeply rooted in the concept of peace elaborated by the Greek²³⁹ and Roman Civilizations²⁴⁰,

231 Art. 1.2: "the German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world".

232 Art. 26.1: "acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare for a war of aggression, shall be unconstitutional".

233 Art. 24.2

234 Art. 20.d: "all Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available".

235 Art. 10.7

236 Art. 14.5

237 Art. 54

238 **Belgium** recognizes that "court hearings are public, unless such public access endangers morals or the peace" (art. 148); **Liechtenstein** states that "the Principality ... shall serve to enable the people within its borders to live together in freedom and peace" (art. 1.1) and **Luxembourg** underlines the importance of promoting the social peace (art. 9).

239 Among the most relevant Greek philosophers earnestly promoting the importance of peace, it should be highlighted the following: **Pythagoras** -peace is the corollaries of mathematical laws on which the universe was founded-; **Plato** -peace should be the end of each individual and State-; **Aristotle** -peace is the ideal

which led to the Scientific Revolution, the Enlightenment, the American Revolution, the Industrial Revolution and to what is considered today as modern civilization.

Consequently, the universal value of peace and human rights was incorporated in the national Constitutions of thirteen Eastern²⁴¹ and fourteen Western European States²⁴². In particular, Greece included the principle *pro persona* in its Constitution by recognizing the value of the human being²⁴³. Additionally, the peace tradition of the Ancient Greece strongly influenced in the current Greek Constitution, which proclaimed that Greece adheres to the principles of peace and justice, and the friendly relations between peoples and States²⁴⁴. Finally, the Constitution affirmed that the economic activity will be aimed to promoting the economic development²⁴⁵.

Moreover, the legal tradition of the Roman civilization inspired the anti-war clause in the Constitution of the **Republic of Italy**, which proclaimed that Italy rejects war as an instrument of aggression²⁴⁶. In addition, the Constitution agreed to the limitations of sovereignty necessary for an order that ensures peace and justice among Nations and, therefore, encourages the development of international organizations having such ends in view.

The value of peace has strongly framed the legal standards contained in all Constitutions of the Ibero-European States. In particular, this principle has been positively included in the Preamble of the Constitution of **Andorra** as a guideline principle along its history²⁴⁷. Consequently, the Constitution recognizes that human dignity guarantees and constitutes the foundation of political order, social peace and justice²⁴⁸.

Moreover, the Constitution of **Portugal** has stressed that they will be governed by the main principles of the UN Charter²⁴⁹ and they shall also advocate for the abolition of aggression²⁵⁰

condition towards which mankind must work-; **Polybius** -peace is a blessing for mankind-, and **Plutarch** -the greatest blessing which States can enjoy are peace and freedom-.

240Several Roman thinkers also expressed the importance of peace for all humankind. In particular, it should be recalled the contribution for the cause of peace done by **Cicero** -one should always work for peace-; **Pomponius** -peace is the expression of human nature-; **Ovidius** -peace should last forever for the benefit of mankind- and **Themistius** -a truly wise man should live in peace-.

241Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Lithuania, Macedonia, Moldova, Montenegro, Romania, Serbia, Slovakia and Slovenia

242Andorra, Finland, Germany, Greece, Ireland, Italy, Malta, Norway, Portugal, Spain and Switzerland

243Art. 2.1: "respect and protection of the value of the human being constitute the primary obligations of the State".

244Art. 2.2: "Greece, adhering to the generally recognized rules of international law, pursues the strengthening of peace and of justice and the fostering of friendly relations between peoples and States".

245 Art. 106: "in order to consolidate social peace and protect the general interest, the State shall plan and coordinate economic activity in the country, aiming at safeguarding the economic development of all sectors of the national economy".

246Art. 11: "Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes"

247"...desiring that the motto "virtus, unita, fortior", which has presided over the peaceful journey of Andorra over its more than seven hundred years of history, may continue to be a completely valid principle and may always guide the conduct of Andorrans...".

248Art. 4

249Art. 7.1: " ... Portugal shall be governed by the principles of national independence, respect for human rights, the rights of peoples, equality between states, the peaceful settlement of international conflicts, non-interference in the internal affairs of other states and cooperation with all other peoples with a view to the emancipation and progress of mankind"

and disarmament among the nations²⁵¹. It also stated that the acceptance of the Rome Statute was necessary to promote justice²⁵². In regards to the foundation of the constitutional system, the Constitution of **Spain** states that "the dignity of the person, the inviolable rights which are inherent, 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"²⁵³.

3.3. Islam and Judaism

In accordance with the **Charter of the Arab League**, signed on 22 March 1945 in Cairo (Egypt), the main goal of the League is to "draw closer the relations between member States and co-ordinate collaboration among them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries". The Arab League currently has 22 member States (including Syria, whose participation was suspended in November 2011).

The Charter of the Arab League recalls in its article 4 that the League will co-operate with the international bodies to be established in the future in order to guarantee security and peace and regulate economic and social relations.

On 25 September 1969, the **Organisation of Islamic Cooperation** (hereinafter: OIC) (formerly Organization of the Islamic Conference) was established upon a decision of the historical summit which took place in Rabat. This Organisation is the second largest inter-governmental Organization after the United Nations with a membership of 57 States spread over four Continents. The Organization is the collective voice of the Muslim world and aims to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world.

The Preamble of the Charter of OIC recognizes that the Member States will promote inter-State relations based on justice, mutual respect and good neighbourliness to ensure global peace, security and harmony. Moreover, article 2.5 indicates that "all Member States undertake to contribute to the maintenance of international peace and security and to refrain from interfering in each other's internal affairs as enshrined in the present Charter, the Charter of the United Nations, international law and international humanitarian law". Finally, article 27 regulates the system of peaceful settlement of disputes by which the Member States undertake to settle their disputes through good offices, negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

In September 1969 the OIC Member States affirmed that they should unite their efforts for the preservation of world peace and security. After that, the Kings, Heads of State and Government

250 Art. 7.2: "...shall advocate the abolition of imperialism, colonialism and all other forms of aggression, dominion and exploitation in the relations between peoples..."

251 Art. 7.7: "... shall advocate the abolition of imperialism, colonialism and all other forms of aggression, dominion and exploitation in the relations between peoples, as well as simultaneous and controlled general disarmament, the dissolution of the political military blocs and the setting up of a collective security system, all with a view to the creation of an international order with the ability to ensure peace and justice in the relations between peoples".

252 Art. 7.8: "with a view to achieving an international justice that promotes respect for the rights of both individual human persons and peoples, and subject to the provisions governing complementarity and the other terms laid down in the Rome Statute..."

253 Art. 10.1

and the Representatives of the Islamic countries and Organisations proclaimed in the second Islamic summit conference held in Lahore (Islamic Republic of Pakistan) on 22-24 February 1974 that "their endeavours in promoting world peace based on freedom and social justice will be imbued with the spirit of amicability and cooperation with other Faith, in accordance with the tenets of Islam" (art. 2.3). They also undertook "...to resolve their differences through peaceful means in a fraternal spirit and, wherever possible to utilize the mediatory influence or good office of fraternal Muslim State or States for such resolution" (art. 2.4).

On 28 January 1981 the third Islamic summit conference held in Mecca Al Mukarramah (Saudi Arabia) adopted the **Mecca Declaration** by which Member States of OIC reaffirmed that the belief of all Muslims in the eternal principles of liberty, justice, human dignity, fraternity, tolerance and compassion and their constant struggle against injustice and aggression reinforces their determination to establish just peace, and harmony among peoples, to ensure respect for human rights, and to work for the strengthening of international organizations based on humanitarian principles and peaceful co-existence among nations.

On 11 December 1991 the sixth Islamic summit conference adopted the **Dakar Declaration** by which the African Member States of the Organization of the Islamic Conference undertake to "contribute in an effective and positive manner to the consecration in these different countries of the genuine principles of Islam, raising the banner of the true religion and spreading its noble precepts in the service of closer cooperation, greater solidarity among peoples and consolidation of the foundations of peace and security in the world".

On 15 December 1994 the seventh Islamic summit conference adopted the **Casablanca Declaration** by which Member States of OIC considered in paragraph 2 that any threat to the security of any member State is a threat to world peace and security, which requires action within the framework of our Organization, of the United Nations and the other regional and international organizations, aimed at eliminating such threats in order to safeguard peace and stability of all member States in accordance with international legality. In addition, it recalled that there exists an obligation to "...develop and consolidate bilateral and multilateral relations, and to abide rigorously by the principles of non-interference in internal affairs and of settling conflicts among member States through peaceful means, while stressing the need to settle regional disputes and conflicts in accordance with the principles of the UN Charter, the resolutions of international legality and the principles of justice and equity".

On 22 April 1998 the League of Arab States adopted the **Arab Convention For The Suppression Of Terrorism** by which Arab nations rejected in its Preamble "...all forms of violence and terrorism and advocates the protection of human rights, with which precepts the principles of international law conform, based as they are on cooperation among peoples in the promotion of peace".

On 13 November 2000 the ninth Islamic summit conference adopted the **Doha Declaration** in the session on Peace and Development by which the Kings, Emirs and Heads of State and Government Members of the OIC considered that the initiative of Dialogue among Civilizations constituted a new paradigm and universal vision to build an equitable international order, founded on inclusion, participation, mutual understanding, and tolerance among peoples and nations; reaffirmed their resolve to actively contribute to the maintenance of international peace and security based on justice as a high priority of the Organization in the principles and objectives of its Charter, and underlined the imperative of global adherence to the purposes and principles of the Charter of the United Nations and the rules of international law, in particular the principles of sovereign equality, non-intervention and the right of peoples under foreign occupation or alien domination to self-determination by all without any discrimination or double standards.

It also launched an appeal to all the world leaders to combine their efforts within the United Nations and within regional organizations with a view to eliminating all causes of tension that beset our world including such scourges as poverty, ignorance, social exclusion, diseases like AIDS, illegal migration, piracy and illicit trafficking in drugs and arms. In addition, it condemned all forms and manifestations of terrorism whatever its source as reflected in the unanimous adoption of the Agreement of the Organization of the Islamic Conference on Combating Terrorism; it warned of the serious threats posed by nuclear arsenals and other weapons of mass destruction to international peace and security, particularly in the Middle East region; and it requested to achieve peace and cooperation — which are two objectives of the OIC— to spur them all to make every effort to bring reconciliation among mankind by deepening common values among peoples and strengthening the bonds of interdependence among them within the framework of fruitful and constructive cooperation which allows for respect of religious and cultural specificities.

On 22 May 2004 the **Arab Charter on Human Rights** was adopted by the Council of the League of Arab States. It affirmed the principles contained in the UN Charter, the Universal Declaration on Human Rights, the International Covenants on Human Rights and the Cairo Declaration on Human Rights in Islam. It has been in force since 15 March 2008. Its Preamble acknowledged the close interrelationship between human rights and world peace and the right of the Arab world to a life of dignity based on freedom, justice and peace. In addition, as indicated by article 35, "citizens have a right to live in an intellectual and cultural environment in which Arab nationalism is a source of pride, in which human rights are sanctified and in which racial, religious and other forms of discrimination are rejected and international cooperation and the cause of world peace are supported".

On 7-8 December 2005 the OIC Secretary General presented the report **New Vision for the Muslim World: Solidarity in Action** to the third Extraordinary Session of the Islamic Summit Conference held in Makkah Al-Mukarramah (Saudi Arabia). In accordance with the report, the scholars underlined the importance of the peaceful resolution of conflicts in the Muslim world. In this regard, they stressed the key role that the General Secretariat of the OIC could play in view of the absence of any effective institution to manage conflicts in Muslim countries. While urging Muslim countries to actively cooperate among themselves in conflict prevention, conflict resolution and post conflict peace-building, the scholars appealed to them to effectively participate in the UN to create a collective security system. They further proposed to set up the Islamic Court of Justice and the strengthening of regional and sub-regional consultation groups to prevent conflicts in the Muslim world. The need for the Secretary General to use his good offices in conflict management process, using the focal point of the Troika was also underscored by the scholars. Finally, the scholars recommended a central role for the OIC in conducting dialogue among civilizations. They further proposed setting up a core group from OIC Member States to initiate the dialogue. The Conference stressed that dialogue among civilizations based on mutual respect, understanding and equality among people is a prerequisite for establishing a world marked by tolerance, cooperation, peace and confidence among nations.

On 14 March 2008 the Eleventh Islamic Summit Conference adopted the **Dakar Declaration** by which Member States of OIC underscored the need to evolve a new and balanced consensus in the area of disarmament, arms control, non-proliferation, and related security matters as a means to promoting international and regional peace and security (art. 88); reaffirmed the importance of establishing a nuclear weapons-free zone in the Middle East as soon as possible for the sake of preserving peace and security in the region. The Conference reaffirmed its support for the Arab initiative submitted to the Security Council in 2003 in this regard (art. 89);

it emphasized that terrorism continues to pose a threat to international peace, security and stability; it does not have any justification and should be condemned unreservedly. It also reaffirmed that full, universal, non-discriminatory, and effective implementation of Chemical Weapons Convention would contribute to enhancing international peace and security; it reaffirmed the resolve of Member States to contribute actively towards a world order based on peace, justice, and equality, stressing the inherent right of Member States to self-defence, in accordance with Article 51 of the UN Charter (art. 99).

The Ten-Year Programme of Action titled To Meet the Challenges Facing the Muslim Ummah in The 21st Century, adopted in 2008 by the OIC Member States, strengthened the role of the OIC in conflict prevention, confidence-building, peace-keeping, conflict resolution and post-conflict rehabilitation in OIC Member States as well as in conflict situations involving Muslim communities (art. 10.1) and enhanced cooperation among the OIC Member States and between the OIC and international and regional organizations in order to protect the rights and interests of the Member States in conflict prevention, conflict resolution, and post-conflict peace-building (art. 10.2).

Judaism has teachings and guidance for its adherents through the **Hebrew Bible** and rabbinic literature relating to the notion and concept of peace. The Torah, Tanakh and its related literature contain extensive writings concerning peace²⁵⁴. The word "**shalom**" meaning "peace" has been absorbed into the usage of the language from its Biblical roots and from there to many of the world's languages, religions and cultures.

Judaism's religious texts overwhelmingly endorse compassion and peace, and the Hebrew Bible contains the well-known commandment to "love thy neighbor as thyself". In fact, the love of peace and the pursuit of peace is one of the key principles in Jewish law. While Jewish tradition permits waging war and killing in certain cases, however, the requirement is that one always seeks a just peace before waging war.

The philosophy of nonviolence has roots in Judaism, going back to the Jerusalem Talmud of the middle third century. While absolute nonviolence is not a requirement of Judaism, the religion so sharply restricts the use of violence, that nonviolence often becomes the only way to fulfilling a life of truth, justice and peace, which Judaism considers to be the three tools for the preservation of the world. Jewish law (past and present) does not permit any use of violence unless it is in self- defense.

3.3.1. Constitutions of States of Middle East

A society based on peace, solidarity and tolerance among peoples is what Islam and Judaism advocate. The peace concept and the idea of living in peace with one's surroundings permeate the whole religions of Islam and Judaism. The human beings' relationship to the universe may not be based on conflicts or longing for conquests. It has to be founded on the notion of peace and the feeling of communion. Peace has an important role in the relationship to other people.

254The Priestly Blessing (Numbers 6:24–26) ends with: "May God lift up his face onto you and give you peace"; Leviticus 26:6: "And I shall place peace upon the land"; Numbers 25:12: "Behold I give him my covenant of peace"; Isaiah 57:19: "Peace, peace to the distant and the close"; Psalms 34:15: "Seek peace and pursue it"; Psalms 119:165: "Great peace to those who love Your Torah" and Psalms 125:5 and Psalms 128:6: "Peace upon Israel" -

The most important principles in the justice concept are equality and brotherliness.

In accordance with the Islamic and Judaism law, the Shari'a and Jewish heritage on peace, freedoms, justice and integrity are the principal sources for legislation. These peace based legal traditions have framed the whole drafting processes of the recent Constitutions of States of Middle East²⁵⁵. Consequently, the concepts of peace, justice, security and co-operation as inspiring principles of the whole legal system were included in the Preamble of some Constitutions²⁵⁶.

In addition, there are some other States in which the achievements of peace along with the defense of the security, integrity, solidarity and co-operation among States have been included among the purposes of their political systems and foreign policy²⁵⁷. In addition, some other Constitutions of Middle East States have also progressively elaborated the content and scope of peace. In fact, these constitutional legal systems have prohibited the offensive war and occupation, and promoted the need to strengthen cooperation and good-neighborly relations between states, the principle of non-interference, the promotion of human rights, the non-proliferation of weapons, the self-determination of peoples, the peaceful settlement of international disputes and the preservation of independence and sovereignty²⁵⁸.

255 **Bahrain** - "the religion of the State is Islam. The Islamic Shari'a is a principal source for legislation" (art. 2); **Iran** - "all civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria..." (art. 4); **Israel** - "... is a democratic State, which respects human rights in the spirit of the Jewish heritage's principles of freedom, justice, integrity and peace" (art. 2); **Jordan** - "Islam is the religion of the State and Arabic is its official language" (art. 2); **Oman** - "the religion of the State is Islam and the Islamic Shari'a is the basis of legislation" (art. 2); **Saudi Arabia** - "government... derives power from the Holy Koran and the Prophet's tradition" (art. 7); **Syria** - "the religion of the President of the Republic has to be Islam" (art. 3.1) and "Islamic jurisprudence is a main source of legislation" (art. 3.2) and **Yemen** - "Islamic Shari'ah is the source of all legislation" (art. 3).

256 **Bahrain** - "...and their striving for everything that will achieve justice, good and peace for the whole of Mankind"; **Israel** - "... created a thriving community controlling its own economy and culture, loving peace and knowing how to defend itself..."; **Kuwait** - "...having faith in the role of this Country in furthering Arab nationalism and the promotion of world peace and human civilization"; **Oman** - "...in our determination to strengthen Oman's international position and its role in establishing the foundations of peace, security, justice and co-operation between different States and Peoples" and **Turkey** - "... they have the right to demand a peaceful life based on absolute respect for one another's rights and freedoms, mutual love and fellowship and the desire for and belief in "Peace at home, peace in the world".

257 **Bahrain** - "Peace is the objective of the State. The safety of the nation is part of the safety of the Arab homeland as a whole, and its defence is a sacred duty of every citizen..." (art. 30); **Kuwait** - "Peace is the aim of the State, and the safeguard of the integrity of the Country, which is part of the integrity of the Greater Arab World, is a trust devolving upon every citizen" (art. 157); **Lebanon** - "...Basic national issues are considered the following... war and peace..." (art. 65); **Oman** - "the State's goal is peace, and safeguarding the country's security is a duty entrusted to every citizen" (art. 14); **Qatar** - "The foreign policy...is based on the principle of strengthening international peace and security..." (art. 7); **Saudi Arabia** - "the state strives for the achievement of the hopes of the Arab and Islamic nation for solidarity and unity of word, and to consolidate its relations with friendly states" (art. 25); **Turkey** - "... the fundamental aims and duties of the state are ... to ensure the welfare, peace, and happiness of the individual and society..." (art. 5); **United Arab Emirates** - "the foreign policy of the Union shall be directed towards support for Arab and Islamic causes and interests and towards the consolidation of the bonds of friendship and cooperation with all nations and peoples..." (art. 12) and **Yemen** - "the political system ...is based on political and partisan pluralism in order to achieve a peaceful transformation of power..." (art. 5).

258 **Iran** - "... has the duty of directing all its resources to the following goals ... the complete elimination of imperialism and the prevention of foreign influence; the elimination of all forms of despotism and autocracy and all attempts to monopolize power..." (art. 3); **Iraq** - "...observe the principles of good neighborliness, adhere to the principle of noninterference in the internal affairs of other states, seek to settle disputes by peaceful means,

3.4. Latin American and Caribbean States

At the **Inter-American Conference for the Maintenance of Peace**, held in Buenos Aires in 1936, the Governments of the American Republics agreed that in the event of a war they would immediately create a process of peaceful collaboration, or in the case of a virtual war between American States. Furthermore, the Governments declared inadmissible the intervention of any of them, direct or indirectly in the internal or external affairs of any other State.

On the other hand, the **Inter-American Conference on problems of War and Peace**, held in Chapultepec (Mexico) in March 1945, was the basis for the reorganisation of the system. During the **Inter-American Conference for the Maintenance of Continental Peace and Security** held in Rio de Janeiro (Brazil) in 1947, the **Inter-American Treaty of Reciprocal Assistance (TIAR)** or Rio Treaty was signed on 2 September 1947. In accordance with this treaty, the High Contracting Parties condemn war categorically and undertake not to resort to the threat or the use of force in their international relations, in any manner inconsistent with the provisions of the Charter of the United Nations or this Treaty (Article 1).

The **Pan American Conference** held in Bogota (Colombia) in 1948 established the **Organization of American States**. During the Conference various regional instruments of international law were adopted to promote, develop and strengthen peace and security in the Continent. Among them stand out the adoption of the **Charter of the OAS** (in substitution of the Pan American Union), the **American Treaty on Pacific Settlement**, and the **American Declaration of the Rights and Duties of Man**.

The OAS Charter stressed that the essential purposes of the Organisation are the following: the strengthening of continental peace and security (art. 2); the enforcement of principles of justice and social security as basis for a durable peace and the implementation of an education system directed toward justice, freedom and peace (art. 3).

In 1968, the **Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean States** (known as Tlatelolco Treaty) was signed in Mexico. This Treaty establishes the denuclearization of the territory of Latin America and the Caribbean States. Moreover, it includes the **Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social and Cultural Rights** (Protocol of San Salvador), which was adopted on 17 November 1988.

According to its article 13 -right to education-, States Parties to this Protocol agree that education should be directed toward the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. Furthermore, it emphasizes that education ought to enable

establish relations on the basis of mutual interests and reciprocity, and respect its international obligations" (art. 8) and "... respect and implement Iraq's international obligations regarding the non-proliferation, non-development, nonproduction, and non-use of nuclear, chemical, and biological weapons..." (art. 9); **Israel** - "the State... is a democratic State, which respects human rights in the spirit of the Jewish heritage's principles of freedom, justice, integrity, and peace" (art. 2); **Kuwait** - "... Offensive war is prohibited" (art. 68); **Oman** - "the political principles are: preserving the State's independence and sovereignty, protecting its security and stability, and defending it against all forms of aggression; Reinforcing co-operation and reaffirming ties of friendship with all States and peoples on a basis of mutual respect, common interest, non-interference in internal affairs..." (art. 10); **Palestine** - "... is a peace loving state that condemns terror, occupation and aggression" (art. 3); **Qatar** - "... shall support the right of peoples to self determination; and shall not interfere in the domestic affairs of states; and shall cooperate with peace-loving nations" (art. 7) and the **United Arab Emirates** - "... towards the consolidation of the bonds of friendship and cooperation with all nations and peoples..." (art. 12).

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".

On 2 and 3 December 2011, thirty-three Member States of Latin America and the Caribbean States met in Caracas (Venezuela) to establish the **Community of Latin American and Caribbean States (CELAC)**. According to the signed Agreement, CELAC will be the highest expression of the wish for unity in diversity of the thirty-three States Parties, having as objective the strengthening of the political, social and cultural links among States Parties, based on a mutual program of welfare, peace and security for their peoples and regional communities.

Recently, the Heads of State and Government of the Community of Latin American and Caribbean States (CELAC) met in La Havana (Cuba) on 28 and 29 January 2014 and decided to declare Latin America and the Caribbean as a Peace Zone. In the operative section of this Proclamation, Member States of CELAC explicitly stated that the future zone of peace would be based on respect of principles and norms of international law, in particular the Principles and Purposes of the Charter of the United Nations and the Declaration on a Culture of Peace.

3.4.1. Constitutions of the Latin American and Caribbean States

Along the years, the Latin American and Caribbean States have adopted Constitutions characterized by the wish to live in peace and encourage, through the mutual comprehension and respect for the sovereignty of each State, the mutual dialogue, the renunciation of war, the respect of human rights and the strengthening of diplomatic relationships.

The value of peace as the inspiring principle of the whole legal system was included in the Preamble of some Constitutions, which should be promoted in connection with justice, national union, international order, human dignity, freedom, equality, freedom, rule of law, economic equity, democracy, pluralism and common good²⁵⁹. Moreover, the defense of peace, national interest, equality, freedom and co-operation has been recognized as a fundamental target to be promoted by the domestic authorities in their respective foreign affairs policies²⁶⁰.

259**Argentina** - "... in order to form a national union, guarantee justice, secure domestic peace, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves..." - ; **Bolivia** - "... move towards a democratic, productive and inspiring peaceful Bolivia... -; **Brazil** - "... as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the internal and international orders, to the peaceful settlement of disputes ..."; **Colombia** - "... ensure its members life, coexistence, labor, justice, equality, knowledge, freedom and peace..."; **Dominican Republic** - "...governed by the supreme values and fundamental principles of human dignity, freedom, equality, the rule of law, justice, solidarity, fraternal, social welfare, ecological balance, progress and peace, essential factors for social cohesion..."; **Ecuador** - "...A democratic country, committed to Latin American integration—the dream of Simón Bolívar and Eloy Alfaro—, peace and solidarity with all peoples of the Earth..."; **Guatemala** - "... recognizing ... the State, as responsible for promoting the common good, the consolidation of the regime of legality, security, justice, equality, freedom, and peace..."; **Haiti** - "... set up a system of government based on fundamental liberties, and the respect for human rights, social peace, economic equity..."; **Honduras** - "... establishes the conditions for the full realization of man as a human being, within a context of justice, liberty, security, stability, pluralism, peace, representative democracy and the common good" and **Venezuela** - "... to the supreme end of reshaping the Republic to establish a democratic, participatory and self-reliant, multiethnic and multicultural society in a just, federal and decentralized State that embodies the values of freedom, independence, peace, solidarity, the common good, the nation's territorial integrity, comity and the rule of law for this and future generations..."

260**Argentina** - "... the Federal Government is under the obligation to strengthen its relationships of peace and trade with foreign powers, by means of treaties in accordance with the principles of public law laid down by this

In addition, the Latin American and Caribbean States have progressively elaborated in their constitutional system the content and scope of peace and human rights in accordance with international law. As to the peace standards, the Latin American and Caribbean Constitutions have recognized the education on peace, the right of peoples to self-determination, prohibition of terrorism, right to resistance, abolition of all forms of domination, disarmament, peaceful solution of conflicts, respect for sovereignty, the economic and social development of peoples, national independence, non-interference into domestic affairs, the realization of mutual benefits and peaceful coexistence among States²⁶¹.

Constitution" (art. 27); **Brazil** - "the international relations ... are governed by the defense of peace..." (art. 4); **Dominican Republic** - "... se compromete a actuar en el plano internacional, regional y nacional de modo compatible con los intereses nacionales, la convivencia pacífica entre los pueblos y los deberes de solidaridad con todas las naciones" (art. 26) - ; **Haiti** - "civic duties are ... to work to maintain peace" (art. 53) - and **Venezuela** - " basing its moral property and values of freedom, equality, justice and international peace on the doctrine of Simon Bolivar, the Liberator... " (art. 1) and " the essential purposes of the State are the protection and development of the individual and respect for the dignity of the individual, the democratic exercise of the will of the people, the building of a just and peace loving society, the furtherance of the prosperity and welfare of the people " (art. 3).

²⁶¹**Argentina** - "all citizens shall have the right to oppose resistance to those committing the acts of force stated in this section" (art. 36); **Bolivia** - "... to contribute to mutual understanding, equitable development and promotion of multiculturalism, with full respect for the sovereignty of states" (art. 10.1); "... rejects all aggressive war as a solution to the disputes and conflicts between states and reserves the right to self-defense in case of aggression, which compromises the independence and integrity of the State" (art. 10.2) and " prohibits foreign military bases in Bolivia" (art. 10.3); **Brazil** - "the international relations ... are governed by the following principles: national independence; prevalence of human rights; self-determination of the peoples; non-intervention; equality among the states; peaceful settlement of conflicts; repudiation of terrorism and racism; cooperation among peoples for the progress of mankind" (art. 4); **Chile** - "terrorism in any of its forms is essentially contrary to human rights" (art. 9); **Colombia** - "... education will form all Colombian in the respect of human rights, peace and democracy; and in the practice of work and recreation, to improve cultural, scientific, technological and environmental protection" (art. 67); **Costa Rica** - "the Army as a permanent institution is abolished..." (art. 12); **Cuba** - "... based on the respect for the independence and sovereignty of peoples and the right to self-determination; bases its international relations on 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...; ... seeking the limitation or subordination of the sovereignty of our peoples, and the aggravation of the economic conditions of exploitation and oppression in the underdeveloped nations;... repudiates the direct or indirect intervention in the internal or external affairs of any State...; categorizes the war of aggression and conquest as an international crime..." (art. 12) and "... grants asylum to those persecuted for their ideals or struggles for... peace" (art. 13); **Dominican Republic** - "... on an equal footing with other States, the Dominican Republic accepts an international legal order, which ensures respect of fundamental rights, peace, justice and political, social, economic and cultural development of nations...." (art. 26); **Ecuador** - "...the establishment of foreign military bases or foreign facilities for military purposes shall not be allowed. It is forbidden to transfer national military bases to foreign armed or security forces" (art. 5); "... education shall be participatory, compulsory, intercultural, democratic, inclusive and diverse, of high quality and humane; it shall promote gender equity, justice, solidarity and peace (art. 27) and "... it proclaims the Independence and legal equality of the States, peaceful coexistence, and the self-determination of the people, as well as cooperation, integration, and solidarity; it advocates the peaceful settlement of disputes and international conflicts and rejects the use of threats and force to settle the above; it condemns the interference of States in the domestic affairs of other States and any kind of intervention, whether armed raids, aggression, occupation or economic or military blockade; it promotes peace and universal disarmament; it condemns the development and use of weapons of mass destruction and the imposition of bases or facilities for military purposes by certain States on the territory of others; it recognizes the rights of the various peoples living together in the States, especially the right to promote mechanisms that express, preserve, and protect the diverse character of their societies and rejects racism, xenophobia and all forms of discrimination; it advocates the principle of universal citizenship, the free movement of all inhabitants of the planet...; it... recognizes the right of peoples to resist and free themselves from all forms of oppression.... (art. 416); **Guatemala** - "... will maintain and cultivate relations of cooperation and solidarity with the other States..." (art. 150) and "the

Finally, it should be noted that neither the Constitutions of **Colombia** nor **Costa Rica** included in their Constitutions the clause of peace. Nevertheless, the Constitutional Court of **Costa Rica** recognized in decision 9992-04 that "there is common ground ... in the sense of recognizing the existence of peace as one of the values informing our Constitutional order." Subsequently, the Court expressly recognized (decision 14193-08 on nuclear fuel) that all citizens have the right to peace even though the Constitution does not specifically include this right. In addition, the Constitutional Court of **Colombia** stated that the right to peace plays a crucial role in the Colombian Constitutional order, given that it is mandatory (Judgement No. C-055/95, 1995).

3.5. Asia

On 2 April 1993, a large number of Asian countries²⁶² signed the **Final Declaration of the regional meeting for Asia in preparation of the World Conference on Human Rights** in Bangkok by which it emphasized the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure.

State will maintain relations of friendship, solidarity, and cooperation with other States whose economic, social, and cultural development are analogous to those of Guatemala with the purpose of finding solutions appropriate to their common problems and of jointly formulating policies leading to the progress of the respective nations" (art. 151); **Honduras** - "... supports the principles and practices of international law, that promote the solidarity and self-determination of peoples, nonintervention and the strengthening of universal peace and democracy (art. 15) and "... has an obligation to promote, organize and regulate conciliation and arbitration procedures for the peaceful settlement of labor disputes" (art. 139); **Mexico** - "the education ... shall be designed to develop harmoniously all the faculties of the human being and shall foster in him at the same time a love of country and a consciousness of international solidarity, in independence and justice...." (art. 3.1); **Nicaragua** - "are principles ... freedom, justice, respect for the dignity of the human person; political, social and ethnic pluralism; the recognition of the different forms of ownership, the free international cooperation, and respect for self-determination of peoples... Therefore, it inhibits and prohibits any kind of political, military, economic, cultural and religious aggression, and the intervention in the domestic affairs of other States. It recognizes the principle of peaceful settlement of international disputes by the means offered by international law, and prohibits the use of nuclear weapons and other means of mass destruction in domestic and international conflicts; it assures the protection to the political refugees, and rejects any subordination of a State over another" (art. 5) and "... the refuge and asylum is only applied to the persecuted for their struggle for democracy, peace, justice and human rights" (art. 42); **Paraguay** - "...everyone has the right to a comprehensive, permanent education... the system is designed to promote the full development of human personality, to foster freedom and peace, to promote social justice, solidarity, cooperation, and integration of all peoples, the respect for the human rights and the principles of democracy (art. 73); "... accepts international law and endorses the following principles: national independence; the self-determination of all people; legal equality among all states; international solidarity and cooperation; international protection of human rights; ... nonintervention; and the condemnation of every form of dictatorship, colonialism, or imperialism" (art. 143) and "...the Republic of Paraguay relinquishes war, but it upholds the principle of self-defense...." (art. 144) and **Venezuela** - "... the geographical space of Venezuela is an area of peace. No foreign military bases or facilities having purposes that are in any way military shall be established within such space by any power or coalition of powers...." (art. 13) and "... serve the ends of the State as a function of the exercise of sovereignty and the interests of the people; they are governed by the principles of independence, equality between States, free self-determination and nonintervention in their internal affairs, the peaceful resolution of international conflicts, cooperation, respect of human rights and solidarity among peoples in the struggle for their liberation and the welfare of humanity" (art. 152)

²⁶²Bahrain, Bangladesh, Bhutan, Brunei Darussalam, China, Cyprus, Democratic People's Republic of Korea, Fiji, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kiribati, Kuwait, Lao People's Democratic Republic, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Oman, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syrian Arab Republic, Thailand, United Arab Emirates, Viet Nam.

The **Charter of the Association of Southeast Asian Nations** (ASEAN) was signed by Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, The Philippines, Singapore, Thailand and Viet Nam. It was adopted at the 13th ASEAN Summit in November 2007. The task force then held 13 meetings during 2007. Some of the proposals include the removal of the non-interference policy that is central to the regional group since its establishment in the 1960s, and to set up a human rights body.

In accordance with article 1 of the Charter, the purposes of ASEAN are the following: to maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region; to enhance regional resilience by promoting greater political, security, economic and socio-cultural cooperation; to preserve Southeast Asia as a Nuclear Weapon-Free Zone and free of all other weapons of mass destruction and to ensure that the peoples and Member States of ASEAN live in peace with the world at large in a just, democratic and harmonious environment. Moreover, article 2 states that the ASEAN and its Member States shall act in accordance with the following principles: respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States; shared commitment and collective responsibility in enhancing regional peace, security and prosperity; renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law; reliance on peaceful settlement of disputes; non-interference in the internal affairs of ASEAN Member States and respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion.

In October 2009, several Asian countries adopted the **Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights** (AICHR). Pursuant to article 1.2, one of the purposes of the AICHR is to uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity.

3.5.1. Constitutions of the Asian States

A fundamental Buddhist principal is that we all should respect and treat one another equally, that means everyone has the right to live in peace. Buddhists are enjoined to respect all nations of the world, all races, social classes, genders, and ages among people. Because of this inherent equality in Buddhism, in all of human history, there never has been a war fought over Buddhism. Buddhism teaches very clearly that when there is first respect and a sense of equality among people, there will never be war among them.

In addition, as indicated previously, a society based on peace, solidarity and tolerance among peoples is what Buddhism advocates. The peace concept and the idea of living in peace with one's surroundings permeate the whole religion of Buddhism.

The principles of peace, freedom, co-operation, sovereignty, independence, justice, democracy, truth, human rights progress and prosperity of mankind as inspiring principles of the whole legal system were included in the Preamble of several Constitutions²⁶³. Moreover, the concept

²⁶³**Afganistan** - "In the name of Allah, the Most Beneficent, the Most Merciful Praise be to Allah, the Cherisher and Sustainer of Worlds; and Praise and Peace be upon Mohammad..." -; **Bangladesh** - "...we may prosper in freedom and may make our full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind..." - ; **Bhutan** - "... Democracy will help ensure the country's security,

of peace, non violence, compassion, tolerance, independence, friendship and cooperation, order, human rights protection have been recognized as a fundamental purposes to be achieved by governments in their foreign affairs policy²⁶⁴.

In addition, the Asian States have progressively elaborated in their constitutional system the content and scope of peace and human rights. As to the peace standards, the Asian Constitutions have recognized the education on peace, the right of peoples to self-determination, prohibition of terrorism, right to resistance, abolition of all forms of domination, disarmament, peaceful solution of conflicts, the renunciation of war, refugee status for peace activists, respect for sovereignty, the economic and social development of peoples, elimination of foreign military bases, national independence, non-interference into domestic affairs, the realization of mutual benefits and peaceful coexistence among States²⁶⁵.

sovereignty, peace and prosperity, justice..." -; **Cambodia** - "... to re-build the country and become once again an "Oasis of Peace" based on the system of a liberal multi-party democracy, to guarantee human rights, to ensure the respect of law ... " -; **China** - "... strives to safeguard world peace and promote the cause of human progress..." -; **Indonesia** - "... to contribute to the establishment of a world order based on freedom, abiding peace and social justice..." -; **Japan** - "We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship..."; **North Korea** - "... for the reinforcement and development of the socialist movement and the nonaligned movement, and for world peace and friendship between peoples, and made an immortal contribution to the mankind's independent cause..." -; **Republic of South Korea** - "... to elevate the quality of life for all citizens and contribute to lasting world peace and the common prosperity of mankind..." -; **Laos** - "... to strive together to fulfil the objective of building Laos into a country of peace, independence, democracy, unity and prosperity..." -; **Nepal** - "... Recognizing the mandate of the Nepali people expressed, from time to time, since before 1951 until now, through historical struggles and people's movements for democracy, peace and progress..." -; **Philippines** - "... our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution" - and **Vietnam** - "... pursue a foreign policy of independence, sovereignty, peace, friendship and cooperation with all countries in the world..."

264 **Bangladesh** - "the state religion ... is Islam, but other religions may be practiced in peace and harmony in the Republic ... " (art. 2.A); **Bhutan** - "... the spiritual traditions are the primary source of well-being, happiness and peace. Buddhism promotes the principles and values of peace, non violence, compassion and tolerance" (art. 3); **Burma** - "every citizen is responsible for public peace and tranquillity and prevalence for law and order..." (art. 21); "the Union practices independent, active and non-aligned foreign policy aimed at world peace and friendly relations with nations..." (art. 41); "the Union Government preserves stability of the Union, community peace and tranquility and prevalence of law and order" (art. 219) and "the Region or State Government shall have the responsibility to assist the Union Government in the preservation of the stability of the Union, community peace and tranquility and prevalence of law and order" (art. 250); **Cambodia** - "... the Kingdom of Cambodia is an independent, sovereign, peaceful, permanently neutral and non-aligned State" (art. 41); **India** - "... the State shall endeavour to promote international peace and security..." (art. 51); **North Korea** - "independence, peace, and solidarity are the basic ideals of the foreign policy and the principles of external activities..." - (art. 17); **Laos** - "... pursues a foreign policy of peace, independence, friendship and cooperation..." (art. 12); **Malaysia** - "3.1. Islam is the religion of the Federation; but other religions may be practiced in peace and harmony..." (art. 3.1); **Maldives** - "... consisting of the Military Service and the Police Service, is established to enable all persons in the Maldives to live in peace, security and freedom" (art. 236); **Mongolia** - "... shall adhere to the universally recognized norms and principles of international law and pursue a peaceful foreign policy" (art. 10); **Nepal** - "it shall be the objective of the State to maintain law and order and peace, protect and promote human rights, promote public welfare in the society..." (art. 34.2); **Sri Lanka** - "...shall promote international peace, security and cooperation..." (art. 27.15) and **Vietnam** - "... pursues a policy of peace, friendship and expanded international relations and cooperation with all countries in the world ... " (art. 14).

265 **Afghanistan** - "... on the basis of preserving the independence, national interests and territorial integrity as well as non-interference, good neighborliness, mutual respect and equality of rights (art. 8) and "... to form political parties, provided that: they shall not have military or quasi-military aims and organizations" (art. 35); **Bangladesh** - "...on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law"; "strive

4. Conclusions

The United Nations is a response to the two world wars and the intention of the member States to suppress war. The maintenance of international peace and security is the most important goal

for the renunciation of the use of force in international relations and for general and complete disarmament" and "... support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism" (art. 25.1); **Burma** - "...shall not commence aggression against any nation" and "no foreign troops shall be permitted to be deployed in the territory of the Union" (art. 42); **Cambodia** - "... implement a policy of national reconciliation to ensure national unity, and protect the good mores and custom of the nation... " (art. 52); " ... coexists peacefully with its neighbours and with all other countries throughout the world.... shall never invade any country, nor interfere in any other country's internal affairs, directly or indirectly, and shall solve any problems peacefully with due respect for mutual interests....shall not join in any military alliance... shall not authorize any foreign military base on its territory, nor have its own military bases abroad ... (art. 53); "the manufacture, use and storage of nuclear, chemical or biological weapons shall be absolutely prohibited" (art. 54) and "any treaty and agreement incompatible with the independence, sovereignty, territorial integrity, neutrality and national unity ... shall be abrogated (art. 55); **China** - "... mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries; China consistently opposes imperialism, hegemonism and colonialism.... " (Preamble); **India** - "... maintain just and honorable relations between nations; foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration" (art. 51); **Japan** - "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes" (art. 9.1) and "in order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of aggression of the state will not be recognized" (art. 9.2); **North Korea** - "... shall promote unity with the world public defending peoples who oppose all forms of aggression and interference... " (art. 17) and "...shall grant the right of asylum to foreign nationals persecuted for struggling for peace..." (art. 80); **Republic of South Korea** - "... endeavours to maintain international peace and renounces all aggressive wars" (art. 5.1); **Laos** - "... peaceful coexistence; respect for each other's independence, sovereignty and territorial integrity; non-interference in each other's internal affairs; and equality and mutual benefit... (art. 12) and "... grants asylum to foreigners who are persecuted for their struggle for freedom, justice, peace and scientific causes" (art. 51); **Mongolia** - "the duty of the State is to secure the country's independence, ensure national security and public order" (art. 11.1) and "... shall have armed forces for self-defense..." (11.2); **Nepal** - "... shall pursue a policy of making continuous efforts to institutionalize peace in Nepal through international norms and values, by promoting cooperative and good relations in economic, social and other spheres with neighboring friendly nations and all other countries of the world, on the basis of equality" (art. 35.22); **Philippines** - "... renounces war as an instrument of national policy..." (art. 2); "...in its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination" (art. 7) and "... adopts and pursues a policy of freedom from nuclear weapons in its territory" - (art. 8); **Sri Lanka** - " ... the establishment of a just and equitable international economic and social order and shall endeavor to foster respect for international law and treaty obligations in dealings among nations" (art. 27.15); **Thailand** - " a person shall have the right to resist peacefully any act committed for the acquisition of the power to rule the country ..." (art. 69) and "...sufficient for protecting and upholding the independence, sovereignty, national security, the institution of monarchy, national interests and the democratic regime... " - (art. 77); **Timor Leste** - "... principles of national independence, the right of the Peoples to self-determination and independence, the permanent sovereignty of the peoples over their wealth and natural resources, the protection of human rights, the mutual respect for sovereignty, territorial integrity and equality among States and the non-interference in domestic affairs of other States" (art. 8.1); "... establish relations of friendship and cooperation with all other peoples, aiming at the peaceful settlement of conflicts, the general, simultaneous and controlled disarmament... (art. 8.2); "... shall maintain special ties of friendship and co-operation with its neighbouring countries and the countries of the region" (art. 8.4) and "... shall grant political asylum, in accordance with the law, to foreigners persecuted as a result of their struggle for national and social liberation, defence of human rights, democracy and peace" (art. 10.2) and **Vietnam** - "... on the basis of respect for each other's independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual benefit; enhances the friendly solidarity and traditional cooperation with socialist and neighboring countries (art. 14) and " foreign nationals who are persecuted for taking part in the struggle for ... peace... may be considered for granting of asylum" (art. 82).

of the United Nations. Recent practice has stressed the strong linkage and interdependence of peace and security with broader conditions of social development and human rights. Article 1 (2) of the UN Charter 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.

Since the creation of the United Nations, the UNGA has adopted several key Declarations and resolutions, by which it solemnly appeals to all States so that they resolve conflicts and disputes by peaceful means and it also reminds them of their obligations under the Charter. Outstanding endeavours have been undertaken by the international community to create an international order free of wars through the strengthening of mechanisms aimed to promoting the pacific settlement of disputes. 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. The conditions prevailing in the world today give increased importance to the role of international law ... in strengthening international peace, developing friendly and co-operative relations among the nations, settling disputes by peaceful means and advancing economic and social progress throughout the world. 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. If all States faithfully reflect this desire and observe their obligations under the Charter, lasting peace and security will be established.

During the negotiation process of the UDHR all governmental delegates recognized that the violation of human rights is one of the main causes of war. In addition, they stressed that the promotion of respect for human rights was closely linked to the maintenance of peace and security. Regarding the legal form, the drafters stated that the Declaration should help to command the respect of people throughout the world and should be framed with a view to speedy adoption by the UNGA. Delegates agreed that the Declaration should immediately strike public opinion and serve as a guide to the future policies of States. The Preamble of the Declaration recognizes that the inherent dignity and the equal rights of all the persons is the foundation of freedom, peace and justice in the world. The Preamble of the Declaration serves as an introduction to the reader. It states the reasons why the drafters felt it necessary to proclaim the list of rights they did. The declaration was inspired by a sincere desire for peace. They agreed that ignorance and contempt of human rights have been among the principal causes of the sufferings of humanity and particularly of the massacres which have polluted the earth in the two world wars. The Declaration is based on the conviction that man and women must have freedom in order to develop his personality to the full, and have his dignity respected.

The Covenants on Civil, Political, Economic, Social and Cultural Rights textually adopted in their respective Preambles the first recital contained in the Preamble of the Universal Declaration of Human Rights. In addition, it expressly recognized the linkage between the UN Charter and the concept of peace and human rights understood in the line of the contributions received during the drafting process of the Charter and Declaration. In addition, other human rights instruments adopted by the UNGA stated in its preamble that discrimination, development and human rights play a crucial role in creating fair and equal societies founded upon freedom, justice and peace. Article 28 of the Declaration is a utopian aspiration and deals

with the process of realization. Human rights usually traverse three stages: idealization, positivization and realization.

The principles codified in Art. 2 of the Charter constitute the basic foundational principles of the whole body of international law (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). The promotion of human rights and peace are considered as essential purposes, whose realization should be jointly promoted by Member States in conjunction with the full respect of those principles included in the UN Charter. It follows that this perspective has been included in both national constitutions and regional instruments from Africa, Europe, Latin America, Asia and Islam.

All national constitutions and regional instruments coincided in stressing the following principles and ideas in the context of the strengthening of world peace: the promotion of cooperation among the Member States in the areas of non-aggression and common defence; the peaceful co-existence; the prevention of conflicts of inter-State or intra-State nature, the obligation to solve the disputes by peaceful means, the solution of conflicts by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or resort to regional and continental mechanisms or arrangements, or other peaceful means. In addition, they recalled the right of peoples to self-determination, prohibition of terrorism, right to resistance, abolition of all forms of domination, disarmament, prohibition of propaganda of war, respect for sovereignty, the economic and social development of peoples, national independence, non-interference into internal affairs, the realization of mutual benefits and peaceful coexistence between States.

The right to live in a context of peace, human rights and development clearly deals with the generic causes of conflict. In addition, the elaboration of the right to life in connection with the three pillars of 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 United Nations and its members should cooperate to this end. 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.

Chapter II

The right to peace under the international law

1. The elaboration of the right to peace within the UN mandates; 1.1. Introduction; 1.2. International solidarity; 1.3. Democratic and equitable international order; 2. Declaration on Preparation of Societies for life in peace; 2.1. Historical approach; 2.2. Legal analysis; 2.3. Follow-up of the Declaration; 2.4. Legal approach to the right to life in peace; 3. Declaration on the Right of Peoples to Peace; 3.1. Historical approach; 3.2. Legal analysis; 3.3. Follow-up of the Declaration; 4. Initiative on the human right to peace within the United Nations Educational, Scientific and Cultural Organization (UNESCO); 4.1. Las Palmas; 4.2. Oslo; 4.3. Bamako and Maputo; 4.4. International consultation of governmental experts on the human right to peace; 5. Declaration on Culture of Peace; 5.1. Historical approach; 5.2. Legal analysis; 5.3. Follow-up of the Declaration; 6. The recognition of the right to peace in both the national constitutions and regional instruments and jurisprudence. 7. Conclusions

1. The elaboration of the right to peace within the UN mandates

1.1. Introduction

The enabling right to peace could be found in the *UNESCO Colloquium on the new human rights: the rights of solidarity*²⁶⁶ (Mexico City 12-15 August 1980). Besides, 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 others²⁶⁷. Thus, taking into account this important background, human rights experts currently consider that the right to peace should be finally codified in connection with the rights of solidarity (such as the right to development or the right to a healthy and sustainable environment).

In the late 1940s, a number of proposals were made to incorporate variations on the right to peace into a *Declaration on the Rights and Duties of States*²⁶⁸. In 1947 Ecuador submitted a draft Declaration to the UNGA, including an article stating that: “The maintenance of peace, based on justice and on law, is a fundamental rule of conduct in relations between States and these have the right to peaceful and secure development”.

Since 2007 the HR Council is reaffirming the fundamental value of solidarity in 21st century international relations. Along with the UN Millennium Declaration (2000), it states that “global challenges must be managed in a way that distributes costs and burdens fairly, in accordance

²⁶⁶ UNESCO, *Colloquium on the New Human Rights*, Matias Romero Institute of Diplomatic Studies of the Secretariat for the External Affairs of Mexico, SS-80/CONF.806/4, 1980

²⁶⁷ Doc. ST/HR/SER.A/10, New York, 1980

268ALSTON, P., “The legal basis of a right to peace”, *Peace Review*, No. 3 Vol. 3, 1991, p. 23.

with basic principles of equity and social justice, and that those who suffer, or who benefit least, deserve help from those who benefit most”²⁶⁹.

The HR Council has consistently approached the development of the human right to peace as an emerging right in the international human rights law from a three-fold perspective: as part of the emerging right to *international solidarity*; as part of the right of all *human beings* and all *peoples* to a *democratic and equitable international order*, as claimed for in Art. 28 UDHR; and as an essential element of the *right of peoples to peace*²⁷⁰.

1.2. International solidarity

The HR Council recognizes that so-called third generation rights, closely linked to the fundamental value of solidarity, require greater progressive development in the context of the UN human rights mechanisms, in order to be able to respond to the recent problems posed by international cooperation in this sphere²⁷¹.

Since 2007 the HR Council has reaffirmed the fundamental value of solidarity in the 21st century’s international relations. The international solidarity requires international cooperation, (unity) of interest and joint action in order to preserve not only the fabric and very survival of international society, but also to achieve the collective goals²⁷². As the former independent expert on human rights and international solidarity -Mr. Mohammed Rudi Rizki- indicated, the right to peace should be qualified as a solidarity right²⁷³.

As a result, the HR Council proclaimed “the right of peoples and individuals to international solidarity”²⁷⁴ and requested that the independent expert on human rights and international solidarity continue preparing “a draft declaration on the right of peoples and individuals to international solidarity”²⁷⁵. It also requested that the independent expert “further develops guidelines, standards, norms and principles with a view to promoting and protecting this right, by addressing, inter alia, existing and emerging obstacles to its realization”²⁷⁶.

As a result, the HRC requested all States, United Nations agencies, other relevant international organizations and non-governmental organizations to mainstream “the right of peoples and individuals to international solidarity” in their activities²⁷⁷ and the independent expert on human rights and international solidarity to continue preparing “a draft declaration on the right of

269 Doc. resolution A/HRC/6/3 of 27 September 2007, and para. 1 of the resolution 12/9 of 1st October 2009. *Cfr.* VILLÁN DURÁN, C.: “The human right to peace in the work of the Human Rights Council”, in VILLÁN DURÁN, C. and FALEH PÉREZ, C. (Editors), *Regional Contributions for a Universal Declaration on the Human Right to Peace*. Lueca, SSIHRL, July 2010, pp. 267-293, at 276-277

270 VILLÁN DURÁN, C.: “The Human Right to Peace: A Legislative Initiative from the Spanish Civil Society”, *Spanish Yearbook of International Law*, vol. XV, 2009, p. 154.

271 Paragraph 4 of the resolution 6/3, cit., paragraph 5 of the HR Council resolution 9/2 of 24 September 2008 and paragraph 6 of the resolution 12/9, cit

272 A/HRC/4/8, par. 12

273 E/CN.4/2006/96, par. 16; and A/HRC/4/8, of 7 February 2007, par. 13

274 Doc. resolution A/HRC/6/3, *op. cit.*, note 269, par. 5

275 Doc. resolution A/HRC/6/3, *op. cit.*, note 269, par. 7

276 Paragraph 7 of the resolution. 9/2, cit. and paragraph 8 of the res. 12/9, cit.

277 Doc. resolution A/HRC/6/3, *op. cit.*, note 269, par. 5.

peoples and individuals to international solidarity”²⁷⁸. It also requested that the independent expert “further develops guidelines, standards, norms and principles with a view to promoting and protecting this right, by addressing, inter alia, existing and emerging obstacles to its realization”²⁷⁹.

In his reports to the HR Council, the independent expert, Professor Rudi Muhammad Rizki stated from the first moment that the **right to peace** shall be part of the future *declaration on the right of peoples and individuals to international solidarity*. In his 2009 report, the independent expert concluded that there exists a principle of international solidarity, on the basis of which can be built a regulatory framework for human rights and international solidarity, as well as for the emergence of a right of peoples and individuals to international solidarity²⁸⁰.

In his 2010 report the independent expert reiterates that “there is an unequivocal value of solidarity and a related value system that can inform ... the progressive development of ... an evolving right of peoples and individuals to international solidarity”²⁸¹. To his opinion, the international solidarity is “a precondition to human dignity, the basis of all human rights, and a human-centered approach to development”²⁸². He concluded that the “international solidarity permeates the three pillars of the Charter of the United Nations: peace and security; development; and human rights. Development and human rights are the most secure basis for peace”²⁸³.

Although international law and politics acknowledge the prevailing interrelationship between human rights and peace, the recognition of *the right to peace* as an autonomous *human right* has not yet been achieved by the UNGA. Nevertheless, as the independent expert on human rights and international solidarity -Mr. Mohammed Rudi Rizki- indicates, the right to peace should be qualified as a right of solidarity²⁸⁴.

The international solidarity requires international cooperation, (unity) of interest and joint action in order to preserve not only the fabric and very survival of international society, but also to achieve the collective goals²⁸⁵. All means used to achieve this global purpose are shared by the right to peace, because the “cooperation for the maintenance of international peace and security is an absolute necessity for the implementation of this right”²⁸⁶.

The former independent expert also reiterated that “there is an unequivocal value of solidarity and a related value system that can inform ... the progressive development of ...an evolving right of peoples and individuals to international solidarity”²⁸⁷. To his opinion, the international solidarity is “a precondition to human dignity, the basis of all human rights, and a human-centered approach to development”²⁸⁸.

²⁷⁸ Doc. resolution A/HRC/6/3, *op. cit.*, note 269, par. 7

²⁷⁹Resolution 9/2, par. 7; and resolution 12/9, par. 8.

²⁸⁰Doc. A/HRC/12/27, 22 July 2009, p. 2

²⁸¹Doc. A/HRC/15/32, 5 July 2010, par. 40

²⁸²Doc. A/HRC/15/32, *op. cit.*, note 281, par. 58

²⁸³Doc. A/HRC/15/32, *op. cit.*, note 281, par. 61

²⁸⁴ Doc. E/CN.4/2006/96, par. 16; A/HRC/4/8, of 7 February 2007, par. 13

²⁸⁵ Doc. A/HRC/4/8, par. 12

²⁸⁶ BOLINTINEAU, A., “Recognition of the right to peace of men and peoples as an institution of international contemporary law”, *Revue roumaine d'études internationales*, Vol. 20(2), March/April, 1986, p. 98-99

²⁸⁷Doc. A/HRC/15/32, *op. cit.*, note 281, par. 40.

²⁸⁸Doc. A/HRC/15/32, *op. cit.*, note 281, par. 58.

In its resolutions 9/2, 12/9 and 15/13, the HRC requested the Advisory Committee to prepare inputs to contribute to the elaboration by the independent expert on human rights and international solidarity of a draft declaration on the rights of peoples and individuals to international solidarity. As stated by the draft final paper on human rights and international solidarity prepared by Chen Shiqiu on behalf of the AC drafting group on human rights and international solidarity, "international solidarity is not limited to international assistance and cooperation, aid, charity or humanitarian assistance; it is a broader concept and principle that includesthe right of peoples to peace...".²⁸⁹

In accordance with the current independent expert on human rights and international solidarity (Ms. Virginia Dandan), the draft paper prepared by the drafting group will guide the draft declaration on international solidarity and it should be delivered to the HRC by 2014²⁹⁰. In addition, participants in the expert workshop on human rights and international solidarity held in Geneva on 7 and 8 June 2012 agreed that "a right to international solidarity could strengthen space for participation and increase the accountability of national and international stakeholders by creating duties and obligations, including to respect cultural diversity and the right to peace".²⁹¹

1.3. Democratic and equitable international order

In 2008 the HR Council initiated the development of the content of Art. 28 UDHR interpreting the aspirations of all peoples for an international order based on the principles enshrined in the Charter of the United Nations.

As stated by the HR Council resolution 18/6, a democratic and equitable international order requires, inter alia, the realization of the following: (a) The right of all peoples to self-determination....; (b) The right of peoples and nations to permanent sovereignty over their natural wealth and resources; (c) The right of every human person and all peoples to development; (d) The right of all peoples to peace;(o) The shared responsibility of the nations of the world for managing worldwide economic and social development, as well as threats to international peace and security, that should be exercised multilaterally".²⁹²

In addition, it reaffirmed 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"²⁹³. It also stressed the need "...to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations"²⁹⁴.

As stated by the Independent Expert on the promotion of a democratic and equitable international order (Mr. Alfred de Zayas), "a new paradigm of rights could be envisioned:

289Doc. A/HRC/AC/9/4, of 2 July 2012, par. 9.

290Doc. A/HRC/21/44, of 10 August 2012, par. 8.

291Doc. A/HRC/21/44/Add.1, of 11 July 2012, par. 17.

292Doc. Res. 18/6, of 29 September 2011, par.6.

293Doc. Res. 18/6, *op. cit.*, note 292, par. 10.

294Doc. Res. 18/6, *op. cit.*, note 292, par. 11

enabling rights (peace, food, homeland, development), immanent rights (equality, due process) and end rights (identity, the right to achieve one's potential)"²⁹⁵.

On his last report²⁹⁶, he pointed out the need of making reforms "to ensure the equitable participation of States ... in global decision-making, especially concerning decisions on peacekeeping"²⁹⁷; and he stressed that in important decisions concerning war and peace, "consultation has been flawed or entirely missing"²⁹⁸.

As the Independent Expert indicated, the Advisory Committee submitted to the HR Council its draft declaration on the right to peace at its twentieth session²⁹⁹. That draft declaration includes a standard that states that "all States shall promote the establishment, maintenance and strengthening of international peace in an international system based on respect for the principles enshrined in the Charter"³⁰⁰.

According to the Independent Expert, the future declaration on the right to peace will "lead to an increased awareness of the core value of peace as a condition for a just and sustainable world order"³⁰¹. He also encouraged the Council to continue its deliberations and refer the declaration to the GA for adoption.³⁰²

2. Declaration on Preparation of Societies for life in peace

2.1. Historical approach

At its 61st meeting³⁰³, 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"³⁰⁴, on behalf of twenty-eight Member States of the United Nations³⁰⁵.

Afterwards, at the 67th meeting, held some days later on 8 December, the representative of Poland added, upon consultation with the sponsors, a reference to the Universal Declaration of Human Rights of 10 December 1948 in the last preambular paragraph. The draft resolution, as

²⁹⁵Preliminary report of the Independent Expert on the promotion of a democratic and equitable international order, A/HRC/21/45, of 31 July 2012, par. 63.

²⁹⁶ Doc. A/HRC/24/38, of 1 July 2013; to be submitted to the HR Council at its twenty-fourth session.

²⁹⁷ *Ibidem*, par. 13. It was also declared by the participants at the expert consultation convened by the Independent Expert in Geneva on 16 May 2013 (see par. 28).

²⁹⁸ *Ibidem*, par. 20. He gives the following examples, namely: the use of force against Serbia in 1999, Iraq in 2003 and Libya in 2011.

²⁹⁹ Doc. A/HRC/20/31; pursuant to HR Council resolution 17/16 and Advisory Committee recommendation 8/4.

³⁰⁰ Art. 1.6.

³⁰¹ Doc. A/HRC/24/38, of 1 July 2013, par. 48.

³⁰² Doc. A/HRC/24/38, *op. cit.*, note 301, par. 55.a.

³⁰³ First Committee of the General Assembly

³⁰⁴ Doc. UNGA, A/33/486, 1978, p. 2-9

³⁰⁵ 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

revised, was adopted by a roll-call vote of 100 to none, and one abstention³⁰⁶. Subsequently, a group of delegations informed the Secretariat that, had they been present, they would have voted in favour³⁰⁷.

At its 85th plenary meeting, on 15 December 1978, the UNGA definitively adopted resolution 33/73 entitled “Declaration on the Preparation of Societies for Life in Peace” under the leadership of Poland and by 138 votes³⁰⁸ to one, with two abstentions³⁰⁹.

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 peace³¹⁰.

As indicated by Mr. Indalecio Liévano, President of the 33rd^o 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 Nations³¹¹.

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 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*”³¹².

The initiative of the preparation of societies for life in peace was originally introduced by Mr. Edward Gierek³¹³ 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,

306United States of America

307Angola, Bangladesh, Cuba, Malaysia, Saudi Arabia and the United Republic of Cameroon

308Afghanistan, 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

309United States of America and Israel

310Doc. Yearbook of the United Nations (1978), p. 163-164

311Doc. UNGA, 33rd session 1978, Official records, Plenary meetings, Vol. 3, p. 1501

312Doc. UNGA, 33rd session 1978, *op. cit.*, note 311, p. 1501

313First Secretary of the Central Committee of the Polish United Workers' Party

chauvinism and racialism, to inculcate in the younger generation a respect for other nations and a conviction of the right of all to live in freedom, equality and peace”³¹⁴.

However, on 28 September 1978, the initiative was formally presented to the UNGA by Mr. Emil Wojtaszek, 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”³¹⁵

2.2. 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 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*: UDHR³¹⁶ and the ICCPR³¹⁷; 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 aggression³¹⁸, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States³¹⁹ and the UNGA Resolution 3314 (XXIX) on the definition of aggression³²⁰; 3. *Prohibition of the propaganda of war*: Resolution 110 (II) on Measures to be

314Doc. A/PV.2264, p. 17

315Doc. A/33/PV.12, p. 43

316Article 3: “Everyone has the right to life, liberty and security of person”.

317Article 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.

318Principle 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)

319Art. 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

320Art. 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

taken against propaganda and the inciters of a new war³²¹ and the ICCPR³²²; 4. *Strengthening of the cooperation in peace*: Charter of the United Nations³²³; 5. *Respect of the right of self-determination of peoples, independence, sovereignty, territorial integrity and independence*: Declaration on the Granting of Independence to Colonial Countries and Peoples³²⁴, the Declaration on the Strengthening of International Security³²⁵ and the Declaration on the Deepening and Consolidation of International Détente³²⁶; 6. *Elimination of the threat inherent in the arms race*: Final Document of the special session of the UNGA devoted to disarmament³²⁷; 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 Apartheid³²⁸, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity³²⁹ and the International Convention on the Elimination of All Forms

321Art. 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

322Art. 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.

323Art. 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”

324 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

325Art. 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

326Art. 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

327First 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

328Art. 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

329Art. 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. (No. 18) at 40, U.N. Doc. A/7218 (1968)

of Racial Discrimination³³⁰ and 8. *Discouragement of advocacy of hatred and prejudice: ICCPR*³³¹ and the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples³³².

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 I³³³, 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.

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”³³⁴.

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

330Art. 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

331Art. 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.

332Principle 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

333“Calls upon all States, in order to implement the above principles:

- (a) 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;
- (b) 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”;

334Doc. UNGA 33rd session, 1978, Official records, First Committee, Doc. A/C1/33/PV, p. 35

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 Universal Declaration of Human Rights³³⁵ 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 Declaration³³⁶. 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 Charter³³⁷.

2.3. 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.

335Preamble 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”.

336“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;

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”.

337Doc. UNGA 33rd session, 1978, Official records, First Committee, Doc. A/C1/33/PV, p. 40-41

As of 31 August 1981, replies containing such information had been received from nine States³³⁸. After this date, five other States replied to the Secretary-General by sending relevant information about the implementation of the Declaration³³⁹.

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 racism³⁴⁰; the re-affirmation of the principles of independence, sovereignty and the right of self-determination of peoples³⁴¹; consolidation of the process of détente³⁴²; arms limitation, disarmament and confidence-building measures³⁴³; the role played by the mass media in the progressive elimination of the hate speech and propaganda of war³⁴⁴; 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 racism³⁴⁵; 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 peace³⁴⁶; the creation of bilateral and multilateral channels to promote the political, economic, social, cultural and scientific-technical co-operation among States, peoples and individuals³⁴⁷; the observance of international occasions which promote the principle of peace³⁴⁸ and the promotion of the peaceful settlement of disputes (i.e. international mediation)³⁴⁹.

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 international bodies and suggested internal, regional and multilateral activities by State³⁵⁰.

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

338Cuba, 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.

339Bulgaria 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

340Cuba, German Democratic Republic, Hungary, Ukrainian Soviet Socialist Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic, Mongolia

341Cuba, Ukrainian Soviet Socialist Republic, Byelorussian Soviet Socialist Republic

342German Democratic Republic, Bulgaria, Mongolia

343German Democratic Republic, Hungary, Rwanda, Senegal, Ukrainian Soviet Socialist Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic, Mongolia

344German Democratic Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic

345German Democratic Republic, Hungary, Kuwait, Ukrainian Soviet Socialist Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic

346Hungary, Rwanda, Ukrainian Soviet Socialist Republic, Kuwait, Mongolia

347Hungary, Kuwait, Rwanda, Ukrainian Soviet Socialist Republic, Bulgaria, Union of Soviet Socialist Republic, Byelorussian Soviet Socialist Republic

348Kuwait

349Rwanda, Senegal

350Doc. UNGA, A/36/101-140, p. 1

two abstentions³⁵¹ 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 citizens³⁵².

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 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”³⁵³.

On 16 November 1982, the UNGA adopted the resolution 37/16 entitled “International Year of Peace” without vote³⁵⁴ under the leadership of Costa Rica and the sponsorship of thirty-one Member States³⁵⁵ by which it accepted the proposal made by the Economic and Social Council 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.

351United States of America and Israel

352Doc. Yearbook of the United Nations (1981), p. 149-150

353Doc. Yearbook of the United Nations (1981), p. 150

354Doc. A/37/PV.69, International Year of Peace, 16 November 1982

355Sponsors 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

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 peace³⁵⁶.

Later, on 17 December 1984, the UNGA passed the resolution 39/157 entitled “Implementation of the Declaration on the Preparation of Societies for Life in Peace” under the leadership of Poland and the sponsorship of twenty-four Member States³⁵⁷. It was adopted by 119 votes to none and twenty-eight abstentions³⁵⁸. 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 notion pertaining to the positive moulding of human consciousness³⁵⁹ could prejudice the exercise of individual freedom³⁶⁰.

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

356Doc. 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.

357Algeria, 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

358Australia, Austria, Bahamas, Belgium, Brazil, Canada, Denmark, Finland, France, Federal Republic of Germany, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherland, 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

359Preamble, 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”

360Doc. Yearbook of the United Nations (1984), p. 118

sponsorship of twenty Member States³⁶¹ by 128 votes³⁶² to none and twenty-four abstentions³⁶³ 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 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 continued³⁶⁴.

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 States³⁶⁵ by 128 votes³⁶⁶ to none and twenty-four

361Afghanistan, 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.

362Afghanistan, 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

363Australia, 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

364Doc. Yearbook of the United Nations (1984), p. 118

365Afghanistan, Algeria, Bulgaria, Cameroon, Costa Rica, German Democratic Republic, Hungary, Indonesia, Madagascar, Mongolia, Panama, Peru, Philippines, Poland, Syrian Arab Republic, Tunisia, Viet Nam, Yugoslavia

366Afghanistan, 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,

abstentions³⁶⁷ 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 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”.

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

³⁶⁷Australia, 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

3. Declaration on the Right of Peoples to Peace

3.1. 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 life³⁶⁸.

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 representatives³⁶⁹, 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.

Other governmental delegations³⁷⁰ 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 countries³⁷¹ 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:

368Doc. Yearbook of the United Nations (1984), p. 118

369Mongolia, 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

370Malaysia and Philippines.

371European Community

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 community³⁷²”. 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 disputes exclusively by peaceful means, accelerating the economic and social development of States, ensuring social progress and justice”³⁷³.

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”³⁷⁴.

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”³⁷⁵.

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 threat of force in international relations, the peaceful settlement of disputes by way of negotiations, co-operation in saving

372Mongolia 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.

373Doc. UNGA, 39th session, 1984, Official Records, Plenary meetings VII, A/39/PV.32-70, p. 1001-1002

374Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p. 1003

375Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p. 1004-1005

present and succeeding generations from the scourge of war, the suppression of acts of aggression in international relations”³⁷⁶.

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”³⁷⁷.

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”³⁷⁸.

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

376Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p. 1006

377Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p. 1008-1009

378Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p. 1009

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 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”³⁷⁹.

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”³⁸⁰.

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 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”³⁸¹.

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

379Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p. 1010 - 1011

380Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p. 1011-1012

381Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p. 1013-1014

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”³⁸².

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 ... 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”³⁸³.

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”³⁸⁴.

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,

382Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p. 1014-1015

383Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p.1015-1016

384Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p.1016-1017

as it were, the principles embodied in the Charter of the United Nations”³⁸⁵. 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 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 Charter³⁸⁶, 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 of the threat of war, let alone one particular type of war”³⁸⁷. For all these reasons, the Ten abstained on the draft resolution.

Next, Mr. **Paul Lusaka**, President of the UNGA, called for a registered vote. The result was 92³⁸⁸ to none and 34 abstentions³⁸⁹. Twenty-nine States were absent from the vote³⁹⁰ and two countries did not participate³⁹¹. The resolution 39/11 was sponsored by 8 States³⁹².

385Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p.1017

386Art. 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”

387Doc. UNGA, 39th session, 1984, *op. cit.*, note 373, p.1017

388Afghanistan, 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

389Australia, 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

390Those absent included Iran, Israel, Morocco, Saudi Arabia and several Third World Countries

391Albania and Malaysia

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 security³⁹³.

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.

3.2. 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: 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

392 Bulgaria, Cuba, Equatorial Guinea, German Democratic Republic, Lao Peoples Democratic Republic, Libyan Arab Jamahiriya, Mongolia and Nicaragua

393Doc. Yearbook of the United Nations (1984), p. 119

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.

3.3. Follow-up of the Declaration

3.3.1. General Assembly

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 States³⁹⁴ 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 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”³⁹⁵.

394Antigua 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

395Doc. UNGA Resolution 40/3 on the International Year of Peace, 49th plenary meeting, 24 October 1985

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 States³⁹⁶ 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”³⁹⁷.

In addition, on 11 November 1985, the UNGA adopted resolution 40/11 on the right of peoples to peace³⁹⁸ with the sponsorship of thirteen Member States³⁹⁹ by one hundred-nine⁴⁰⁰ to none and the abstention of twenty-nine States⁴⁰¹ 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”.

396Antigua 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

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

398Doc. UNGA Resolution 40/11 on right of peoples to peace, 70th plenary meeting, 11 November 1985

399Angola, Bulgaria, Cuba, German Democratic Republic, Lao People’s Democratic Republic, Libyan Arab Jamahiriya, Madagascar, Mali, Mauritania, Mauritius, Mongolia, Nicaragua and Viet Nam

400Afghanistan, 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.

401 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

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 world situation, which, it said, were the super-Powers' hegemonistic and military policies, including the militarization of outer space⁴⁰².

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 received⁴⁰³.

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 rights⁴⁰⁴.

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 world⁴⁰⁵, the need to make constant efforts aimed at implementing the right of peoples to peace (i.e. prohibition of propaganda of war and education)⁴⁰⁶, the elimination of war (i.e. nuclear war) and arms race, international cooperation, renunciation of use of force and peaceful settlement of disputes⁴⁰⁷. 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 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

402Doc. Yearbook of the United Nations (1985), p. 125

403Member 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

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

405 Bulgaria (p. 3)

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

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

Constitution -, World Bank – peace and development are closely interrelated – International Atomic Energy Agency – promotion of the peaceful uses of atomic energy⁴⁰⁸.

On 24 October 1986, the UNGA adopted resolution 41/10 on the right of peoples to peace⁴⁰⁹ with the sponsorship of twelve Member States⁴¹⁰ by one hundred-four⁴¹¹ to none and the abstention of thirty-three States⁴¹² 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 years⁴¹³.

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

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

409Doc. UNGA Resolution 41/10 on right of peoples to peace, plenary meeting, 24 October 1986

410Bulgaria, Byelorussian, Cuba, Czechoslovakia, German Democratic Republic, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Mauritania, Mongolia, Nicaragua, Syrian Arab Republic and Viet Nam.

411Afghanistan, 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

412 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.

413Doc. Yearbook of the United Nations (1986), p. 119

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 request⁴¹⁴.

As of the replies, they agreed to highlight that Member States should be more active in the progressive elimination of nuclear weapons⁴¹⁵, strengthening of international cooperation among States⁴¹⁶, organization of events on sports and culture⁴¹⁷, creation of the social conditions for achieving harmony and development⁴¹⁸, promotion of the security in the ecological, humanitarian, social, economic, political and military fields⁴¹⁹, reduction and control of armed forces and conventional weapons and disarmament⁴²⁰, inclusion of the principles contained in the right of peoples to peace at the national level⁴²¹, improvement of the health, housing and educational system and reduction of poverty⁴²², the prevention and punishment of terrorist acts⁴²³ and conclusion of peace agreements⁴²⁴.

On 11 November 1988, the UNGA adopted resolution 43/22 on the right of peoples to peace⁴²⁵ with the sponsorship of fifty Member States⁴²⁶ by one hundred eighteen⁴²⁷ to none and the

414Brunei Darussalam, Burkina Faso, Byelorussian Soviet Socialist Republic, Chile, 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

415Brunei Darussalam (p. 3), Byelorussia (p. 4), Chile (p. 10), Poland (p. 15), Ukraine (p. 17), Union of Soviet Socialist Republic (p. 19)

416Burkina Faso (p. 4), Chile (p. 8), Libya (p. 11), Poland (p. 14)

417Burkina Faso (p. 4)

418Burkina Faso, Byelorussia (p. 4), Ukraine (p. 18)

419Byelorussia (p. 5), Poland (p. 15), Union of Soviet Socialist Republic (p. 19)

420Byelorussia (p. 5), Chile (p. 9), Mexico (p. 13), Poland (p. 14-15), Ukraine (p. 17-18), Union of Soviet Socialist Republic (p. 19)

421Chile (p. 6-7)

422Chile (p. 7)

423Chile (p. 11)

424Ukraine (p. 18)

425Doc. UNGA Resolution 41/10 on right of peoples to peace, plenary meeting, 24 October 1986

426Bulgaria, 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

427Afghanistan, 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, 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

abstention of twenty-nine States⁴²⁸ 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 peace⁴²⁹ by one hundred sixty-six⁴³⁰ to fifty three⁴³¹ and the abstention of fourteen States⁴³² 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”.

428 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

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

430 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

431 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, Poland, 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.

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

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”⁴³³.

Finally, since 2003 the UNGA has adopted four resolutions⁴³⁴ 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 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 Working Group on the Right to Peace.

3.3.2. Commission on Human Rights and Human Rights Council

From 2001 to 2003 the CHR has adopted two resolutions entitled “promotion of the right of peoples to peace”⁴³⁵. In particular, at the 78th meeting, Mr. Rodolfo Reyes, representative of Cuba, introduced draft resolution E/CN.4/2001/L.95, sponsored by several countries⁴³⁶ 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 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 acceptable⁴³⁷.

In the explanation of vote before the vote, Mr. Noifalise, representative of Belgium, speaking in explanation of the position of the European Union (hereinafter, EU) and its associated countries⁴³⁸, 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

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

434 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

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

436 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.

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

438 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),

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 instrument⁴³⁹.

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, Security Council and Conference on Disarmament. She thus urged the members of the Commission to oppose the draft resolution⁴⁴⁰.

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 politicization⁴⁴¹.

At the request of the representative of Belgium, a roll-call vote was taken on the draft resolution, which was adopted by 29 votes⁴⁴² to 16⁴⁴³, with 7 abstentions⁴⁴⁴.

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 issues⁴⁴⁵.

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 development⁴⁴⁶.

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

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

440 Doc. E/CN.4/2001/SR.78, *op. cit.*, note 439, p. 25

441 Doc. E/CN.4/2001/SR.78, *op. cit.*, note 439, p. 26

442 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.

443 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.

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

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

446 Doc. E/CN.4/2001/SR.56, *op. cit.*, note 445, p. 31

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 countries⁴⁴⁷.

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 countries⁴⁴⁸, 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 instrument⁴⁴⁹.

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 forums⁴⁵⁰.

At the request of the representative of Spain, a roll-call vote was taken on the draft resolution, which was adopted by 33 votes⁴⁵¹ to 15⁴⁵², with 5 abstentions⁴⁵³.

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).

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

448 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),

449 Doc. E/CN.4/2001/SR.78, *op. cit.*, note 447, p. 48

450 Doc. E/CN.4/2001/SR.78, *op. cit.*, note 447, p. 49

451 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.

452 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.

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

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 Commission 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 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”⁴⁵⁴.

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”⁴⁵⁵. 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”⁴⁵⁶ 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”⁴⁵⁷.

In particular, at the 61th meeting, Mr. Gonzalez, representative of Cuba, introduced draft resolution E/CN.4/2003/L.76, sponsored by several countries⁴⁵⁸ and said that it reaffirms the commitment of all States to promoting peace and underlined the importance 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

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

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

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

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

458 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.

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 all⁴⁵⁹.

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 Commission⁴⁶⁰.

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 Commission⁴⁶¹.

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 rights⁴⁶².

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 votes⁴⁶³ to 16⁴⁶⁴, with 4 abstentions⁴⁶⁵.

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 rights⁴⁶⁶. 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 votes⁴⁶⁷ to 15⁴⁶⁸, with 6 abstentions⁴⁶⁹.

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

460 Doc. E/CN.4/2003/SR.61, *op. cit.*, note 459, p. 26

461 Doc. E/CN.4/2003/SR.61, *op. cit.*, note 459, p. 27

462 Doc. E/CN.4/2003/SR.61, *op. cit.*, note 459, p. 28

463 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.

464 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.

465 Argentina, Chile, Costa Rica, India.

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

467 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.

468 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.

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

In the last resolution on this topic presented before the CHR in 2005⁴⁷⁰, 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 all”⁴⁷¹ 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”⁴⁷². 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 votes⁴⁷³ to 15⁴⁷⁴, with 6 abstentions⁴⁷⁵. The explanation of Member States before the vote was again the same⁴⁷⁶.

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 UNHRC.

Since 2008 onwards the HRC has adopted a yearly resolution entitled “promotion on the right of peoples to peace” by which it requested firstly the OHCHR to organize a workshop on the right of peoples to peace and secondly its Advisory Committee to elaborate a draft Declaration on the same topic⁴⁷⁷. In 2012 the HRC decided to create an Intergovernmental Working Group on the Right to Peace to progressively negotiate a future Declaration⁴⁷⁸. Afterwards, in 2013, the Council extended the mandate of the Working Group an additional year⁴⁷⁹; with a meeting scheduled to take place in Geneva from 30 June to 4 July 2014.

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

470 Doc. E/CN.4/2004/SR.57, op. cit., note 466, p. 34-39

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

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

473 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.

474 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.

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

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

477 Doc. Res. 8/9, 18 June 2008; Res. 11/4, 17 June 2009; Res. 14/3, 17 June 2010 and Res. 17/16, 17 June 2011.

478 Doc. Res. 20/15, 17 July 2012

479 Doc. Res. 23/16, 24 June 2013

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”.

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 life⁴⁸⁰; secondly, the importance of construction of peace and the strengthening of human rights⁴⁸¹; thirdly, international cooperation in the field of human rights as a means to create an environment of peace and stability⁴⁸² and fourthly, the obligation of all States to promote peace and human rights⁴⁸³.

Despite the important advancement of the right of peoples to peace in the field of human rights at the HRC, Member States in their national capacities have still not accepted the human rights approach of this enabling right. Therefore, 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 HRC⁴⁸⁴, 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:

480 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”

481 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”.

482 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”.

483 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”

484 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

“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 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 countries⁴⁸⁵ 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 consultations⁴⁸⁶.

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”⁴⁸⁷.

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.

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 countries⁴⁸⁸ 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

485Belarus, China, Cuba, Djibouti, Egypt, Iran (Islamic Republic of), Nicaragua, Pakistan, Russian Federation, Venezuela.

486See the explanation of vote by the European Union on the draft resolution L.30 on the Prevention of Genocide

487Belarus, 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.

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

causes of conflicts and social tensions”. Additionally, they referred to the main principles of the UN Charter 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 Security Council, 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 endeavour 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 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.

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

4.1. Las Palmas

In January 1997, the 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 institutions⁴⁸⁹.

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

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

Palmas (Spain). This meeting gathered together 30 participants, among them well-known specialists in international law and human rights⁴⁹⁰.

Experts attending the meeting recognized the intimate linkage between human rights and peace in accordance with international human rights law⁴⁹¹ and some UNESCO documents⁴⁹². 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”⁴⁹³. Moreover, experts recalled some other United Nations instruments, which have expressly recognized the right to peace⁴⁹⁴.

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 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 Universal Declaration of Human Rights⁴⁹⁵.

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”;

490 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. Guerini (Italy), directors of human rights institutes; and Mr E. Roucouas (Greece), member of the United Nations Commission on International Law.

491 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).

492 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.

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

494 **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).

495 Doc. 29 C/59, *op. cit.*, note 493, p. 3-4

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”⁴⁹⁶.

4.2. 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 debate⁴⁹⁷.

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 radio⁴⁹⁸.

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 Nations⁴⁹⁹, the Constitution of UNESCO⁵⁰⁰, the Universal Declaration of Human Rights⁵⁰¹ and the International Covenants on Economic, Social, Cultural, Civil and Political Rights⁵⁰². As recognized by drafters, “the recognition of a human right to peace can give peace its full human dimension”⁵⁰³.

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

496 Doc. 29 C/59, *op. cit.*, note 493, Annex I, p. 7

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

498 Doc. 29 C/59, *op. cit.*, note 493, p. 4

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

500 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”

501 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”

502 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”

503 Doc. 29 C/59, *op. cit.*, note 493, p. 4

organizations, both governmental and nongovernmental, and of individuals and public and private entities”⁵⁰⁴.

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”.

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 peace⁵⁰⁵.

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 peace⁵⁰⁶.

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 interdependent⁵⁰⁷.

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

504 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

505 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;

506 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”.

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

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 initiative⁵⁰⁸.

As at 22 October 1997, 42 Member States had replied to the Director-General's letter⁵⁰⁹. 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 peace⁵¹⁰.

Ten Member States suggested changes or proposed amendments⁵¹¹ to the Draft Declaration while at the same time expressing interest, in the principles of the initiative⁵¹².

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 rights⁵¹³.

4.3. 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 Governance⁵¹⁴.

508 Doc. 29 C/59, *op. cit.*, note 493, p. 4-5

509 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

510 Doc. 29 C/59, *op. cit.*, note 493, p. 5

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

512 Doc. 29 C/59, *op. cit.*, note 493, p. 5

513 Doc. 29 C/59, *op. cit.*, note 493, p. 5

514 Doc. 29 C/59, *op. cit.*, note 493, p. 4

The participants in Peace Week, held in Bamako from 24 to 28 March 1997, in the presence of high level dignitaries⁵¹⁵, 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”⁵¹⁶.

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”⁵¹⁷.

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 rights⁵¹⁸.

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 tolerance⁵¹⁹; sustainable economic and social development and a system of participatory democracy⁵²⁰; elimination of the huge social disparities and empowerment of

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

516 Doc. 29 C/59, *op. cit.*, note 493, Annex III: Bamako Declaration, p. 10

517 Doc. 29 C/59, *op. cit.*, note 493, Annex III: Bamako Declaration, p. 10

518 Doc. 29 C/59, *op. cit.*, note 493, Annex III: Bamako Declaration, p. 10

519 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”

520 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”

vulnerable sectors of the population⁵²¹; healthy environment⁵²²; peace as a precondition for ensuring respect for human rights⁵²³ and promotion of education for tolerance, human rights and democracy⁵²⁴.

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”⁵²⁵.

4.4. International consultation of governmental experts on the human right to peace

Pursuant to the resolution 29 C/Resolution 43⁵²⁶ on the draft Declaration on the Human Right to Peace, UNESCO acknowledged “the intimate link between peace and human rights”⁵²⁷; took note of “Article 3 of the Universal Declaration of Human Rights which proclaims that ‘everyone has the right to life, liberty and security of person’”⁵²⁸ 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 fundamental freedoms”⁵²⁹. 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 Nations⁵³⁰.

521 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”

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

523 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”

524 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”

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

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

527 Preamble, paragraph 3

528 Preamble, paragraph 4

529 Preamble, paragraph 8

530 Preamble, paragraph 6

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 States⁵³¹ of UNESCO Governmental met at UNESCO Headquarters in Paris. Moreover, Observers⁵³², intergovernmental organizations⁵³³ and civil society organizations sent representatives to the meeting.

At the beginning of the Consultation the Chairperson⁵³⁴ and the members of its Bureau⁵³⁵ were elected. In accordance with its Rules of Procedure⁵³⁶, the meeting established a Drafting Committee consisting of representatives of several countries⁵³⁷.

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 Consultation⁵³⁸, the Preamble to the Charter of the United Nations⁵³⁹, the Agenda for Peace elaborated by Mr. Boutros Boutros-Ghali⁵⁴⁰ and the transdisciplinary project of Culture of Peace⁵⁴¹.

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 peace⁵⁴² and its

531 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.

532 Palestine and the Holy See

533 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

534 Mr. Alexandre Kouznetsov (Russian Federation)

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

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

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

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

539 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 ...”

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

541 Doc. 28 C/Resolution 5.3, 1995

542 **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

linkage with the Culture of Peace⁵⁴³. In addition, he proclaimed in the draft Declaration that “the right of every human being to peace constitutes the foundation of the culture of peace”⁵⁴⁴ 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 ...”⁵⁴⁵.

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”⁵⁴⁶. 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 right⁵⁴⁷.

During the general debate, Member States were unanimous regarding the existence of an indivisible link between all human rights and peace⁵⁴⁸ and also recognized that the Draft Declaration to be prepared would primarily be an ethical document designed to proclaim principles⁵⁴⁹. In addition, for a large number of speakers a declaration 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 development⁵⁵⁰.

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

543 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.

544 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

545 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 544, Annex II, p. 11-13

546 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 544., paragraph 4, p. 5

547 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 544, Annex IV, p. 18-19

548 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 544, paragraph 12, p. 8-9

549 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 544, paragraph 16, p. 9-10

550 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 544, paragraph 13, p. 9

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 subject⁵⁵¹. 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 Security Council. 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 peace⁵⁵².

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 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"⁵⁵³.

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"⁵⁵⁴.

5. Declaration and Programme of Action on a Culture of Peace

5.1. Historical approach

The project entitled "Towards a culture of peace" was examined by the UNGA at its fiftieth and fifty-first sessions under the item entitled "Human rights questions" (resolutions 50/173 and 51/101).

551 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 544, paragraph 14, p. 9

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

553 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 544, paragraph 21, p. 10

554 Report by the Director-General on the results of the international consultation of governmental experts on the human right to peace, *op. cit.*, note 544, paragraph 23, p. 10

In accordance with the resolution 50/173 adopted on 22 December 1995, the UNGA encouraged “countries, regional organizations, non-governmental organizations and the Director-General of the UNESCO to take all necessary action to ensure education for peace, human rights, democracy, international understanding and tolerance” and also requested “the Secretary-General, in consultation with the Director-General of the United Nations Educational, Scientific and Cultural Organization, to report to the UNGA at its fifty-first session on the progress of educational activities in the framework of the transdisciplinary project entitled “Towards a culture of peace”⁵⁵⁵.

On 23 September 1996, the Secretary-General transmitted to the members of the UNGA the report of the Director-General of UNESCO, on educational activities in the framework of the UNESCO transdisciplinary project entitled “Towards a culture of peace” which stressed that “the Culture of Peace Programme includes specific activities in the fields of competence of UNESCO in both pre-conflict (prevention) and post-conflict (national reconciliation) situations”⁵⁵⁶. It also indicated that “the culture of peace addresses the deep roots of conflict”⁵⁵⁷ and that people should begin “to transform the shared aspects of their cultures that have been shaped by war and violence to the sharing of a culture of peace”⁵⁵⁸. Finally, it stressed that prevention is the key, as problems are more difficult to solve after they have reached a stage of crisis⁵⁵⁹.

The UNGA adopted on 12 December 1996 resolution 51/101 on the “Culture of Peace” by which it recalled the main principles in which a culture of peace is based⁵⁶⁰ and requested the Secretary-General, in coordination with the Director-General of the UNESCO, to report to the UNGA at its fifty-second session on the implementation of the present resolution and on the progress of educational activities and prepare the elements for a draft provisional declaration and programme of action on a culture of peace⁵⁶¹.

In response to UNGA resolution 51/101 the Secretary-General in September [A/52/292] transmitted a report of the Director-General of UNESCO on educational activities under the transdisciplinary project entitled “Towards a culture of peace”. The project comprised four units: education for peace, human rights, democracy, international understanding and tolerance; promotion of human rights and democracy—struggle against discrimination; cultural pluralism and intercultural dialogue; and conflict prevention and post-conflict peace-building.

The Director-General's report presented elements for a draft provisional declaration and programme of action, indicating how the United Nations could take up the issue. In addition, it proposed that the United Nations might wish to declare a year and decade for a culture of peace and non-violence, during which the Secretary-General would lead a campaign involving all

555 Res. A/RES/50/173 on United Nations Decade for Human Rights Education: towards a culture of peace, 27 February 1996

556 Report of the Director-General of the UNESCO entitled on “Towards a culture of peace”, Doc. A/51/395, 23 September 1996, para. 6

557 Report of the Director-General of the UNESCO entitled on “Towards a culture of peace”, *op. cit.*, note 556, para. 8

558 Report of the Director-General of the UNESCO entitled on “Towards a culture of peace”, *op. cit.*, note 556, para. 9

559 Report of the Director-General of the UNESCO entitled on “Towards a culture of peace”, *op. cit.*, note 556, para. 72

560 Principles: respect for human rights, democracy, tolerance, dialogue, cultural diversity and reconciliation, and efforts to promote development, education for peace, the free flow of information and the wider participation of women, as an integral approach to prevent violence and conflicts and to contribute to the creation of conditions for peace and its consolidation. Doc. A/RES/51/101, Culture of Peace, 3 March 1997, para. 3

561 Doc. A/RES/51/101, Culture of Peace, 3 March 1997, para. 6

levels of society, especially youth, to promote the values, attitudes and behaviours of a culture of peace⁵⁶².

On 10 November 1998, the UNGA adopted resolution 53/25 on the International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001–2010)⁵⁶³ by which it proclaimed the period 2001–2010 as the International Decade for a Culture of Peace and Non-Violence for the Children of the World and invited the Secretary-General to submit a draft programme of action to promote the implementation of the Decade at local, national, regional and international levels, and to coordinate the activities of the Decade.

On 28 April 1999 the Commission encouraged the UNGA to conclude its deliberations on the adoption of a declaration and programme of action on a culture of peace and reiterated its invitation to States to promote a culture of peace based on the purposes and principles established in the UN Charter. It asked OHCHR to prepare a report in 2000, taking into consideration the comments and views of all Governments, intergovernmental organizations and NGOs, on the contribution of the promotion and protection of human rights to the further development of a culture of peace⁵⁶⁴. Finally, on 13 September 1999, the UNGA adopted the Declaration and Programme of Action on a Culture of Peace.

During the International Year of Culture of Peace proclaimed for 2000⁵⁶⁵, CHR adopted its resolution 2000/66 by which it requested the OHCHR, “in coordination with the Bureau of the Commission at its fifty-sixth session, to organize, provide the necessary resources, including financial resources, and coordinate during the course of the International Year for a Culture of Peace, a panel/forum on a culture of peace, with participation open to Governments, non-governmental organizations and other interested organizations, focusing on the contribution of the promotion, protection and realization of all human rights to the further development of a culture of peace” (para. 5).

The Expert Seminar on Human Rights and Peace was held in Geneva on 8 and 9 December 2000. It was co-organized with the University for Peace and received the support of the Political Affairs Directorate of the Swiss Federal Department of Foreign Affairs, the Research Department of the Swedish International Development Cooperation Agency and the Bank of Sweden Tercentenary Foundation. In accordance with the report prepared by the OHCHR:

“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. Human rights principles must equally prevail in post-authoritarian regimes and in ongoing democratic transition and consolidation processes....”⁵⁶⁶

Since 2000 the UNGA has regularly adopted resolutions (i.e. 55/47⁵⁶⁷, 56/5⁵⁶⁸, 57/6⁵⁶⁹, 58/11⁵⁷⁰, 59/143⁵⁷¹, 60/3⁵⁷², 62/81⁵⁷³) on the International Decade for a Culture of Peace and

562 Doc. Yearbook of the United Nations, 1998, p. 620-621

563 Doc. A/RES/53/25 International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001–2010), 19 November 1998, Preamble, para. 5

564 Doc. E/CN.4/2000/97/Add.1, Report of the OHCHR on towards a culture of peace, 9 March 2000. Mexico and Thailand replied.

565 Doc. A/RES/52/15, Proclamation of the year 2000 as the International Year for the Culture of Peace, 15 January 1998

566 Doc. E/CN.4/2001/120, report of the Expert Seminar on Human Rights and Peace prepared by the OHCHR, 23 January 2001, p. 3

567 Doc. A/RES/55/47, 22 January 2001

568 Doc. A/RES/56/5, 13 November 2001

569 Doc. A/RES/57/6, 27 November 2002

Non-Violence for the Children of the World, 2001-2010 by which it recognized that the objective of the International Decade for a Culture of Peace and Non-Violence for the Children of the World is to further strengthen the global movement for a culture of peace; noted with satisfaction the engagement of Member States, the United Nations system and civil society; invited Member States to place greater emphasis on and expand their activities promoting a culture of peace and non-violence; welcomed the establishment of national committees and national focal points in over one hundred and sixty countries; designated UNESCO as the lead agency for the Decade with responsibility for coordinating the activities of the organizations of the United Nations system; recognized the important role of relevant United Nations bodies, in particular the United Nations Children's Fund and the University for Peace; requested UNESCO to disseminate widely in various languages the Declaration and Programme of Action and related materials and stressed the importance of the media and of new information and communications technology in further promoting a culture of peace and non-violence.

Additionally, resolution 64/80⁵⁷⁴ on the International Decade for a Culture of Peace and Non-Violence encouraged the Peacebuilding Commission to continue to promote a culture of peace and non-violence for children in its activities and also requested the Secretary-General to explore enhancing mechanisms for the implementation of the Declaration and Programme of Action.

In response to UNGA resolutions 59/142 and 59/143 on the promotion of religious and cultural understanding, harmony and cooperation, and on the International Decade for a Culture of Peace and Non-violence for the Children of the World (2001-2010), proclaimed in 1998, the Secretary-General transmitted a report⁵⁷⁵ of the UNESCO Director-General on a midterm review of the Decade. The report analyzed work undertaken by the UN system, civil society organizations and UNESCO during the past five years.

To maintain visibility and momentum between the midpoint and the completion of the Decade, the report proposed that a global framework be promoted to integrate the various objectives of the Declaration and Programme of Action on a Culture of Peace, which should launch national, regional or international events to demonstrate the Decade's objectives, and, among other things, mobilize the requisite resources for those activities⁵⁷⁶.

5.2. Legal analysis

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 elements⁵⁷⁷, and also indicates that its full development is integrally linked to several important

570 Doc. A/RES/58/11, 10 November 2003

571 Doc. A/RES/59/143, 25 February 2005

572 Doc. A/RES/60/3, 1 December 2005

573 Doc. A/RES/62/81, 1 December 2005

574 Doc. A/RES/64/80, 16 February 2010

575 Doc. 60/279, Midterm global review of the International Decade for a Culture of Peace and Non-Violence for the Children of the World, 2001-2010, 19 August 2005

576 Doc. Yearbook of the United Nations, 2005, p. 746

577 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

fields⁵⁷⁸. Moreover, it identifies the main actors responsible to implement the Declaration⁵⁷⁹ and the role played by education in the construction of a culture of peace⁵⁸⁰.

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.

The report identified the eight areas of the *Programme of Action*: fostering a culture of peace through education⁵⁸¹; promotion of sustainable economic and social development⁵⁸²; respect for

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; 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”

578 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”

579 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”.

580 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”

581 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

all human rights⁵⁸³; equality between men and women⁵⁸⁴; democratic participation⁵⁸⁵; understanding, tolerance and solidarity⁵⁸⁶; participatory communication and the free flow of

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”.

582 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”.

583 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 Development⁵ 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”.

584 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”.

585 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”.

586 Art. 14: “(a) Implement the Declaration of Principles on Tolerance and the Follow-up Plan of Action for the United Nations Year for Tolerance⁸ (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

information and knowledge⁵⁸⁷; and international peace and security⁵⁸⁸. Regarding formal and non-formal education for a culture of peace, the report 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 branches⁵⁸⁹.

5.3. Follow-up of the Declaration and Programme of Action

Since the International Decade for a Culture of Peace and Non-Violence for the Children of the World ended in 2010, the UNGA has adopted several resolutions⁵⁹⁰ entitled “implementation or

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 technologies and dissemination of information;(i) Support actions that foster understanding, tolerance, solidarity and cooperation among peoples and within and among nations”

587 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”

588 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”

589 Doc. Yearbook of the United Nations, 2002, p. 651

590 Doc. A/RES/65/11, 3 February 2011; A/RES/66/116, 22 February 2012 and A/RES/67/106, 2 April 2013

follow up to the Declaration and Programme of Action on a Culture of Peace” by which it reiterates that the objective of the effective implementation of the Programme of Action on a Culture of Peace is to strengthen further the global movement for a culture of peace following the observance of the International Decade for a Culture of Peace and Non-violence for the Children of the World, 2001–2010, and calls upon all concerned to renew their attention to this objective; Invites Member States to continue to place greater emphasis on and expand their activities promoting a culture of peace at the national, regional and international levels and to ensure that peace and non-violence are fostered at all levels;. Encourages UNESCO to strengthen further the activities it has undertaken for promoting a culture of peace and to consider the feasibility of creating a special fund under the Organization to cater to the country-specific projects for the effective promotion of a culture of peace; Commends the relevant United Nations bodies, in particular the United Nations Children’s Fund, the United Nations Development Fund for Women and the University for Peace, for their activities in further promoting a culture of peace and non-violence; Encourages the Peacebuilding Commission to continue to promote peacebuilding activities and advance a culture of peace and non-violence in post conflict peacebuilding efforts; Urges the appropriate authorities to provide age-appropriate education, in children’s schools; Encourages the involvement of media, especially the mass media, in promoting a culture of peace and non-violence; Encourages civil society and non-governmental organizations to further strengthen their efforts to promote a culture of peace; Welcomes the efforts made by UNESCO to continue to enhance communication and outreach, along with its efforts to coordinate and implement its activities to promote the objectives of the International Decade at the; Invites Member States, all parts of the United Nations system and civil society organizations to accord increasing attention to their observance of the International Day of Peace on 21 September each year; Requests the Secretary-General to explore enhancing mechanisms for the implementation of the Declaration and Programme of Action; Invites relevant United Nations bodies to continue their efforts in increasing awareness of the Programme of Action and its eight areas of action aimed at their implementation.

On 14 September 2012 the President of the Assembly organized the first-ever General Assembly High-level Forum on the Culture of Peace, in which participated a wide-ranging partnership and inclusive collaboration among Member States, international organizations and civil society, as evidenced at the Forum. The last Forum was held on 6 September 2013 at the UNGA.

6. The recognition of the right to peace in both the national constitutions and regional instruments and jurisprudence

The concept of the right to peace, as a fundamental value⁵⁹¹ or principle⁵⁹², has been explicitly included in seven Constitutions⁵⁹³. However, these constitutional texts have elaborated this

591 Constitution of Burundi: art. 14 included in the Fundamental Values

592 Constitution of Guinea Bissau: art. 5 included in the TITLE I: Fundamental Principles on the nature and basis of the State

593 **Bolivia** - “Bolivia is a pacifist State that promotes the culture of peace and the right to peace ... “(art. 109) - ; **Burundi** – “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» (art. 14); **Cameroon** – “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

concept by taking into account a conception based only on the relationships between States and without referring to human rights issues, with the exception of Peru⁵⁹⁴. In particular, these Constitutions took into account some of the principles contained in Art. 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.

In addition, regional instruments, such as the *African Charter on Human and Peoples' Rights*⁵⁹⁵ and most recently the *Human Rights Declaration*⁵⁹⁶ adopted by the Association of Southeast Asian Nations (ASEAN), have explicitly recognized the right to peace as a collective right and always in connection to principles contained in Art. 2 of the UN Charter. Unlike the previous regional instruments, other texts brought their attention to particular groups of people, in particular women and the youth. (i.e. 2003 *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*⁵⁹⁷ and the 2005 *Ibero-American Convention on Young People's Rights*⁵⁹⁸).

On 30 March 1998, civil society organisations adopted the **Asian Human Rights Charter** by which it acknowledged in article 4.1 that all persons have the right to live in peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence. The peoples of Asia have suffered great hardships and tragedies due to wars and civil conflicts which have caused many deaths, mutilation of bodies, external or internal displacement of persons, break up of families, and in general the denial of any prospects of a civilized or peaceful existence. Both the state and civil society have in many countries become heavily militarized in which all scores are settled by force and citizens have no protection against the intimidation and terror of state or private armies. Finally, the Charter stated in its article 4.5 that the international community of States has been deeply implicated in

Organization of African Unity shall govern relations between States” (art. 23); **Japan** – “... we recognize that all peoples of the world have the right to live in peace, free from fear and want...” (Preamble); **Republic of Congo** – “all Congolese have the right to peace and security on the national as well as on the international level (art. 52) and **Guinea Bissau** - “...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” (art. 5).

594**Peru** – “every individual has the right to peace, tranquility, enjoyment of leisure time, and rest, as well as to a balanced and appropriate environment for the development of his life” (art. 2.22)

595Art. 23: "1. 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 Organization of African Unity shall govern relations between States, Doc. OUA CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (27 June 1982).

596Art 38: “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 realised. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region”

597Art. 10: "Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace..."

598Art. 4: "This Convention proclaims the right to peace, a life without violence and fraternity and the duty of encouraging them through education and programmes and initiatives which conduct youth solidarity and cooperation energies....".

wars and civil conflicts in Asia. Foreign States have used Asian groups as surrogates to wage wars and have armed groups and governments engaged in internal conflicts. They have made huge profits out of the sale of armaments. The enormous expenditures on arms have diverted public revenues from programs for the development of the countries or the well-being of the peoples. Military bases and other establishments (often of foreign powers) have threatened the social and physical security of the people who live in their vicinity.

Furthermore, there is an increasing case-law on the right to peace developed by some national Courts. However, the claimants, who brought the case to the court, focused their attention only on the illegal use of force by some specific States in a context of war or conflict. The component of human rights was not properly included.

The Constitutional Court of **Colombia** stated that the right to peace plays a crucial role in the Colombian Constitutional order, given that it is mandatory (Judgement No. C-055/95, 1995). However, the Court concluded:

“It is unacceptable the argument used by the accusation to seek a peaceful co-existence, which indicates that the right to peace should be recognized as a fundamental right. Indeed, this Court has noted, in previous a decision, that while the right to peace occupies a transcendental rank in the Colombian constitutional system because it is mandatory, is not, strictly speaking, a fundamental right. Therefore, it does not have statutory legal reservation”⁵⁹⁹.

Afterwards, the Constitutional Court of **Costa Rica** recognized in decision 9992-04 that "there is common ground ... in the sense of recognizing the existence of peace as one of the values informing our Constitutional order."⁶⁰⁰

“There is a common basis in the allegations and responses from all those involved in this process, in the sense of recognizing the existence of peace as one of constitutional values that inform our system, clearly distinguishable, not only by the systematic understanding of our Constitution, but as "living constitution," as called by that particular doctrine in which the legal bloc of constitutionality is understood and performed by society. Such a view is shared by the Court as it coincides with the vision that has shaped this body and in various pronouncements on the subject. In this regard it is clear that the Costa Rican people, tired of a story of death, fighting dictators and exclusion from the benefits of free development, wisely chose in nineteen hundred forty-nine, to manifest the feeling that has long accompanied Costa Ricans, of adopting peace as a guiding value in society. At this time, this historic change materializes, and a new spirit was proclaimed, a spirit of peace and tolerance. Since then, symbolically the Military Headquarters became a museum, or educational institution, and the country adopted “right and reason” as mechanism to resolve their problems internally and externally. Moreover, we chose human development and proclaimed our right to live freely and in peace. That day this nation changed, and we decided that any price we should pay to fight for peace, will always be less than the irreparable cost of war. That philosophy is one that culminates with our country’s "Proclamation of perpetual, active and unarmed neutrality", and numerous international instruments signed in the same direction - abundantly cited by the parties, as an extension of that entrenched constitutional value that serves as a constitutional parameter when analyzing the

⁵⁹⁹See in Judgement No. C-055/95: Judicial review, p. 82-83

⁶⁰⁰ZAMORA BOLAÑOS, R., “Reconocimiento y aplicación judicial del derecho humano a la paz en la jurisprudencia del Tribunal Constitucional de Costa Rica” in C. VILLAN DURAN, C. and FALEH PEREZ, C., *Regional Contributions on the Human Right to Peace*, SSIHRL, July 2010, p. 419-435

contested acts. In this sense this Chamber has stressed in its judgments the value of peace as legal and political principle by stating:

"... from there that the laws, in general, the rules and acts of authority, require for its validity, not only having being promulgated by competent bodies and due process, but also pass the revision for its compliance with the rules, principles and highest values of the Constitution ..., such as order, peace, security, justice, freedom, etc, which are set as standards of reasonableness (see sentence number 1739-92)".

Subsequently, the Court expressly recognized (decision 14193-08 on nuclear fuel) in 2008 that all citizens have the right to peace even though the Constitution does not specifically include this right.

"... it should be reminded that States that promote peace are obligated to adopt an "unconditional or ethical pacifism" as called by some part of the doctrine, which departs from the premise that peace and war are obviously antagonistic, and one respectively a value to be achieved, and the other a negative value that must be eradicated. Therefore, a State accepting peace as a fundamental constitutional value may not conform to the limited notion that peace is the absence of war; but must go further, preventing and continuously rejecting every decision and action that can encourage and lead to such circumstances. Certainly among the activities that can be considered opposed to a pacifist spirit of a nation or country, are the manufacture of arms and the production of certain minerals or chemicals. They are directly linked to violence, even in circumstances of legitimate defence. There are even certain types of weapons, firearms, chemical, biological, etc., those are manufactured specifically for use in war. Therefore, a country wishing to promote peace, both domestically and internationally, must take care to restrict the manufacture and/or import of weapons and chemicals in their territory, flatly rejecting those that by their nature have been thought and created to promote the negative value of war. Given that there exists in the market many types of weapons, from weapons of war to others whose primary purpose is to assist in the protection of citizen and public or private property and allow the practice of some sports activities, such as hunting and target shooting, Costa Rican law permits the manufacture and importation of certain types of light weapons, under strict control. The Arms and Explosives Act provides in Article 1 that the law regulated "... the acquisition, possession, registration, export, sale, importation, exportation, manufacture and storage of weapons, ammunition, explosives and gunpowder, in any presentations, and raw materials to manufacture products covered by this Act, in all its aspects, as well as the installation of safety devices. "Article 19 states that there are permitted weapons and prohibited weapons. The former are governed by Article 20 and the second by Article 25. Article 26 prohibits the use, or introduction to the country of gases, chemicals, viruses or toxic or deadly bacteria that produce irreversible mental or physical consequences, to be used as a weapon. It also prohibits police use of ammunition for hunting. Article 68 regulates the manufacture, stockpiling, trade, import and export of arms, ammunition, explosives, fireworks and gunpowder. Hence, even when there is a group of weapons, and substances and chemicals whose importation and manufacture is permitted by law, such permission must be understood in highly restrictive sense, in respect of the aforementioned constitutional value."

The concept of peace as a fundamental right of everyone has been explicitly included in the Constitution of Japan - "...we recognize that all peoples of the world have the right to live in peace, free from fear and want." (Preamble). In addition, it should be noted that the right to peace is also a duty to be applied by all Japanese citizens. In particular, the Japanese High

Courts jurisprudence -in particular, the Nagoya case (2008)-, recognized the right of all individuals to request redress from the Courts when the State violates Article 9 of the Constitution of Japan in the following terms⁶⁰¹:

“The right to live in peace, expressed in the Preamble of the Constitution as “the right to live in peace,” 23 is defined as, for example, “the fundamental human right to live in peace, free from fear and want, unfringed and unrestricted due to destruction resulting from war, armaments or war preparation, with the essence of a natural right in the nuclear age that can create a peaceful country and world,” and is an extremely diverse and broad right, as shown by the differing expressions advocated by the appellants, including “the right to live in a Japan that does not engage in war or the use of military force,” “the right to not contribute to the taking of the life of another through war or the military,” “the right to live in peace based on one’s peaceful convictions, and not be involved with damaging acts by military measures against the people of another country,” and “the right to live and stand against war, against violence, and for pacifism, aspiring to peace based on faith, and pursuing the happiness of all people.”

From the fact that the fundamental human rights presently guaranteed by the Constitution could not exist without a foundation of peace, the right to live in peace can be called a foundational right at the base of all fundamental human rights making their enjoyment possible, and goes beyond a simple expression of the basic spirit or idea of the Constitution. From the fact that the Preamble of the Constitution, which must be said to have legal normative character, famously expresses “the right to live in peace,” and in addition Article 9 of the Constitution provides for the renunciation of war and prohibits the maintenance of war potential as an objective system from the side of government action, and furthermore, Chapter III of the Constitution, beginning with the personal rights provided for in Article 13, provides for individual fundamental human rights, the right to live in peace must be recognized as a legal right under the Constitution. The right to live in peace can be called a compound right that can be expressed as a freedom right, a social right, or a political right, depending on the circumstances, and there are situations where its character as a concrete right can be affirmed, meaning its protection and relief can be requested through invoking legal enforcement measures in a court of law. For example, if, due to acts of state that violate Article 9 of the Constitution, in other words the execution of war, the use of military force, or acts of military preparation, an individual’s life or freedom are infringed or threatened with being infringed, or if an individual is forced to contribute to or cooperate with the execution of war in violation of Article 9, then mainly as a manifestation of the freedom right aspect of the right to live in peace, it can be interpreted that there are situations where relief can be sought in a court of law through such methods as a request for injunction against the unconstitutional act or a request for damages, and to that extent the right to live in peace has the character of a concrete right.

Still, there is a point of view denying the possibility of characterizing the right to live in peace as a right, or a concrete right, based on the fact that “peace” is an abstract concept, and that there are so many ways to define and achieve peace, however constitutional concepts are generally abstract, and filled in by interpretation. For example, even “freedom” and “equality” have many ways of achievement, and there is

601 HAMILTON, H., “Mori v. Japan: the Nagoya High Court recognizes the right to live in peace”, *Pacific Rim Law & Policy Journal Association*, 2010 and HAMILTON, H., “Emergence of the Right to Live in Peace in Japan”,

no reason to single out the right to live in peace and deny it the possibility of being characterized as a legal right or a concrete right because the concept of peace is abstract”⁶⁰².

The Nagoya High Court and Okayama District Court decisions in the SDF Iraq Deployment cases have breathed new life into the pacifist provisions of the Constitution of Japan. They further provide evidence that international law norms on the use of armed force can be incorporated into domestic legal systems. By recognizing the right to live in peace as an enforceable right in certain situations, the Nagoya and Okayama courts have created a means for citizens to legally enforce Article 9, and to voice their opposition to national policy regarding the use of armed force⁶⁰³.

In addition, the Constitutional Court of the Republic of Korea recognized the existence of the right to live in peace on the basis of Article 10 of the Constitution, which recognizes that all citizens have the right to pursue happiness.

In accordance with Mr. Cançado Trindade, current Judge of the ICJ, the right to peace can be adjudicated by contemporary international courts and tribunals, in particular the Inter-American Court of Human Rights and the ICJ. The rights of peoples was acknowledged by the Inter-American Court of Human Rights in the case of the Community Mayagna (Sumo) Awas Tingni v. Nicaragua (2001), since it extended protection to the right of all members of the indigenous community to the communal property of their historical lands. Furthermore, three other decisions had a direct bearing on the rights of peoples, their cultural identity and their very survival, namely: Yakye Axa Indigenous Community v. Paraguay (2005–2006); Sawhoyamaya Indigenous Community v. Paraguay (2005–2006); and Moiwana Community v. Suriname (2005–2006). In addition, Mr. Cançado Trindade recalled that the right of peoples to live in peace was acknowledged by the ICJ in a number of cases. He also referred to the case law of the European Court of Human Rights, as well as of the African Commission on Human and Peoples’ Rights⁶⁰⁴.

7. Conclusions

The *Declaration on the Preparation of Societies for Life in Peace* of 1978 reaffirms and makes reference to the existing United Nations accomplishment aimed at fostering the principle of friendly relations and co-operation among States. In addition, it spells out the eight main principles, which will guide Member States in the preparation of societies for life in peace (i.e. recognition of the right to live in peace; qualification of wars of aggression as a crime against peace; prohibition of the propaganda of war; strengthening of the cooperation on peace; respect of the right of self-determination of peoples, independence, sovereignty, territorial integrity and independence; elimination of the threat inherent in the arms race; discouragement of all manifestation and practices of intolerance, racism, racial discrimination, colonialism, apartheid and other human rights and fundamental freedoms and discouragement of advocacy of hatred and prejudice). Both this *Declaration* and the *Universal Declaration of Human Rights* share the

602 HAMILTON, H., “Mori v. Japan: the Nagoya High Court recognizes the right to live in peace”, *Pacific Rim Law & Policy Journal Association*, 2010, p. 560-561

603 HAMILTON, H., “Emergence of the Right to Live in Peace in Japan”, *Australian Journal of Asian Law*, Vol. 12, No. 1, February 2011, p. 22

604 Report of the Office of the High Commissioner for Human Rights on the outcome of the expert workshop on the right of peoples to peace, doc. A/HRC/14/38 of 17 March 2010, par. 37-38

same legal ways aimed at widely promoting the peace values and principles contained in human rights law. 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 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”.

In the *Declaration of the Right of Peoples to Peace of 1984*, most of the governmental representatives stated that the right of peoples to peace was implicitly recognised by the international community in accordance with the UN Charter, in particular its Preamble and Art. 2. In order to protect and promote this right, they proposed that States should effectively implement and respect the set of principles contained in Art. 2 of the UN Charter and proclaimed the sacred right of peoples to peace. In addition, they also stressed that the respect of the latter principles should help to eliminate the scourge of war, in particular nuclear war. Other governmental delegations stated that while peace is an indispensable condition of human survival, it cannot be peace at any price. Finally, another group of countries stressed that the right of peoples to peace has no legal basis. Unlike the *Declaration on the Preparation of Societies for Life in Peace*, the *Declaration on the Right of Peoples to Peace* is not linked to international human rights law. In the operative sections of the resolutions on this topic 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 (i.e. elimination of the threat of war, the renunciation of the 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). 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”. 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. Since 2008 onwards the Human Rights Council adopted a yearly resolution entitled “promotion on the right of peoples to peace”. Despite the important advancement of the right of peoples to peace in the field of human rights at the HRC, Member States in their national capacities have still not accepted the human rights approach, and in particular its individual dimension, of this enabling right. Therefore, 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 1997 the Director-General of UNESCO 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 and its linkage with the Culture of Peace. During the general debate, Member States were unanimous regarding the existence of an indivisible link between all human rights and peace and also recognized that the Draft Declaration to be prepared would primarily be an ethical document designed to proclaim principles. 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 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.

On 28 April 1999 the Commission encouraged the UNGA to conclude its deliberations on the adoption of a declaration and programme of action on a culture of peace and reiterated its

invitation to States to promote a culture of peace based on the purposes and principles established in the UN Charter. During the International Year of Culture of Peace proclaimed for 2000, CHR adopted its resolution 2000/66 by which it requested the OHCHR, to organize a panel/forum on a culture of peace. The Expert Seminar on Human Rights and Peace was held in Geneva on 8 and 9 December 2000. The eight areas of the *Programme of Action* are the following: fostering a culture of peace through education; promotion of sustainable economic and social development; respect for all human rights; equality between men and women; democratic participation; understanding, tolerance and solidarity; participatory communication and the free flow of information and knowledge; and international peace and security. It should be noted that there is a close linkage between the standards included in the *Human Rights Council Advisory Committee draft Declaration on the right to peace* and the *Declaration and Program of Action of Culture of Peace*. In particular, all the main concepts (i.e. human security and poverty, disarmament, education, development, environment, vulnerable groups, refugees and migrants) proposed by the Advisory Committee were already included and later elaborated in the *Program of Action of Culture of Peace*, with the exception of conscientious objection, peacekeeping and private military companies.

The concept of the right to peace has been explicitly included in several domestic Constitutions. However, these constitutional 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 addition, regional instruments have explicitly recognized the right to peace as a collective right and always in connection to principles contained in Art. 2 of the UN Charter. Furthermore, there is an increasing case-law on the right to peace developed by some national Courts. However, the claimants who brought the case to the court, focused their attention only on the illegal use of force by some specific States in a context of war or conflict. The component of human rights was not properly included. The concept of the right to peace included in both Constitutions and regional instruments, and used in some domestic Courts, is clearly elaborated in the light of the “right of peoples to peace”, elaborated by the 1984 Declaration.

Chapter III

Debate on the right of peoples to peace

1. Legal status of the resolutions adopted by the United Nations; 1.1. Primary and subsidiary sources of international law; 1.2. Secondary law of International Governmental Organisations; 2. Phases of debate in the United Nations human rights bodies; 2.1. Human Rights Council; 2.2. Workshop on the right of peoples to peace; 2.3. Advisory Committee; 2.4. First session of the Open Ended Working Group on the right to peace; 2.5. Informal consultations on the right to peace; 3. Results of the debate; 3.1. The outlaw of war and armed conflict; 3.2. The linkage between human rights and war and armed conflict; 3.3. The role of human rights in the prevention of war and armed conflict; 3.4. The linkage between the right to life and peace; 3.5. Human dignity; 4. Conclusions

1. Legal status of the resolutions adopted by the United Nations

1.1. Primary and subsidiary sources of international law

The primary rules of the system create the essence of every legal system, which is always based on principles and rules that lay down the rights and obligations of the subjects of that system⁶⁰⁵. As indicated by Malcolm N. Shaw, “there is no single body able to create laws internationally binding upon everyone, nor a proper system of courts with comprehensive and compulsory jurisdiction to interpret and extend the law... This perplexity is reinforced because of the anarchic nature of world affairs and the clash of competing sovereignties”⁶⁰⁶.

Art. 38.1 of the Statute of the ICJ described 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 four main legal sources, namely: 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; thirdly, the *general principles of law* recognized by civilized nations and fourthly, *judicial decisions* and *teachings* of the most highly qualified publicists. Therefore, as indicated by the International Law Commission in 2002, there is clear difference between the legal value of a norm and of a source⁶⁰⁷.

For many legal practitioners, treaties constitute the most important source of international law taking into account that the contracting parties must expressly express its consent. Treaties can have different names, ranging from Conventions, International Agreements, Pacts, General Acts, and Charters to Statutes and Covenants. The obligatory nature of treaties is founded upon the principle that agreements are always binding⁶⁰⁸.

The Vienna Convention on the Law of Treaties of 1969 states in its Art. 26, under the heading “*pacta sunt servanda*”: “Every treaty in force is binding upon the parties to it and must be

605 THIRLWAY, H., “The sources of international law”, in EVANS, M., *International Law*, Third Edition, Oxford, England ; New York : Oxford University Press, 2010, p. 97

606 SHAW, M. N., *International law*, 6th ed., Cambridge, England ; New York : Cambridge University Press, 2008, p. 70

607 Doc. A/57/10, Report of the International Law Commission, Fifty-fourth session (29 April-7 June and 22 July-16 August 2002), para. 83

608 SHAW, M. N., *op.cit.*, note 606, p. 93-95

performed by them in good faith”. As stressed by the ICJ in its case *North Sea Continental Shelf*, parties that do not sign and ratify the particular treaty are not bound by its legal terms. It also indicated that a provision in a treaty may constitute the basis of a rule which, when the *opinio juris* exists, can lead to the creation of a binding custom governing all states⁶⁰⁹.

International law is a process, even a system, of constant renewal, dynamism and development. This entails that the sources of law cover a large spectrum of normative force. The normative process can be expressed in many different ways by principles, custom, and treaties⁶¹⁰.

The provision on international customary law was incorporated into the United Nations Charter by Article 92: "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply...international custom, as evidence of a general practice accepted as law”.

A marker of *international custom* is consensus among states exhibited both by widespread conduct and a discernible sense of obligation. Generally, sovereign nations must consent in order to be bound by a particular treaty or legal norm. However, international customary laws are norms that have become pervasive enough internationally that countries need not consent in order to be bound. In these cases, all that is needed is that the State, group of States or regional groups have not objected to the law.

International law indicates that the international customary law is the result of the combination of two elements: an established, widespread, and consistent practice on the part of States; and a psychological element known as the *opinio juris sive necessitates*⁶¹¹. As indicated by the ICJ in its case *Military and Paramilitary Activities in and against Nicaragua*, in order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of state conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule⁶¹².

The basic rule related to continuity and repetition was laid down in the *Asylum* case of the ICJ in 1950 as follows: “a customary rule must be in accordance with a constant and uniform usage practised by the States in question”⁶¹³. The view that some degree of uniformity amongst state practices was essential before a custom was emphasized in the *Anglo-Norwegian Fisheries* case⁶¹⁴.

One normative element of law, which most progressively supports the connotation of international law as a process is the notion of *general principles*. These principles are “an authoritative recognition of a dynamic element on international law, and of the creative function of the courts which may administer it”⁶¹⁵. The recognition of law as a continuing process provides general principles for a “welcome possibility for growth”⁶¹⁶, in which capacity they also contribute to the development of international law.

609 THIRLWAY, H., *op.cit.*, note 605, p. 100-101

610 CHRISTINA VOIGHT, A., “The Role of General Principles in International Law and their Relationship to Treaty Law”, *RETFÆRD ÅRGANG*, 2008, Vol. 31 NR. 2/121, p. 4

611 THIRLWAY, H., *op.cit.*, note 605, p. 102

612 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 14, para. 186

613 *Asylum case*, ICJ Reports, 1950, p. 266

614 *Anglo-Norwegian Fisheries case*, ICJ Reports, p. 116

615 BRIERLY, J.L. (H. Waldock ed.), *The Law of the Nations: An Introduction to the International Law of Peace*, Oxford: Clarendon, 1963, p. 63.

616 BOS, M., “The Recognized Manifestations of International Law”, *German Yearbook of International Law*, 1977, Vol. 20, p. 42.

When classifying general principles as a supplement to treaty and custom, they are seen as a category of norms which usually come after those depending more immediately on the consent of states⁶¹⁷. 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”⁶¹⁸. Similarly, *Ben Cheng* regarded the practice element to be unnecessary in the context of general principle 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”⁶¹⁹. 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. They can guide law-makers and shape the content of treaty law. In addition, “these principles sketch the context of the law-makers’ 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”⁶²⁰.

In any system of law, a Court in considering a case before it many times realises that there is no law covering exactly a specific matter, neither parliamentary statute nor judicial precedent. In such cases the judge will proceed to deduce a rule by analogy from already existing rules or directly from the general principles that guide the legal system⁶²¹. As indicated by legal practitioners, “the principles are those which can be derived from a comparison of the various systems of municipal law, and the extraction of such principles as appear to be shared by all, or a majority, of them”⁶²².

In general international law, the principles on non-interference in the affairs of other states, on the prohibition of the threat or use of force, on the peaceful settlement of disputes, on respect for human rights, and on self-determination of peoples have been seen as playing a major role in forming the ‘*constitutional principles*’ of the world community⁶²³. These principles were deeply elaborated in the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*, which was adopted by the UNGA in 1970⁶²⁴.

In accordance with the Charter of the United Nations, peace is a Purpose and Principle of the international community. In particular, Art. 1.2 states that the United Nations should “...to take other appropriate measures to strengthen universal peace”. Additionally, the Charter indicates in its Art. 2.3 that the Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles: “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”.

617 BROWNLIE, I., *Principles of International Law*, 6th ed., Oxford University Press, 2003, p. 15

618 SIMMA, B. and ALSTON, P., “The Sources of Human Rights Law: Custom, Jus Cogens and General Principles”, *Australian Yearbook of International Law*, Vol. 12, 1991, p. 102.

619 CHENG, B., *General Principles of Law as applied by International Courts and Tribunals*, London, Ed. Stevens, 1953, p. 24.

620 CHRISTINA VOIGHT, A., *op.cit.*, note 610, p. 13

621 SHAW, M. N., *op.cit.*, note 606, p. 98

622 THIRLWAY, H., *op.cit.*, note 605, p. 109

623 CASSESE, A., *International Law*, 2nd ed., Oxford University Press, 2005, p. 188.

624 Doc. 2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, A/RES/25/2625, 24 October 1970

On the initiative of the United States of America, the UNGA adopted resolution 95 (I) in 1946 by which it affirmed “the principles of international law recognized by the Charter and the Nürnberg Tribunal and the judgment of the Tribunal”⁶²⁵. In its principle VI, the crime against peace was considered as a punishable crime under international law.

By the same resolution, the UNGA further directed the Committee on the Progressive Development of International Law and its Codification to “treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal.”

Resolution 95 (I) was followed by a second resolution 177 (II), adopted by the UNGA on 21 November 1947, in which the Assembly directed the newly created International Law Commission (‘the Commission’) – established by resolution 174 (II) – to formulate these principles and to prepare a draft Code of Offences against the Peace and Security of Mankind (‘the draft Code’).

On 10 December 1981, the UNGA adopted resolution 36/106 by which it requested the Commission to resume its work on the draft Code. In 1996, the work of the Commission resulted in its adoption of the “draft Code of Crimes against the Peace and Security of Mankind”.

Paragraph 1 (d) of Art. 38 makes a clear distinction between, on the one hand, the sources mentioned in the preceding paragraphs, and on the other, judicial decisions and teachings. The latter are considered as “subsidiary means for the determination of rules of law”. It follows that “if a rule of international law is stated in a judicial decision, or in a textbook, it will be stated as a rule deriving either from treaty, custom, or the general principles of law”⁶²⁶.

A reference to the teachings was included in the early days of the development of international law, when the opinions of eminent legal writers such as Vattel, Pufendorf, Gentili, Grotius, Bynkershoek or Vitoria had much more weight than the current authors. As to the judicial decisions, it usually includes the decisions of the ICJ, a being of the highest authority⁶²⁷.

In accordance with Art. 1.1. of the Statute of the UN International Law Commission, codification is “the more precise formulation and systematization of rules of international law in fields where there already has been extensive state practice, precedent and doctrine”. Those who saw codification as essentially scientific considered that its task was to ascertain and declare the existing rule of international law. According to this position, this task should be carried out solely on the basis of state practice and precedent. Therefore, it is an inductive

625 Principles I: crimes against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced; Principle II: criminal liability exists under international law even if domestic law does not punish an act which is an international crime; Principle III: denial of immunity for individuals who acted as Head of State or responsible Government officials; Principle IV: The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him; Principle V: Fair Trial for Defendants; Principle VI: It codifies the three categories of crimes established by article 6 of the International Military Tribunal Charter (crimes against peace, war crimes and crimes against humanity; Principle VII: complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law. See in A. Cassese, *Affirmation of the principles of international law recognized by the Charter of the Nürnberg Tribunal*, United Nations Audiovisual Library of International Law, p. 2-4

626 THIRLWAY, H., *op.cit.*, note 605, p. 110

627 SHAW, M. N., *op.cit.*, note 606, p. 109-113

process which should be entrusted to independent jurists, not governments. However, the idea of non-governmental codification of international law did not find the requisite support in the United Nations, nor was it generally supported by international lawyers⁶²⁸.

On the other hand, a large number of general multilateral treaties are considered as “progressive development” or “law-making” rather than as codification of customary international law. Although many of these treaties may be based on some prior state practice, they are above all perceived as expressing new law required by States for political, social and technical reasons. Most of them have been prepared and negotiated by United Nations bodies, in which expert or specialized committees from the main political and geographical groups actively participate⁶²⁹.

1.2. Secondary law of International Governmental Organisations

Nowadays there exists a disagreement as to whether secondary acts adopted by the International Governmental Organisations (IGOs) constitute a source of law or whether they form part of general international law. It is important to distinguish between primary (i.e. founding treaties) and secondary sources of IGOs. An argument against the existence of secondary law as an independent source of international law is that these secondary acts, which derive from primary rules, are neither binding, nor abstract nor general rules⁶³⁰.

Some of the rules of international law contain binding obligations, while others, such as acts adopted by IGOs are non-binding. The influence of non-binding rules on the development of international law and on State practice is considerable, although it cannot be classified as positive law. They are called “soft law” to distinguish them from “hard law”. However, it is a fallacy to dismiss soft law as not law because it can and does contribute to the corpus of international law.

The Vienna Convention on the Law of Treaties does not require treaties between States to create any identifiable rights and obligations in order to be subjected to this international regime⁶³¹. A soft law document represents many times a better instrument than a treaty whose value is substantially impaired by a poor number of ratifications, or by rather ambiguous or diluted provisions⁶³².

It follows that the type of instruments can be useful because they can help generate widespread and consistent state practice and/or provide evidence of *opinio juris* of a customary rule⁶³³. Additionally, soft law instruments can be vehicles for focusing consensus on rules and principles, and for mobilizing a general response on the part of states⁶³⁴. In addition, as

628 DAMROSCH, L.F, HENKIN, L., MURPHY, S.D. and SMIT, H., *International law: cases and materials*, Fifth edition, American Casebook Series, p. 115

629 DAMROSCH, L.F, HENKIN, L., MURPHY, S.D. and SMIT, H., *op.cit.*, note 737, p. 118

630 KACZOROWSKA, A., *Public international law*, fourth edition, Routledge, London and New York, 2010, p. 62

631 CHINKIN, C. M., “The challenge of soft law: development and change in international law”, *International and Comparative Law Quarterly*, Vol. 38, 1989, p. 851

632 BARELLI, M., “The Role of Soft Law in the International Legal System: the case of the United Nations Declaration on the Rights of Indigenous Peoples”, *International and Comparative Law Quarterly*, Vol. 58(4), 2009, p. 964

633 BOYLE, A., “Some Reflections on the Relationship of Treaties and Soft Law”, *International and Comparative Law Quarterly*, Vol. 48, 1999, p. 903

634 KACZOROWSKA, A., *op.cit.*, note 630, p. 64-65

indicated by academics, “soft law instruments may provide more evidence of international support and consensus than a treaty whose impact is heavily qualified by reservations and the need to wait for ratification and entry into force”.

It follows that this type of instruments can be useful because they can help generate widespread and consistent state practice and/or provide evidence of *opinio iuris* of a customary rule⁶³⁵. Additionally, soft law instruments can be vehicles for focusing consensus on rules and principles, and for mobilizing a general response on the part of states⁶³⁶. Furthermore, in many cases, it may be advantageous for states to reach agreements with each other or through international organisations, which reflect a political intention to act in a certain way⁶³⁷.

Soft law has many advantages in regard to hard law as it allows States to participate in the creation of new rules without the duty to implement them into national law. In addition, NGOs, international private organisations and corporations can actively participate in the elaboration, negotiation and implementation of international law (i.e. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines of 1997 and the creation of the International Criminal Court)⁶³⁸. Soft law is not only a multi-faceted concept, but also another tool in the professional legal field⁶³⁹.

By contrast, if the treaty form is applied, non-State actors are likely to be excluded from crucial stages of negotiations and the conclusions of the text⁶⁴⁰.

The following instruments can be qualified as non-binding rules: some provisions of international treaties; political declarations; recommendations and resolutions of IGO, and in particular those adopted by the UNGA or codes of conduct⁶⁴¹.

Most of declarations or resolutions adopted by the UNGA only contain political statements and therefore, have no binding effect in international law. Although the UNGA has adopted many declarations without binding obligations, it does not mean that these instruments have not influenced the development of international law. Normally, these legal instruments have been regarded as reflecting customary law on relevant topics and consequently, they have set out standards of behaviour or ideals which the international community aspires to achieve⁶⁴². In addition, as indicated by legal practitioners, “resolutions can be understood as authoritative interpretation by the Assembly of the various principles of the United Nations Charter depending on the circumstances”⁶⁴³.

The presence of representatives of all States of the world in the UNGA enhances the political value of this body and provides the generation of state practice which may or may not lead to binding custom. The Court explained this issue in the *Legality of the Threat or Use of Nuclear Weapons* Advisory Opinion as follows:

“The Court notes that the UNGA resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of

635 BOYLE, A., “Some Reflections on the Relationship of Treaties and Soft Law”, *International and Comparative Law Quarterly*, Vol. 48, 1999, p. 903

636 BOYLE, A., *op.cit.*, note 635, p. 904

637 SHAW, M. N., *op.cit.*, note 606, p. 118

638 KACZOROWSKA, A., *op.cit.*, note 630, p. 65

639 BOYLE, A., *op.cit.*, note 635, p. 913

640 BARELLI, M., *op.cit.*, note 632, p. 965

641 KACZOROWSKA, A., *op.cit.*, note 630, p. 65

642 KACZOROWSKA, A., *op.cit.*, note 630, p. 64

643 SHAW, M. N., *op.cit.*, note 606, p. 117

an *opinio juris*. To establish whether this is true of a UNGA resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinion juris* required for the establishment of a new rule”⁶⁴⁴.

In regard to the legal effects of any declaration adopted by the UNGA, it should be noted that this type of instrument does not create special rights in the sense that they are separated from the fundamental human rights, but rather elaborates these fundamental rights in a specific cultural, historical, social and economic context. However, it may represent the first step toward the establishment of a future treaty. Indeed, a high number of human rights conventions have been adopted after a lengthy process, in which formal gestation started through the approval of a declaration by the UNGA⁶⁴⁵. The Universal Declaration of Human Rights remains one of the most influential examples of soft law⁶⁴⁶.

The level of implementation of a declaration depends on the degree of consensus around a declaration. In this case consensus should be understood as an overwhelming majority or a convergence of international opinion⁶⁴⁷. The context within which soft law instruments are negotiated and the accompanying statements of delegations will be relevant to assess the *opinion iuris* of States. The degree of support is always significant. A resolution adopted by consensus or by unanimous vote will necessarily carry more weight than one supported only by a two-thirds majority of States⁶⁴⁸.

As indicated by the ICJ in the *Legality of the Threat or Use of Nuclear Weapons* case, “if a resolution purports to be declaratory of international law, if it is adopted unanimously or by consensus, and if it corresponds to State practice, it may be declaratory of international law”⁶⁴⁹.

In definitive, the legal effects of any declaration will depend on a strong consensus in favour of such resolution and the appropriate use of the wording in the resolution. It should be also stressed that neither the Universal Declaration of Human Rights nor the Declaration on the Granting of Independence to Colonial Territories and Peoples were adopted upon consensus. Nevertheless, their impact as norms of *ius cogens* have been important due to there has existed a subsequent confirmatory State practice⁶⁵⁰.

2. Phases of debate in the United Nations human rights bodies

2.1. Human Rights Council

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.

644 Legality of the Threat or Use of Nuclear Weapons, ICJ Reports 1996, p. 226

645 BARELLI, M., *op.cit.*, note 632, p. 962-967

646 BOYLE, A., *op.cit.*, note 635, p. 132

647 BARELLI, M., *op.cit.*, note 632, p. 970

648 BOYLE, A., *op.cit.*, note 635, p. 135

649 Legality of the Threat or Use of Nuclear Weapons, ICJ Reports 1996, p. 226

650 BOYLE, A., *op.cit.*, note 635, p. 136

In 2008, the HRC reiterated the traditional position, according to which “peoples of our planet have a sacred right to peace”⁶⁵¹, 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. It concluded that on the basis of studies and latest developments of doctrine and civil society, one might identify the contents and scope of the *human right to peace* as an emerging right. Additionally, some participants also showed their doubts about the existence of the right to peace.

In June 2010 the HR Council in its 14th regular session had before it the report of the Office of the High Commissioner on the outcome of the expert workshop on the right of peoples to peace,⁶⁵² as well as the joint written statement on the Working Group on the Human Right to Peace of more than 500 NGOs world-wide⁶⁵³. The HRC approved the resolution 14/3 -with the vote in favor of African, Asian and Latin American and Caribbean States⁶⁵⁴- in which reiterates the content of this right, according to the resolutions already approved in 2008 and 2009.

In the *informal meeting on the right of peoples to peace* held at the Palais des Nations (Geneva) on 7 June 2010, the **Czech Republic**, on behalf of the EU, expressed its opposition to the draft resolution, justifying it with the same arguments used in previous years, namely, the issues of peace should be discussed in other forums, and the draft resolution refers exclusively to relations between states, not their relations with individuals. The **United Kingdom** added that there was already a Declaration on the Right of Peoples to Peace in 1984 and did not see a need for a new draft, which also would cause excessive expenditure of resources. By contrast, **China** was in favor of the draft resolution and the **Russian Federation** stated that the right of peoples to peace is part of international human rights law, whose development is the responsibility of the HRC.

651 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)

652Doc. A/HRC/14/38 of 17 March 2010, 16 p.

653A/HRC/14/38, 17 March 2010

654Resolution 14/3 was approved by 31 votes in favour (African, Asian and Latin American and Caribbean States), namely: Angola, Argentina, Bahrein, Bangladesh, Bolivia (Plurinational State of), Brasil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, Indonesia, Jordan, Madagascar, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Uruguay and Zambia.

14 States voted against, namely: Member States of the European Union (Belgium, France, Hungary, Italy, Netherlands, Slovakia, Slovenia and United Kingdom), associate European States (Bosnia and Herzegovina, Norway and Ukraine), United States of America, Japan and Republic of Korea). There was 1 abstention (India). Kyrgyzstan did not participate.

The report of the workshop was orally presented by the Deputy High Commissioner on 8 June 2010 before the HRC. **Spain** took note on the report of the right of peoples to peace. The EU recognises the linkage between peace and enjoyment of human rights. However, they considered that the absence of peace cannot justify failure to respect human rights. He said that we believe that most of the issues raised in your report are better dealt with in other fora, which have the competence to do so and which are already dealing with these issues⁶⁵⁵.

Jamahiriya Arab Libya said that peace and human rights are closed linked as recognized by the Charter of the United Nations in its purposes. In order to keep international peace and security and to prevent any threat to peace, the Universal Declaration has affirmed the right of all mankind to the dignity and equal rights which are available and to enjoy freedom, justice and peace. The UNGA of the United Nations has also adopted resolution 11/39 which affirms the right of peoples to live in peace and calls the international community to observe every effort to help people to enjoy peace and to guarantee this peace and to protect them from the threat of war⁶⁵⁶.

At the request of **Bangladesh**, the draft resolution recalls the Declaration and Programme of Action of the United Nations Culture of Peace of 1999, and the UNGA resolution 35/25 which proclaimed 2001-2010 the International Decade for a Culture Peace and Nonviolence for the Children of the World⁶⁵⁷, and "calls upon States and relevant bodies of the United Nations to promote the effective implementation of the Declaration and Programme of Action on a Culture of Peace"⁶⁵⁸ of 1999.

On 17 June 2010 **Cuba** presented to the plenary of the HRC the draft resolution L.12 for its approval. Before the vote, **France**, on behalf of the EU, said that the EU supports some principles set out in the draft resolution and recognizes the relationship between peace and the enjoyment of human rights. However, they advanced the negative vote of the Member States represented in the Human Rights Council, because the text does not state that the absence of peace cannot justify in any way the disrespect of human rights. Moreover, the text deals almost exclusively with the relations between states, whereas it should focus on the relationships between states and their citizens and the obligation of states to respect human rights. He also reiterated that most of the issues raised in the text should be treated in other international bodies which have the mandate and competence to do so. Finally, he expressed doubts that the Advisory Committee makes a positive contribution since the UNGA had adopted a Declaration on the Right of Peoples to Peace in 1984⁶⁵⁹.

The **United States of America** indicated that the resolution before them does not meaningfully promote peace or address the plight of vulnerable people in conflict zones. Instead, it focuses on issues that are primarily a matter of state-to-state relations. In addition, they were concerned that the resolution seeks to cast this overall issue as a collective right. As they noted on several occasions, human rights are universal and apply to individuals. Collective rights are a distinct category of rights. They also regretted the resolution's request for the Advisory Committee to prepare a draft declaration, which they anticipate will be an exercise fraught with difficulty and divisions that makes no meaningful contribution to the protection of human rights. They also

655The complete oral statement delivered can be found in the extranet of the HRC, 14th regular session, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCRegistration.aspx>, user name: HRC extranet, password: 1session

656Ibidem 655

657 Doc. resolution A/HRC/14/L.12, par. 4 of Preamble

658 Doc. resolution A/HRC/14/L.12, par. 11 of Preamble

659Ibidem 655

noted that there are other international bodies— particularly the Security Council—that are better suited to address issues related to international peace and security⁶⁶⁰.

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”⁶⁶¹.

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”⁶⁶²; recalls “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;”⁶⁶³ “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”⁶⁶⁴; 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”⁶⁶⁵.

In the general debate item 5 held in the context of the 17th regular session of the HRC at the Palais des Nations (Geneva) from 30 May to 17 June 2011, **Hungary** delivered an oral statement on the right of peoples to peace, on behalf of the and associated countries⁶⁶⁶, in which they took note of the revised progress report on the right of peoples to peace sent by the AC. They also said that the EU had not supported the previous resolution 14/3, and that, therefore, they cannot support the draft resolution on the subject. Later they said that while they support some of the principles contained in the draft resolution, the absence of peace cannot justify in any way the disrespect of human rights. Moreover, the text deals almost exclusively with the relations between states, whereas it should focus on the relationships between states and their citizens and the obligation of states to respect human rights, which mandate corresponds to the Council. They also reiterated that most of the issues raised in the text should be treated in other international bodies with the mandate and competence to do so. They expressed doubts that the Advisory Committee makes a positive contribution since the UNGA had adopted a Declaration on the Right of Peoples to Peace in 1984⁶⁶⁷.

China considered that peace is incompatible with the existence of violent acts within and among States and is closely linked with the effective protection of human rights, gender equality, social justice, economic welfare and freedom of expression of different cultural values. They reiterated China's support to the enjoyment of the right of peoples to peace. It also

660Ibidem 655

661 Doc. resolution A/HRC/14/L.12, par. 15

662Last paragraph of the preamble of the res. 14/3 cit.

663Doc. resolution A/HRC/14/L.12, par. 4 of Preamble

664Doc. resolution A/HRC/14/L.12, par. 11

665Doc. resolution A/HRC/14/L.12, par. 15

666Candidate Countries: Turkey, Croatia and the former Yugoslav Republic of Macedonia, Montenegro. Countries of the Stabilization and Association Process and potential candidates: Albania, Bosnia and Herzegovina, Serbia, as well as Ukraine, the Republic of Moldova, Armenia and Georgia.

667The complete oral statement delivered can be found in the extranet of the HRC, 17th regular session, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCRegistration.aspx>, user name: HRC extranet, password: 1session

found that the right to peace and development are fundamental human rights and that all countries should promote the peaceful coexistence among States, by prohibiting the threat or use of force, respect of the territorial integrity, political independence and non-interference in their internal affairs⁶⁶⁸.

Cuba recognized the work of the Drafting Group in this topic, including efforts to develop a draft declaration on the right of peoples to peace. They coincided with several dimensions of the right of peoples to peace identified by the Advisory Committee, such as peace and security, disarmament, development, resistance or opposition to colonial or foreign domination, the environment, among others. As to the practical content of the right of peoples to peace, they said, it was important to note that the dimensions that it comprises are varied, such as in the case of the right of peoples living in a territory over which they exercise its sovereignty and not to be violently assaulted by another State. Also they stressed that there is a close linkage between the right to peace and other third generation rights, such as the right to development and a healthy environment. They stated that the right to peace is an absolute right, which cannot be subjected to restrictions or limitations and that the mere existence of these involves the denial of the right to peace and consequently of all other attributes, which come from it. According to the delegate, Cuba gives the greatest importance to peace as an essential condition for the enjoyment of all human rights, above all the right to life. Peace is a prerequisite for the promotion and protection of all human rights of all people. He said the content of the right of peoples to peace includes the contents of the obligation of all States to settle their international disputes by peaceful means. It does not endanger security and justice. That is why we must reject the use of violence in the pursuit of political objectives and that only the peaceful political solutions can assure a stable and democratic future for the peoples of the world. To achieve a climate of peace and security in the world, he said, it was necessary to respect the diverse cultures and identities of all peoples, and work actively in actions that promote dialogue among civilizations⁶⁶⁹.

During the presentation and approval by the HRC of the draft resolution L. 23 on the promotion of the right of peoples to peace on 17 June 2011, **Cuba** introduced an amendment to the operative paragraph 14, third line of the draft resolution, to eliminate the concept of "human" after "right"⁶⁷⁰.

Hungary explained that the EU defends one of the principles of the draft resolution and recognizes the relationship between peace and the enjoyment of human rights. However, they advanced a negative vote of the Member States represented in the HRC, because the draft resolution does not state that the absence of peace cannot justify in any way disrespect for human rights. Moreover, the draft resolution deals almost exclusively with the relations between states, whereas it should focus on the relationships between states and their citizens and the obligation of states to respect human rights. He also reiterated that most of the issues raised in the draft resolution should be treated in other international bodies with the mandate and competence to do so. He expressed doubts that the Advisory Committee makes a positive contribution since the UNGA had adopted a Declaration on the Right of Peoples to Peace in 1984⁶⁷¹.

668Ibidem 667

669Ibidem 667

670Ibidem 667

671Ibidem 667

The **United States of America** announced their vote against the draft resolution because it does not promote peace rightly or attends to the needs of vulnerable people in conflict zones. Instead, it focuses on issues that are primarily matters of relations between states. In addition, they expressed their concern that the resolution attempts to treat the whole issue as a collective right. Human rights are universal and apply to individuals. Collective rights are a separate category of rights. They also said that after reviewing the draft report prepared by the Advisory Committee, they may anticipate that any effort to obtain a draft declaration will be a fraudulent exercise which will not contribute correctly to human rights protection. Finally, they stated that there are other international bodies, in particular the Security Council, which is better equipped to address the issues of peace and security. The United States would prefer to see the HRC focused on addressing the numerous violations of human rights and fundamental freedoms, which are occurring worldwide⁶⁷².

Mexico recognized the relationship between peace and human rights and underlined that a clear trend within the international community to consolidate the right to peace as a human right in the context of international law does not exist. He added that this situation stems mainly from the diversity of approaches that are kept on the way to examine the concept of peace as a human right and the factors or aspects to be evaluated as part of this analysis. He said he kept his doubts about some issues contained in the report of the Advisory Committee. He stressed that they were convinced that the negotiation of a Declaration of this nature requires a dimension that exceeds the human rights dimension, such as peace and international security and disarmament⁶⁷³.

On 17 June 2011, the HRC adopted the resolution 17/16 by which "takes note of the progress report of the HRC Advisory Committee on the right of peoples to peace (A/HRC/17/39), which include more than 40 possible standards for inclusion in the draft declaration on the right of peoples to peace" (paragraph 14); "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 present a draft declaration on the right of peoples to peace, and to report on progress thereon to the Council at its twentieth session" (paragraph 15); and finally "requests the OHCHR to retransmit the questionnaire prepared by the Advisory Committee in the context of its mandate on the issue of the right of peoples to peace, seeking the views and comments of Member States, civil society, academia and all relevant stakeholders" (paragraph 16).

On 29 June 2012 the plenary of the HR Council discussed the (third) AC draft declaration on the right to peace. In the general debate representatives of 9 States⁶⁷⁴, 3 International Organisations⁶⁷⁵ and 10 CSO⁶⁷⁶ took the floor. On 5 July 2012 the HR Council took action on draft resolution L.16 ("The promotion of the right to peace") as orally revised by Cuba on

⁶⁷²Ibidem 667

⁶⁷³Ibidem 667

⁶⁷⁴Algeria, Bolivia, China, Cuba, Costa Rica, Ecuador, Sudan, Viet Nam and Venezuela (Bolivarian Republic of)

⁶⁷⁵Denmark (on behalf of the European Union), Senegal (on behalf of the African Group) and the representative of the Organization of the Islamic Cooperation

⁶⁷⁶International Association of Peace Messenger Cities (in association with SSIHRL), Associazione Comunità Papa Giovanni XXIII, International Association of Democratic Lawyers, International Buddhist Relief Organisation, Rencontre Africaine de Défense des Droits de l'Homme, Worldwide Organization for Women, Commission africaine des promoteurs de la santé et des droits de l'homme, Verein Sudwind Entwicklungspolitik, Nord Sud XXI and Comité International pour le Respect et l'Application de la Charte Africaine des Droits de l'Homme et de Peuples

behalf of the co-sponsors. It was adopted by a registered vote of 34 votes in favour⁶⁷⁷, 12 abstentions⁶⁷⁸ and one against⁶⁷⁹.

Cuba welcomed the submission of the draft declaration on the right to peace prepared by the Advisory Committee. It should include standards on education for peace, development, environment and rights of victims, disarmament and rights of vulnerable groups. **Denmark**, speaking on behalf of the EU, said that the EU and its Member States took note of the conclusion of the draft declaration of the Advisory Committee on the right to peace. However, the EU reminded its view that a "right to peace" does not exist under international law. **Senegal** (speaking on behalf of the **African Union**) expressed thanks for the Advisory Committee's approach in regards to the education and training on peace and the right to development. For the remaining points and without going into the substance, the African Group reserved its position regarding some issues which go beyond the jurisdiction of the HR Council and some controversial notions. Moreover, the right to peace should be based in the following core principles: respect, dignity, solidarity, tolerance, rejection of violence, conflict prevention and resolution of conflicts by peaceful means. They recalled the GA resolution 60/251 of 2006 on the establishment of the HRC, and in particular the paragraph which acknowledged that peace and security, development and human rights are the pillars of the United Nations system and the foundation for collective security and well-being. Therefore, the GA recognized that development, peace and security and human rights were interlinked and mutually reinforcing. In addition, the African Charter on Human and People's Rights recognized the right to peace⁶⁸⁰.

China stated that in accordance with the UN Charter, all international disputes should be resolved through peaceful means rather than wars. Dialogue offers an important contribution because it helps to reduce differences and resolve disputes, avoid the use or the threat of use of force and enforce peace and international security. The right to peace and the right to development are fundamental rights and they complement each other⁶⁸¹.

Algeria stated that all the basic human rights documents refer to elements related to the right to peace in the broadest sense of the term. In this context they highlighted the main articles, namely: the Preamble of the UN Charter, Articles 3 and 28 of the UDHR and Article 9 of the ICCPR. The UNGA has recognized the right to peace in both the Declaration on the Preparation of Societies for Life in Peace (Resolution 33/73) and the Declaration on the Right of Peoples to Peace (Resolution 39/11). At the regional level, this right has been recognized in the African Charter on Human and Peoples' Rights (art. 6) and the Arab Charter on Human Rights (art. 14)⁶⁸².

Bolivia stressed that there is "the legal obligation to renounce the use or threat of use of force in international relations". **Venezuela** stated that to ensure the realization and promotion of the

677Angola, Bangladesh, Benin, Botswana, Burkina Faso, Cameroun, Chile, China, Congo, Costa Rica, Cuba, Djibouti, Ecuador, Guatemala, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda and Uruguay.

678Austria, Belgium, Czech Republic, Hungary, India, Italy, Norway, Poland, Republic of Moldova, Romania, Spain and Switzerland.

679United States of America

680The complete oral statement delivered can be found in the extranet of the HRC, 20th regular session, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCRegistration.aspx>, user name: HRC extranet, password: 1session

681Ibidem 680

682Ibidem 680

right to peace, they must exhaust all necessary efforts to eliminate any threat of war and the cessation of the ongoing conflicts, which seriously affect the lives of millions people⁶⁸³.

The **OIC** said that the Declaration on the human right to peace contributes precisely to show the way forward and to offer the contents of the culture of peace. OIC is fully committed to the program of action for a Culture of Peace adopted by the UN in 1999 and the Alliance of Civilizations. Peace, in its holistic approach, not only is related to the absence of war, but also the culture of peace. Peace is committed to the preservation both of life and conditions for a dignified life. The culture of peace should begin to be inculcated at school and it has inspired the OIC multifaceted actions on the field. Peace has a close linkage with the management of conflicts through the preventive diplomacy and conflict resolution through the deployment of multiple humanitarian actions⁶⁸⁴.

On 5 July 2012, **Cuba** introduced resolution A/HRC/20/L.16 for its final adoption. **Austria** delivered an explanation of vote for the draft resolution L.16 on the promotion of the right to peace on behalf of Austria, Belgium, Czech Republic, Hungary, Italy, Poland, Romania and Spain. He said that they would be willing to have a fruitful discussion on the linkage between peace and the enjoyment of human rights. However, he stressed that they do not recognise the right to peace in the existing international law either as a collective or as an individual human right. Moreover, there is not sufficient international consensus to justify the inter-governmental negotiation set up in this resolution as it assumes that the right to peace exists. As their countries did not support resolution 14/3 and 17/16 on the right to peace, they are deeply concerned about the content of the draft Declaration prepared by the Advisory Committee. Most of the issues raised in the resolution are better dealt with in another forum, which has the competence to do so and is ready to deal with these issues. He indicated that they have to acknowledge the openness of the main sponsor of this resolution to engage other States on the text and they took note of some of the changes made in the text. Yet, given the deep flaws of the alleged right to peace and the potential and undermining effects of the future Declaration⁶⁸⁵.

The **United States of America** said that any peace is unstable where citizens are denied the right to speak freely or worship as they please, choose their own leaders or assemble without fear. They would continue work on many of the underlying issues that the supporters of this resolution have argued the creation of a right to peace would advance, such as women's rights, disarmament and development. They would address each of these issues in the appropriate UN body, utilizing deep reservoirs of subject matter expertise and building on years of diligent and robust efforts. They stressed that the inter-governmental Working Group created by this resolution took as its basic premise drafting a declaration that would cover many issues that are, at best, unrelated to the cause of peace and, at worst, divisive and detrimental to efforts to achieve peace. Rather than building on the existing consensus-based paths that have been developed over the years in the UN on a variety of topics related to peace-building, this resolution threatened to sow division and embroil the Council in contentious negotiations. This Council could make the greatest contribution to promoting peace by focusing on the implementation of human rights obligations and commitments. Human Rights are universal and are held and exercised by individuals. The USA does not agree on attempts to develop a collective right to peace or to position it as an enabling right that would in any way modify or stifle the exercise of existing human rights⁶⁸⁶.

683Ibidem 680

684Ibidem 680

685Ibidem 680

686Ibidem 680

After the vote, **Italy** delivered a statement in which stressed that the notion of the "right to peace" remained vague and legally flawed. What is the content of the "right to peace"? Does a peace-keeping operation or humanitarian intervention violate the "right to peace"? What is the relationship between the responsibility to protect and the "right to peace"? Unfortunately, the long draft declaration prepared by the Advisory Committee did not provide clarity and guidance and they do not take it as a good basis for future activities. In addition, they believed that the forthcoming working group, instead of focusing on the codification of a disputed right, should highlight the intrinsic link between human rights and peace: violations of human rights lead to conflict⁶⁸⁷.

In the concluding remarks, **United Kingdom and Northern Ireland**, made a statement on behalf of Canada, the Netherlands and the United Kingdom of Great Britain and Northern Ireland. They remained firmly of the view that "the right to peace" does not exist under international law, whether as a collective or individual human right, or otherwise. As such, there is no justification for inter-governmental negotiations aimed at agreeing on a Declaration on the concept. They considered that the decision to establish a Working Group with this aim was an overly political step. Also, notwithstanding the lack of consensus, it is a highly expensive mechanism which will draw attention and funds away from other more important tasks of the Council and the Office of the High Commissioner. The Council has missed an opportunity for a fruitful discussion aimed at finding consensus over the value that the Council can add in this area. A Panel discussion on the relationship, or links, between peace and the full enjoyment of all human rights would have been such an opportunity, and one squarely within the mandate of the Council. He indicated that they have closely studied the Advisory Group's "draft Declaration on the Right to Peace". They do not consider it a good starting point for any discussions of this nature, and in any event it is a deeply flawed document. In addition to our fundamental disagreement with the concept on which it is based, it is also potentially inconsistent with other relevant international norms, including the UN Charter. The absence of peace cannot justify failure to respect human rights⁶⁸⁸.

On 5 July 2012, the HRC adopted resolution 20/15 on "The promotion of the right to peace". The resolution established an open-ended working group (OEWG) with the mandate of progressively negotiating a draft UN 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 proposals.

The resolution welcome the important work being carried out by civil society organizations for the promotion of the right to peace and their contribution to the development of this issue. It also established an **open-ended 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 proposals.

The resolution further decided that the working group shall hold its first session for four working days in 2013, before the twenty-second session of the HR Council (March 2013); and requested the President of the HR Council to invite the Chairperson of the Advisory Committee's drafting group to participate in the first session of the working group.

687Ibidem 680

688Ibidem 680

Finally, it invited Member States, civil society and all relevant stakeholders to contribute actively and constructively and requested the working group to submit a report on progress made to the HR Council for consideration at its twenty-third session (June 2013).

The adoption of this resolution was a landmark event since a UN resolution on the right to peace was first adopted with the abstention of eleven European States belonging to the HR Council and only one vote against. This achievement was facilitated by the positive role played by multiple actors along with a very intensive negotiation process. In addition, the new resolution paved the way towards a future work more transparent and constructive within the new OEWG.

At its 23rd session (June 2013), the HR Council had before it the first progress report of the OEWG. On 7 June 2013 the plenary of the HR Council discussed the report of the first session of the OEWG on the draft United Nations Declaration on the right to peace prepared by Mr. **Christian Guillermet**, Chairperson-Rapporteur of the OEWG. In the general debate, representatives of seven States⁶⁸⁹, two International Organizations⁶⁹⁰ and eight CSOs⁶⁹¹ took the floor.

Mr. **Guillermet** stated that our challenge is to address the difficulties in a spirit of cooperation, good faith and transparency in view to reaching an agreement in favor of the promotion and protection of human rights. Persisting in not negotiating or rejecting an initiative because it does not respond to one's interests or national legal system is not a constructive approach to the matter. Since this year we celebrate the 20th anniversary of the Vienna Declaration and Plan of Action, it would be contradictory to deny the progressive development of human rights and the need to move toward a better, more just and respectful human rights environment⁶⁹².

Venezuela reaffirmed its position on the need to have such an instrument, in the belief that peace is a fundamental condition for the full enjoyment of all human rights, in particular the right to life, under the principles of complementarity, international solidarity, full respect for sovereignty and the exercise of all human rights⁶⁹³.

Cuba delivered a statement on behalf of the CELAC. They said that the CELAC took note of the report of the first session of the OEWG on the right to peace, held in February 2013 and expressed its strong support to the mandate of the OEWG. Latin American and Caribbean countries are seriously committed to this process, which attempts to put peace in the right place as a fundamental condition for the enjoyment of all human rights, particularly the right to life⁶⁹⁴.

Algeria stated that the culture of peace has been defined in resolution 53/243 of 6 October 1999 as the set of values, attitudes, traditions, behaviors and ways of life based on the following principles: the respect for life, end of violence and promotion and practice of non-violence through education, dialogue and cooperation; respect of the principles of sovereignty,

689 Algeria, Bolivia, China, Cuba, Holy See, Morocco and Venezuela

690 Organization of the Islamic Cooperation and the Community of the Latin America and Caribbean States (CELAC)

691 International Association of Democratic Lawyers, International Association of Peace Messenger Cities, Japanese Workers for Committee, Japanese Federation of Bar Associations, Indian Council of South America, Maarj Foundation for Peace and Development, World Barua Organization and the World Federation of Democratic Youth

692The complete oral statement delivered can be found in the extranet of the HRC, 23th regular session, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCRegistration.aspx>, user name: HRC extranet, password: 1session

693Ibidem 692

694Ibidem 692

territorial integrity and political independence of States and non-intervention in matters which are essentially within the domestic jurisdiction of any State; respect of all human rights and fundamental freedoms; the commitment to settle conflict by peaceful means; respect and promote the right to development, equal rights and opportunities for women and men and the right of everyone to freedom of expression, opinion and information. In addition, it is not possible to talk about the right of peoples to peace without reaffirming the right of all peoples to self-determination, including peoples under colonial or other forms of alien domination or foreign occupation. According to the speaker, a declaration on the right to peace should include the following aspects: reference to international law, including the Charter of the United Nations; it should avoid introducing new concepts which are not enshrined in the international human rights instruments. Furthermore, it should keep in mind the relationship between international and regional peace and peace at the national level. However, the reference to the right to peace at the domestic level must also include the concept of non-interference in the internal affairs of States. The linkage between peace and security should be reinforced by referring to the threat posed by the scourge of terrorism in the international community⁶⁹⁵.

The **Holy See** said that peace is one of the deepest desires of the human heart and also a right of everyone which permits the integral human development. Peace is the precondition to the realization of all other rights. Furthermore, it is the means to realize all human rights and achieve a true peace based on freedom, justice and brotherhood. The Charter of the United Nations, the Universal Declaration of Human Rights and other international instruments recognized the close linkage between peace and human rights. Consequently, the threat of war should be removed. The African Charter on Human and Peoples' Rights proclaimed in art. 23.1 that "All peoples shall have the right to national and international peace and security". To define peace only as the absence of war is to reduce it to a negative value. Peace is built each day in the family, school and society. Without economic, political, cultural and spiritual progress, peace would be a mirage for naïve minds. Those who want to base peace exclusively on the force and balance of power are wrong⁶⁹⁶.

Morocco stated that the right to peace should be linked to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, respect for cultural diversity and the promotion of dialogue and understanding at all levels of society and among nations. The right to peace is a way to promote the peaceful settlement of conflicts, mutual respect, international cooperation and legal obligations and principles enshrined in the Charter of the United Nations. It should also be a means to promote the culture of peace through education and training in human rights and the promotion of intercultural dialogue and religious tolerance⁶⁹⁷.

Bolivia indicated that peace is one of the fundamental human rights, which permits all citizens to life peacefully at the domestic level and enhances the peaceful and friendly relations with other nations. The right to peace is of vital importance, and a condition *sine qua non* for the enjoyment of all rights, including the right to life⁶⁹⁸.

The **OIC** stated that the concept of peace can be found in the following instruments: the Preamble of the OIC Charter; the *ten-year action program* adopted at the summit held in Mecca on 8 December 2005 which have been realized through the active participation in the United Nations institutions, the Alliance of Civilizations and its contribution to the resolution

695Ibidem 692

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of several conflicts; the final communiqué of the Cairo Summit adopted in February 2003; and its humanitarian work in different parts of the world. In addition, the OIC has promoted this important value in the culture of peace and the respect of the individual and collective rights (i.e. rights to life, development, health and education). He said that peace is not limited to the absence of war but goes beyond a double disarmament, moral and psychological⁶⁹⁹.

On 13 June 2013, the representative of **Cuba** introduced draft resolution L. 21 on behalf of CELAC as a continuation of the work done on this topic in recent years. The draft resolution requested to convene a second session of the OEWG on the right to peace.

Venezuela stated that peace is a fundamental condition for the full enjoyment of all human rights on an equal footing, but particularly the right to life, in strict adherence to the principles of international solidarity and complementarity, respect of sovereignty and the right of peoples to self-determination⁷⁰⁰.

The **United States of America** stated many times in past discussions of this resolution throughout the years, it believes that respect for human rights is fundamental to ensuring peace in any society. Any peace is unstable where citizens are denied the right to speak freely or worship as they please, choose their own leaders or assemble without fear. International human rights bodies can and do make crucial contributions to advancing the important cause of international peace. Consistent with the framework set forth in the UN Charter and the Covenants, they believe that the most appropriate and effective way to do so is through increased attention to implementation of existing human rights obligations. However, they continue to question the value of working toward a declaration on the so-called “right” to peace. This proposed right is neither recognized nor defined in any universal, binding instrument, and its parameters are entirely unclear. Nor is there any consensus, in theory or in States’ practice, as to what such a right would entail. Regardless of how it has been promoted, studied or framed, past efforts to move forward with the “right to peace” have always ended in endorsements for new concepts on controversial thematic issues, often unrelated to human rights. The result has inevitably been to circumvent ongoing dialogue in the HR Council by using broad support for the cause of peace to advance other agendas. Human rights are universal and are held and exercised by individuals. They do not agree with attempts to develop a collective “right to peace” or to position it as an “enabling right” that would in any way modify or stifle the exercise of existing human rights. Therefore, as they said during the first session of the OEWG explaining the basis for their participation, they are not prepared to negotiate a draft declaration on the “right to peace.” They do, however, remained open to the possibility of discussing, for instance, the relationship between human rights and peace or how respect for human rights contributes to a culture of peace, including in this OEWG. But if the focus is on negotiating a declaration on the “right to peace,” the OEWG will surely continue to be divisive⁷⁰¹.

Ireland said that the following explanation of vote was agreed on by the EU as a whole. The EU firmly believes in peace and human rights, and its close linkage. The Preamble of the UDHR and Covenants proclaimed that “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”. Peace and human rights can be mutually reinforced. There is no legal basis for the right to peace in international law and it is not possible to find a common definition of

699*Ibidem* 692

700*Ibidem* 692

701*Ibidem* 692

this right. In keeping this position, they expressed concern about the content of the draft declaration prepared by the Advisory Committee. They did not see reasons to continue the discussion on a declaration focused on a concept that does not enjoy consensus. However, they are willing to be engaged in the discussion on the linkage between peace and the enjoyment of human rights. They were disappointed that the main sponsor of the resolution did not take into account their main concerns. For this reason, the EU cannot support draft resolution L. 21. At the same time, it recognized the main change introduced in paragraph 4 of the current draft resolution. They hope that this paragraph can pave the way to a more consensual text. If the new text to be prepared by the Chairperson-Rapporteur well reflects their position on the relationship between peace and the enjoyment of human rights, then they will take into serious consideration taking part in the negotiation process, including the second session of the OEWG⁷⁰².

1792 CSO and cities worldwide submitted to the HR Council a joint written statement entitled "Progress report of the Open Ended Working Group on the right to peace: CSOs assessment"⁷⁰³. They invite the HR Council to extend the mandate of the OEWG for an additional year, to enable it to achieve consensus with CSOs in the language of the future UN declaration of the human right to peace. The Chairperson-Rapporteur should also be authorized to call on informal consultations between the OEWG sessions, with full participation of CSOs, with a view to submit to the OEWG at its second session a consolidated draft Declaration that should take into account legal standards established in IHRL and elements of progressive development as requested by UN human rights bodies and CSOs.

On 13 June 2013, the HRC adopted resolution 23/16 at the initiative of the CELAC by 30 votes in favor⁷⁰⁴, 9 against⁷⁰⁵ and 8 abstentions⁷⁰⁶. The HRC "decided that the working group shall hold its second session for five working days in 2014, before the twenty-fifth session of the HRC". It also "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". Finally, it "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".

The representative of the **United States of America** said that human rights are universal and are held and exercised by individuals. The United States does not agree with attempts to develop a collective "right to peace" or to position it as an "enabling right" that would in any way modify or stifle the exercise of existing human rights. They do, however, remained open to

702 *Ibidem* 692

703 doc. A/HRC/23/NGO/96, of 24 May 2013

704 Angola, Bangladesh, Benin, Botswana, Burkina Faso, Cameroon, Chile, Congo, Costa Rica, Djibouti, Ecuador, Guatemala, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Peru, Philippines, Qatar, Saudi Arabia, Thailand, Uganda, Uruguay

705 Austria, Czech Republic, Estonia, Germany, Japan, Montenegro, Republic of Korea, Spain and the United States of America

706 India, Ireland, Italy, Kazakhstan, Poland, Republic of Moldova, Romania and Switzerland

the possibility of discussing, for instance, the relationship between human rights and peace or how respect for human rights contributes to a culture of peace, including in this OEWG⁷⁰⁷.

Afterwards, the Permanent Representative of **Ireland** said that the following explanation of vote was agreed on by the EU as a whole. The EU firmly believes in peace and human rights, and its close linkage. Peace and human rights can be mutually reinforced. There is no legal basis for the right to peace in international law and it is not possible to find a common definition of this right. If the new text to be prepared by the Chairperson-Rapporteur well reflects their position on the relationship between peace and the enjoyment of human rights, then they will take into serious consideration taking part in the negotiation process, including the second session of the OEWG⁷⁰⁸.

2.2. Workshop on the right of peoples to peace

The HR Council adopted in 2008 and 2009 resolutions entitled “Promotion of the right of peoples to peace”⁷⁰⁹, requesting the High Commissioner to convene an expert workshop on the right of peoples to peace, which took place in Geneva on 15-16 December 2009. The HR Council was informed on the results of the workshop⁷¹⁰. The report of the OHCHR summarizes the discussions held during the expert workshop⁷¹¹.

The Office of the High Commissioner invited 10 experts from three regions of the world to share their opinions and experiences on the object of the workshop. It was open to States, International Organizations and non-governmental organizations. Twenty-one representatives of Member States⁷¹² of the United Nations and ten non-governmental organizations⁷¹³ participated in the workshop.

The opening statement 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

⁷⁰⁷*Ibidem* 692

⁷⁰⁸*Ibidem* 692

⁷⁰⁹Res. 8/9, 18 June 2008 and res. 11/4 of 17 June 2009

⁷¹⁰A/HRC/13/NGO/89 of 25 February 2010

⁷¹¹A/HRC/14/38 of 17 March 2010

⁷¹²Argentina, Armenia, Bahrain, Belgium, Bolivia (Plurinational State of), Brazil, Cuba, Egypt, Finland, Greece, Jordan, Philippines, Russian Federation, Senegal, Singapore, Slovenia, South Africa, Sri Lanka, Sweden, Venezuela (Bolivarian Republic of) and Viet Nam, as well as a representative from the Holy See.

⁷¹³The SSIHRL, Graines de Paix, Institute for Planetary Synthesis, Planetary Association for Clean Energy, UNESCO Etxea, Interfaith International, Union of Arab Jurists, APRED, International Association for the Elimination of All Forms of Racial Discrimination (IMARD) and Rencontre Africaine pour la Defense des Droits de l'Homme

to peace”⁷¹⁴.

The workshop was carried out in four sessions over a two working days. The substantive sessions were structured around three main subjects, namely: (a) the content and scope of the right of peoples to peace, bearing in mind the resolutions of the UNGA, the Human Rights Commission and the HRC on the right of peoples to peace; (b) the right of peoples to peace from a human rights perspective; and (c) measures and actions to raise awareness and to promote the right of peoples to peace.

In the first session Ms. **Vera Gowlland-Debbas** (Honorary Professor of the Graduate Institute of International and Development Studies of Geneva); Mr. **Alfred de Zayas** (Professor of the School of Diplomacy of Geneva); and Mr. **Thierry Tardy** (Director of the Centre for Security Policy of Geneva), took part as guest speakers.

Ms. **Vera Gowlland-Debbas** noted that the right to peace had never been formalized into a treaty and that it was not contained in the framework of human rights. It was dependent on the links which were being forged between human rights and humanitarian law on the one hand, and between the Charter of the United Nations, the normative framework on the use of force, disarmament or arms control, development and the regime of international peace and security on the other. She added that in recent years, however, there had been a proliferation of soft instruments proclaiming the right to peace as a human right (i.e. GA resolution 39/11 and subsequent resolution adopted in the UNGA, CHR and HRC). She concluded by indicating that “the right to peace had not yet crystallized as a human right within the context of human rights law. Nevertheless, the distinct linkages which were being forged between human rights law and peace and security and disarmament needed further analysis and might be useful in situating and further understanding an emerging right to peace”⁷¹⁵.

Mr. **Alfred de Zayas** stated that “the right to peace must be understood and implemented in a holistic manner through, among other things, respect for civil and political rights, and must include a focus on the obligations that peace imposed both on States and on individuals”. He also indicated that there was consensus to recognise that the responsibility to promote and protect human rights belongs to the State. He also referred to the four benchmark of the doctrine of the responsibility to protect⁷¹⁶.

Mr. **Thierry Tardy** stated that in the nature of contemporary peace operations was that they were aimed at transforming a situation of negative peace into a situation of positive peace (i.e. security sector reform, democratization, power-sharing, rule of law and others)⁷¹⁷.

The second session considered the content of the right of peoples to peace. Prof. **Mario Yutzis** (Argentina, former President of the Committee for the Elimination of Racial Discrimination); Mr. **Jarmo Sareva** (Assistant Secretary-General of the Conference on Disarmament); and Mr. **Laurent Goetschel** (Director of the Swisspeace Foundation) were guest speakers at this session.

Mr. **Jarmo Sareva** stated that there was no explicit reference to the right to peace in the Charter. He noted that the right to peace was underdeveloped and had not yet been incorporated in the body of international law. It was moreover unclear how that right could impinge on the right of States to self-defence and on their duty to maintain international peace and security. He also added that there was an important disarmament dimension in realizing, promoting and

⁷¹⁴*Ibidem* n. 711, par. 3-8

⁷¹⁵*Ibidem* n. 711, par. 9-14

⁷¹⁶*Ibidem* n. 711, par. 15-17

⁷¹⁷*Ibidem* n. 711, par. 19

clarifying the right to peace⁷¹⁸.

Prof. **Mario Yutzis** indicated that the right of peoples to peace had garnered new interest which might considerably enrich its content. He recalled that there was an inextricable relationship between solidarity rights and the human rights. He also stated that it was possible to say that the right of peoples to peace had several dimensions, namely: the value of life, the recognition of others, the resources against violence arising from armed conflict and structural violence and the dual character - individual and collective- of the right to peace⁷¹⁹.

Mr. **Laurent Goetschel** stated that there was no definition of the right to peace at the general level that could be applied to the concrete context-relevant levels⁷²⁰.

In the third session the magistrate of the ICJ Prof. Antonio **Augusto Cançado Trindade** (Brazil), delivered a lecture on the right of peoples to peace from the perspective of human rights. Other guest speakers were Prof. **William Schabas** (Director of the Irish Centre for Human Rights of the National University of Ireland) and Ms. **Fatimata-Binta Victoire Dah** (President of the Committee for the Elimination of Racial Discrimination).

Mr. **Cançado Trindade** wondered why so many years had lapsed between the adoption of the Declaration on the Right of Peoples to Peace and the current seeming revival of the subject by the HRC. He contended that “the peoples’ right to peace was justiciable, and that there was a path to be pursued to that end in the years to come”⁷²¹. He focused on the jurisprudence elaborated by the Inter-American Court of Human Rights and the ICJ to demonstrate that peoples’ right to peace had been acknowledged and asserted before contemporary international tribunals⁷²². In particular, the ICJ recognised in several occasions the peoples’ right to live in peace⁷²³.

Prof. **William Schabas** indicated that the right to peace was an underdeveloped value in international human rights law. In fact, UN human rights instruments did not give proper expression to the right to peace. There were many references to peace in the preamble to the Universal Declaration of Human Rights and the two human rights covenants. He also indicated that in the context of its advisory opinion on the legality of nuclear weapons, the ICJ had been asked to consider the relationship between international humanitarian law and international human rights law, specifically with the right to life. Finally, he recalled that the Human Rights Committee, in its General Comment n° 14 on nuclear weapons and the right to peace, drew a clear link between the prohibition of war and the right to life⁷²⁴.

Ms. **Fatimata-Binta Victoire Dah** stated that “peace was essential for the enjoyment of rights and that in the absence of peace victims could and should claim peace as a right along with other human rights”. She added that the preamble to the International Convention on the Elimination of All Forms of Racial Discrimination stated that discrimination among human beings was an obstacle to friendly and peaceful relations among nations and could jeopardize peace and security among peoples and harmonious coexistence⁷²⁵.

The workshop recalled that in the 2005 World Summit Outcome the UNGA acknowledged that peace and security, development and human rights were the foundations for collective security

718 *Ibidem* n. 711, par. 22-24

719 *Ibidem* n. 711, par. 25-27

720 *Ibidem* n. 711, par. 30

721 Statement by Mr. Cançado Trindade (A/HRC/14/38, paragraph 38)

722 *Ibidem*, n. 721, par. 36

723 *Ibidem*, n. 721, par. 37

724 *Ibidem* n. 711, par. 41-43

725 *Ibidem* n. 711, par. 45 and 47

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 reinforcing⁷²⁶. In accordance with different declarations⁷²⁷ and human rights treaties⁷²⁸, it could be affirmed that peace is the previous condition for the full enjoyment of human rights and fundamental freedoms, as the respect of human rights is essential for the promotion of development, peace and security⁷²⁹. Moreover, it was affirmed that the progressive development of international human rights law had favoured the emergence of solidarity rights, such as the right to development and the human right to peace⁷³⁰.

According to the experts, the collective dimension of the right to peace is proclaimed in the Preamble of the UN Charter when it underlines that the responsibility to save succeeding generations from the scourge of war belongs to peoples⁷³¹. Furthermore, it was recognised that peace must be seen as an enabling right to empower individuals to enjoy civil, political, economic, social and cultural rights⁷³². Moreover, it was confirmed that the transition from negative -as absence of armed conflict- to positive peace requires strengthening the security of individuals⁷³³. Experts concluded that human right to peace has two dimensions, both individual and collective.

Although the right to peace was not sufficiently elaborated in the human rights instruments, it could be mentioned repeatedly in the Preamble of the UDHR and the preambles of the two human rights covenants⁷³⁴. The linkages between human rights law and peace and security and disarmament might be useful in situating and further understanding an emerging right to peace⁷³⁵. Mr. **Sareva** added that the right to peace included an important disarmament dimension, because there was a connection between national security and the right to life⁷³⁶.

The fourth session dealt with specific measures and actions aimed at increasing awareness and to promoting the right of peoples to peace. The invited experts were Prof. **Mario Yutzis**, Prof. **Alfred de Zayas**, Mr. **Luis Tiburcio** (UNESCO Representative in Geneva), Mr. **Laurent Goetschel**, Prof. **William Schabas** and Ms. **Fatimata-Binta Victoire Dah**.

Mr. **Laurent Goetschel** stated that there were three sectors in which civil society organizations were working to make the right to peace operational: deal with the past, the right to compensation, issues related to statehood. He added that “to bring political issues into the realm of the discussions of the right to peace was not constructive and did not contribute to the clarification of such a right”⁷³⁷.

726Opening statement by the Deputy High Commissioner, A/HRC/14/38, paragraph 6

727UDHR, Declaration on the Rights of Peoples to Peace and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (A/HRC/14/38, paragraph 4 y 11)

728International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of Persons with Disabilities (A/HRC/14/38, paragraph 4 y 5); and the International Covenant on Civil and Political Rights (A/HRC/14/38, paragraph 11)

729*Ibidem* n. 707, par. 6

730Statement by Mr. Mario Yutzis (A/HRC/14/38, paragraph 25)

731Statement by Judge Cançado Trindade (A/HRC/14/38, paragraph 33)

732Statement by Mr. Alfred de Zayas (A/HRC/14/38, paragraph 15)

733Statement by Mr. Thierry Tardy (A/HRC/14/38, paragraph 19-20)

734Statements by Mr. Jarmo Sareva (A/HRC/14/38, paragraph 22) and Mr. William Schabas (A/HRC/14/38, paragraph 41)

735Statement by Mrs. Vera Gowlland-Debbas (A/HRC/14/38, paragraph 14)

736*Ibidem* n. 734, par. 23

737*Ibidem* n. 711, par. 48

Mr. **Tiburcio** pointed out that “the preamble to the UNESCO constitution stated that war was born in the minds of men; therefore, peace had been set as the ultimate objective of UNESCO, through its work done in the fields of science, education and cultural diversity”. He also indicated that currently UNESCO had no specific position on the human right to peace⁷³⁸.

Some experts concluded that, on the basis of the studies and most recent developments of doctrine and civil society, the content and scope of the *human right to peace* as an emerging right can be identified. Consequently, it was recommended that the HR Council establish an open-ended working group (representatives of States), with the task of beginning the official codification of the human right to peace.⁷³⁹

Some experts noted that there was currently some momentum to clarify the legal nature of the human right to peace. Having an in-depth academic study from a human rights perspective could help the HR Council decide how to ensure that the right to peace found its place in international law⁷⁴⁰. Moreover, it was supported a systemic approach to future consideration of the theme, relating the peoples’ right to peace to other rights of peoples, and further relating the human right to peace to rights of peoples⁷⁴¹.

NGO advocated that on the basis of the most recent studies of the doctrine and latest developments within civil society, one could identify the contents and scope of the *human right to peace* as an emerging right. Civil society contribution can be found in the *Luarca Declaration on the Human Right to Peace*, as well as through their active participation in the context of the HR Council discussions on the right of peoples to peace⁷⁴².

Ms. **Dah** concluded that there was an urgent need to codify the right of peoples to peace, and that all actors should support moves in that direction, in particular States participating in the non-aligned movement. In that respect, she supported the idea to invite the Council to create an open-ended working group charged with the codification of such right⁷⁴³.

Mr. **de Zayas** concluded by suggesting that the HR Council could establish the mandate of a special rapporteur or independent expert on the right to peace⁷⁴⁴.

Mr. **Yutzis** concluded that the HR Council should “initiate the codification of the human right to peace through the establishment of an opened working group, open to the participation of civil society organizations”; it should invite its Advisory Committee to prepare “elements for the elaboration of an universal declaration on the human right to peace and to propose guidelines, norms and principles aimed at protecting and promoting that right”; and it should invite “human rights treaty bodies and special procedures to contribute to the development of the right to peace from the perspective of their respective mandates”⁷⁴⁵

Accordingly, it could be summed up that some experts participating at the workshop recommended to the HR Council the establishment of an open-ended working group (representatives of States), with the task of initiating the official codification of the *right to peace*.

⁷³⁸*Ibidem* n. 711, par. 49 and 51

⁷³⁹*Ibidem* n. 711, par. 57 (Report of the Office of the High Commissioner on the outcome of the expert workshop on the right of peoples to peace).

⁷⁴⁰Statement by Mr. William Schabas (A/HRC/14/38, paragraph 52)

⁷⁴¹Statement by Mr. Cañado Trindade (A/HRC/14/38, paragraph 38)

⁷⁴²*Ibidem* n. 711, par. 58

⁷⁴³*Ibidem* n. 711, par. 47

⁷⁴⁴*Ibidem* n. 711, par. 54

⁷⁴⁵*Ibidem* n. 711, par. 57

2.3. Advisory Committee

Several civil society organizations submitted to the fourth session of the Advisory Committee a written statement on the “codification of the human right to peace”. This statement was accompanied by an oral statement on this issue on 29 January 2010. The written statement called on the expert Miguel Alfonso Martínez to keep in mind in his study the conclusions and recommendations of the expert workshop on the right of peoples to peace, especially in reference to the establishment at the HRC of an open-ended working group devoted to the codification of the human right to peace. Also, the study should pay special attention to gender perspective in the framework of peace-building, in accordance with the Declaration of Beijing and the Platform of Action of the fourth World Conference on Women of 1995. Finally, it recommended that the expert’s study should be focused on preparing elements that contribute to the drawing up of a universal declaration of the human right to peace, as well as the drawing up of guidelines, criteria, rules and principles aimed at promoting and protecting that right.⁷⁴⁶

The Advisory Committee approved without a vote the recommendation 3/5 on 7 August 2009 entitled “Promotion of the Right of Peoples to Peace”. It designated Mr. **Miguel Alfonso Martínez**, a member of the Advisory Committee, “to prepare an initial working paper on the need to initiate a study with the purpose, inter alia, to: a) further clarify the content and scope of this right; b) propose measures to raise awareness of the importance of realizing this right; and c) suggest concrete actions to mobilize States, intergovernmental and non-governmental organizations in the promotion of the right of peoples to peace”.

The study was not done due to the death of the expert. In June 2010, the expert **Miguel d'Escoto Brockman** (Nicaragua) was elected to fill the vacancy. The Advisory Committee had to decide who person or persons will prepare the draft declaration on the right of peoples to peace. According to its rules, for the moment of appointment of an expert or experts the Advisory Committee should take into account the knowledge and experience and equitable geographical distribution of each candidate⁷⁴⁷.

Further to HR Council resolution 14/3, the Advisory Committee adopted on 6 August 2010 the recommendation 5/2 on the promotion of the right of peoples to peace, by which it established a *drafting group* of four members to prepare a draft declaration on the right of peoples to peace.

At its 6th session (January 2011), the AC had before it the progress report on the right of peoples to peace prepared by its drafting group⁷⁴⁸. It recognised in its progress report the important contribution of civil society to the international codification of the right to peace within the United Nations⁷⁴⁹. Furthermore, the drafting group recalls the role played by UNESCO in this field, including the *Oslo Declaration on the human right to peace* of 1997⁷⁵⁰.

The progress report suggested conceiving peace as both the absence of organised violence, the effective protection of human rights, gender equality and social justice, economic well being and free expression of different cultural values, without discrimination⁷⁵¹. Consequently, the drafting

⁷⁴⁶ See document A/HRC/AC/4/NGO/3 of 20 January 2010.

⁷⁴⁷Article 15.2 of the Rules of Procedure of the Advisory Committee of 6 August 2009. Vid. doc. A/HRC/AC/3/2 of 9 October 2009

⁷⁴⁸Doc. A/HRC/AC/6/CRP.3, of 22 December 2010

⁷⁴⁹Ibidem id., par. 14

⁷⁵⁰Ibidem 748, Annexes IV and V

⁷⁵¹Ibidem 748, par. 21

group proposed nine guiding dimensions which should be included in the future draft declaration on the right of peoples to peace, namely: peace as a right of all peoples; disarmament; human security and respect of our environment; resistance to oppression; conscientious objection; private military and security forces; education; development; the rights of victims and vulnerable groups; the obligations of States; and the monitoring and implementation of the right of peoples to peace⁷⁵².

The report then identified the legal basis for each of the proposed dimensions and makes proposals of standards providing a frame to the right of peoples to peace⁷⁵³. The report reaffirms that the right to peace has its legal basis in the Charter of the United Nations, the international human rights law and numerous resolutions approved by the UNGA, the Human Rights Commission and the HRC⁷⁵⁴. Additionally, it recognised that the right to peace has a double dimension -individual and collective-, and that the duty-holders of the right are both peoples and individuals⁷⁵⁵. Besides, it noted that the establishment, maintenance and strengthening of the right to peace requires the application and respect of all human rights for all, namely: civil, political, economic, social, cultural, the right to development and the right of peoples to self-determination⁷⁵⁶.

The progress report also recognises that the contribution of women to the cause of peace is fundamental for a full and complete development of a country and the welfare of the world⁷⁵⁷. Therefore, States, international organizations, in particular the United Nations, and civil society should empower women so that they can contribute to building, consolidating and maintaining peace after conflicts and can participate at all levels of decision-making on peace and security issues⁷⁵⁸. To reach this aim, the gender perspective should be incorporated in a comprehensive peace education⁷⁵⁹. Furthermore, national laws and policies that are discriminatory against women should be revised, and legislation addressing domestic violence, the trafficking of women and girls and gender-based violence should be adopted⁷⁶⁰.

During the debate on the right of peoples to peace in its sixth session, **Germany** indicated that the wording of a Declaration was controversial both from the legal and political viewpoint. He stated that Section II of the progress report focused on the legal basis of the right to peace was not sufficiently substantiated to affirm the existence of a new right. He asked about the added value of a new Declaration taking into account the adoption of another Declaration on the Right of Peoples to Peace in 1984 and the role played by other international actors, in particular terrorist groups and others.

Morocco said it was a highly politicized right and also it was linked to the culture of peace. While they acknowledge that it was important to consolidate this right, they requested more time to learn the position of other states.

Algeria recalled that the right to peace was recognized in the African Charter on Human and Peoples' Rights and the Asian Human Rights Charter. He said that peace and security are mutually reinforcing, and that the right to self-determination of peoples is an important element of the right to peace.

752Ibidem 748, par. 22

753Ibidem 748, sections IV to XV

754Ibidem 748, par. 5-12 and 23-27

755Ibidem 748, Annex III

756Ibidem 748, par. 27.e

757Ibidem 748, par. 9

758Ibidem 748, paragraph 67.c

759Ibidem 748, paragraph 57.a

760Ibidem 748, paragraph 57.f.3

The **United States of America** expressed its reservations about the existence of the right to peace and conclusions which confirm the recognition of this right. He stressed that other United Nations bodies are mandated to focus on issues of peace and security, such as the Security Council. He said the right to peace is a programmatic right ('soft law') and that all human rights are individual and not collective.

Cuba confirmed that there was sufficient legal basis to recognize the right of peoples to peace. He explained that in recent years wars had multiplied, including the so-called war against terrorism, and that the United Nations should create mechanisms to guarantee the right to live in peace. He acknowledged that the right to peace had two dimensions -individual and collective - and that there were legal instruments recognizing both dimensions. He stressed that the nine standards proposed by the drafting group are a sufficient legal basis to develop this issue.

By recommendation 6/3, of 21 January 2011, the Advisory Committee took note of the progress report⁷⁶¹; increased to six the members the drafting group; and requested it to prepare a questionnaire to be distributed among all the stakeholders. In the light of the comments to be received, it submitted in January 2012 a draft declaration to the Advisory Committee. The progress report also submitted to the HR Council at its seventeenth session⁷⁶².

As part of the consultations undertaken by the Advisory Committee a questionnaire on possible elements for a draft declaration on the right of peoples to peace was distributed among relevant stakeholders in order to assist Advisory Committee in furthering its work on the right to peace.

The AC revised progress report submitted to the HR Council (A/HRC/17/39 of 28 March 2011) proposed more than 40 possible standards for inclusion in the draft declaration on the right to peace. It also referred to specific rationale leading to including them and relevant legal standards (paragraph 72). In the light of discussions to be held by the HR Council and of responses from all stakeholders, the drafting group worked at its upcoming meetings on a draft declaration that was submitted in January 2012 to the Advisory Committee. The ultimate aim of the drafting group was to produce a document helping to promote freedom, peace and security and which was valuable in the promotion of the human rights agenda and the right to peace (paragraph 74).

The following questions were included in the questionnaire, namely: 1. What do you see as core components of the right of peoples to peace, which should be taken into account in the draft declaration?; 2 and 3. With regard to the implementation of the right of peoples to peace at the national and international level, the AC asked: What mechanisms are necessary for the State to better enhance this right? Could you provide observations/proposals and/or examples of good practices? What should be the role of civil society? Experiences in international and regional organizations?; 4. With regard to peace education, the AC asked: What is your Government doing to provide peace education during primary, secondary and tertiary education? What should be the role of civil society? Experiences of international and regional organizations? and 5. Do you have any comments on progress report A/HRC/17/39, in particular with regard to the proposed standards for a draft declaration on the right of peoples to peace?

Some eight States Members⁷⁶³ of the United Nations and twenty-four non-governmental organizations⁷⁶⁴ answered the questionnaire. In addition, one non-Member State participated in

761A/HRC/AC/6/CRP.3, of 22 December 2010.

762Ibidem 748, paragraph 74.

763Zimbabwe, Costa Rica, Qatar, Honduras, United States of America, Bolivia, Mauritius and Bahrain

764ADET (Amis des Etrangers au Togo), APRED, ATD Fourth World Geneva, Baha'i International Community - Geneva, Center for Global Non-killing, Conscience and Peace Tax International, Emmanuel Atchade, Hiroshima Day Coalition of Toronto, International Association of Democratic Lawyers, Instituto

the process in the capacity of observer⁷⁶⁵. Additionally, one intergovernmental organization⁷⁶⁶, two international organizations⁷⁶⁷ and one body of the United Nations⁷⁶⁸ also answered the questionnaire.

In regards to the answer to the questionnaire, the **United States of America** upholds international peace as an ideal and a fundamental objective. The U.S. Government works tirelessly toward the achievement of international peace, devoting much effort and resources to its promotion including in the areas of conflict prevention, conflict resolution, and post-conflict reconciliation. They added that human rights and peace are closely related. The UN Charter recognizes the importance of protection of human rights to the promotion and maintenance of international peace. They also said that the international human rights bodies can and do make crucial contributions to advancing the important cause of international peace. The United States therefore continued to question the value of working toward a declaration on the “right” of peoples to peace. This proposed right is neither recognized nor defined in any universal, binding instrument, and its putative parameters would be entirely unclear⁷⁶⁹.

The in its reply stressed that there is a close linkage between peace and human rights. The HRC resolution 14/3 omits to state that the absence of peace cannot justify failure to respect human rights. Besides it deals almost exclusively with the relationship among states and not with the relationship between the state and its citizens and the respect of human rights. In addition, most issues raised in the resolution are better dealt with other fora. For these reason, the European Member States could not support resolution 14/3 and cannot support the questionnaire⁷⁷⁰.

As to the core components of the right of peoples to peace to be taken into account in the draft declaration, the **Holy See** enumerated some components, namely: fundamental human rights and, in particular, the right to life and the right to religious freedom; people are the centre of development; attacks on peace are often the result of the lack of recognition of the equal and inherent dignity of persons; inequality in access to essential goods like food, water, shelter, health is also a very common cause of a lack of peace; persistent inequalities between men and women in the exercise of basic human rights are also a factor that must be squarely addressed in any such declaration. **Zimbabwe** indicated that it should include the protection against economic violence. **Costa Rica** said that the key element in the right to peace is the absence of threat of armed conflict, which incorporates in its spirit disarmament and settlement of disputes by law and reason. In addition, peace is based on the protection and promotion of human rights. Other elements would be the principles of the fight against violence, the responsibility to protect, protection of civilians and the fight against poverty. **Bolivia** stated that education should be considered a core component of the right of peoples to peace. **Mauritius** stressed that

Latinoamericano del Ombudsman, International Federation of Translators, International Fellowship of Reconciliation Geneva, International Fellowship of Reconciliation US, International Trade Union Confederation & Education International (EI), JALISA, World Movement of Women, International, National Centre for Human Rights (Jordan) Bushra Shaker Abu Shahout, Non-Violent Peace force, Nord-Sud XXI, Norwegian Helsinki Committee, Observatory on the human right to peace (joint NGOS statement), Operation Peace Trough Unity (OPTU), Society for the Psychological study of Social Issues, World Federalist Movement and World Pulse

765Holy See

766European Union

767UNESCO and UNICEF

768Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination

769See in

<http://extranet2.ohchr.org/Extranets/AdvisoryCommittee/portal/page/portal/AdvisoryCommittee/Rightofpeoplestopeace.html>

770Ibidem 769

some of the core elements would be the understanding and tolerance, equality between women and men, education for a culture of peace, sustained economic and social development and a stable economy⁷⁷¹.

UNESCO enumerated the following elements to be considered as core elements, namely: the promotion of social justice; respect and promotion of cultural diversity; reinforcement of intercultural dialogue and mutual respect; conflict prevention, peaceful settlement of disputes and reconciliation; respect for the right to education and universal access to quality education; promoting peace and human rights education; elimination of all forms of discrimination gender equality; respect for the right to take part in cultural life; the role and the participation of civil society and young people in conflict resolution; respecting the right to development and promoting human security in all its dimensions. **UNICEF** outlined as core elements democracy, good governance and peace education. The **Working Group on the use of mercenaries** proposed as core elements a more stringent control of small arms and light weapons and better monitoring and regulation of the production and trade of arms as well as the services which accompany their export⁷⁷².

In the “Joint reply of 1795 NGOs, CSOs and cities to the Advisory Committee questionnaire on elements for a draft declaration on the right to peace”, NGOs stated that although the legal standards proposed by the AC revised progress report was welcome, they identified as core elements the following: the double dimension of the right to peace —individual and collective —and strengthening the relationship among the right to peace and women’s contributions, migrations, indigenous peoples, and the prohibition of racism, racial discrimination, xenophobia and related intolerance⁷⁷³.

With regard to the implementation of the right of peoples to peace at the national and international level, the **Holy See** proposed the promotion of democracy; guarantee of the rule of law; combat corruption; taking responsibility for the social aspects of development, such as education, job security and basic healthcare for all. **Zimbabwe** proposed self-determination in the socio-economic field. **Costa Rica** proposed as measures the strengthening of democracy, rule of law, cooperation and prevention of conflict. **Bolivia** proposed the condemnation of war, the prohibition of the use of force and the abolishment of military bases. **Mauritius** proposed the use of preventive diplomacy, the creation of a forum for dialogue or conflict reduction, the peaceful settlement of disputes and analysis of the multiple factors that foster or undermine peace⁷⁷⁴.

UNESCO proposed the development and strengthening of existing mechanisms to eliminate inequalities, exclusion and poverty, especially between young people and the improvement of regional observation instruments in order to oversee the fulfillment of the obligations of relevant treaties in the field of disarmament. **UNICEF** proposed the establishment of national commissions on civic education, media commissions, and commissions on human rights⁷⁷⁵.

In the “Joint reply of 1795 NGOs, CSOs and cities to the Advisory Committee questionnaire on elements for a draft declaration on the right to peace”, NGOs identified the following practical measures of implementation: to include, elaborate and/or strengthen the right to peace in national Constitutions; to recognize the right to peace as a justiciable right to be adjudicated by local courts; to set up Ministries and Departments of Peace at the local, regional and national

⁷⁷¹*Ibidem* 769

⁷⁷²*Ibidem* 769

⁷⁷³Doc. A/HRC/17/NGO/57, 27 May 2011

⁷⁷⁴*Ibidem* 769

⁷⁷⁵*Ibidem* 769

level; to promote declarations on the human right to peace by local, regional and national Parliaments and City Councils; to adopt National Plans of Action to implement Security Council resolution 1325 on women, peace and security; to establish international non-violent peace corps; to protect minorities; to support local non-violent conflict resolution; and to set up communities of Peace Academies at the local, regional and national level⁷⁷⁶.

In the question about the role of education, all Member States and international organizations showed their agreement to reinforce the education on peace and human rights as a means to promote the values of solidarity, mutual understanding and friendship among all nations of the world.

On 17 June 2011, the HR Council adopted resolution 17/16 by which it took note of the progress report of the Advisory Committee (AC) on the right of peoples to peace (A/HRC/17/39) and it supported the need to further promote the realization of the right of peoples to peace. In that regard, it requested the AC, in consultation with Member States, civil society, academia and all relevant stakeholders, to present a draft declaration on the right of peoples to peace, and to report on progress thereon to the Council at its twentieth session” (June 2012).

In its 7th session (August 2011), the AC had before it the progress report on the right of peoples to peace prepared by its drafting group, which included a first draft declaration on the right of peoples to peace. The group focused on standards relating to international peace and security as core standards (elements of negative peace, absence of violence), and included standards in the areas of peace education, development, the environment, victims and vulnerable groups as elements of a positive peace.

On 8 August 2011 a general debate on the draft declaration took place at the plenary of the AC. The participation of civil society in the general debate of the Advisory Committee on the right of peoples to peace was particularly relevant, highlighting the presentation of the joint written statement entitled "Amendments to the draft Declaration on the Right of Peoples to Peace submitted by the Advisory Committee drafting group"⁷⁷⁷.

During the general debate, the **United States of America** said that they had significant concerns about many of the report's proposed standards. In brief, general terms, their objections to the standards include the following: in them, key concepts are undefined or not sufficiently defined; they inappropriately assign human rights to groups or "peoples", rather than to individuals; they purport to turn a goal of the entire human rights system into a freestanding "right;" they attempt to treat issues addressed in other areas, such as the environment and security, as human rights issues; they state "standards" that are not agreed upon, and are rejected by many countries; and to the extent that they do address valid human rights issues, they are duplicative of other instruments or mechanisms, and offer no significant prospect of improved promotion of these rights. In some instances, because of overly broad or vague formulations, promotion of established human rights might actually be undermined. Securing peace is a primary goal of the entire UN system, and of the international human rights system. The United States therefore continues to question the value of working toward a declaration on the "right" of peoples to peace. This proposed right is neither recognized nor defined in any universal, binding instrument, and its putative parameters would be entirely unclear. All resolutions on this topic in UN bodies, including the UNGA, the CHR, and the HRC, have been adopted only against significant numbers of dissenting or abstaining votes⁷⁷⁸.

776Doc. A/HRC/17/NGO/57, 27 May 2011

777 A/HRC/AC/7/NGO/3 and Corr. 1, 3 August 2011

778 The complete oral statement delivered can be found webpage of the HRC Advisory Committee, 7th regular session. <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/Sessions.aspx>

Bolivia indicated that its Constitution recognizes the country as a pacifist state that promotes the culture of peace and the right to peace and cooperation between the peoples of our region and the world. In this context we reaffirm that the human right to peace is the fundamental requirement for the good life of the people and the realization of all human rights. Nationally and internationally, we promote the culture of dialogue for the prevention and resolution of conflict; we reject all war because we have chosen to promote the culture of life and not death and of destruction⁷⁷⁹.

Cuba said they give a great importance to peace as an essential condition for the enjoyment of human rights, above all the right to life. Peace is a prerequisite for the promotion and protection of all human rights for all. The content of the right of peoples to peace includes the reaffirmation of the obligation of all States to settle their international disputes by peaceful means. That is why we must reject the use of violence in the pursuit of political objectives and that only peaceful political solutions can assure a stable and democratic future for the peoples of the world. They reaffirmed that in order to achieve a climate of peace and security in the world, we must respect the diverse cultures and identities of all peoples and work actively in actions that promote cooperation, solidarity and dialogue among civilizations. They recalled that in accordance with the Universal Declaration of Human Rights, everyone is entitled to a social and international order in which the rights and freedoms can be fully realized. He recalled that the common article of the International Covenants on Human Rights stated that all people have the right to self-determination of peoples, by virtue of which they freely determine their political status in the pursuit of their economic, social and cultural advancement. International law recognized the obligation of all States to refrain in their international relations from the use or threat 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. In that sense, he reaffirmed the importance of ensuring respect of the principles of sovereign equality, 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 and international law⁷⁸⁰.

Pakistan stated that they attach great importance to the subject under discussion – people's right to peace. They believe that this right can be realized by a) identifying and addressing the root causes of issues that continue to thwart international peace and security, b) respecting the sovereignty, territorial integrity and political independence of all States, c) refraining from acting in any other manner inconsistent with the purposes of the United Nations, d) creating an enabling environment with greater participation of developing countries in international political, economic and financial decision making and e) implementing UN resolutions⁷⁸¹ to ensure peace and security.

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 group⁷⁸² (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).

At its eighth session, held on 20-24 February 2012, the AC discussed the second, revised draft

779 *Ibidem* n. 778

780 *Ibidem* n. 778

781 *Ibidem* n. 778

782 A/HRC/AC/7/3 of 19 July 2011, cit.

declaration⁷⁸³. “The drafting group expresses its gratitude for the comments and observations received since August 2011, particularly those from civil society. It also welcomes the support for the right to peace expressed recently at the twenty-first Ibero-American Summit in Paraguay and by the Parliament of Spain”⁷⁸⁴.

During the general debate on the right of peoples to peace, **Cuba** stated that the right to peace is a sacred right of peoples and its promotion and implementation is a primary obligation of the States. In accordance with the Universal Declaration of Human Rights, everyone is entitled to a social and international order in which all rights can be fully realized. Peace is, without doubt, an essential component of that order. Peace is an essential condition for the enjoyment of all human rights, above all the right to life. He added that there has been a progressive development of peace since the adoption of the 1984 Declaration on the Right of Peoples to Peace and the 2000 Millennium Declaration by the UNGA. They reiterated its commitment for the promotion of peace as a fundamental right to the full enjoyment of all human rights for all⁷⁸⁵.

Tunisia recalled that article 23 of the African Charter on Human and Peoples' Rights stated that all peoples shall have the right to national and international peace and security. According to the speaker, the Declaration will be useful to strengthen peace and security in the world⁷⁸⁶.

Spain recalled the Preamble of the ICCPR stating that the 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. They considered that we need to go from ideals to particular legal standards in the right to peace⁷⁸⁷.

Russia indicated that the right to peace is based on the three UN pillars, namely: human rights, peace and security and development⁷⁸⁸.

On 24 February 2012, the AC adopted recommendation 8/4, by which took note of the progress report submitted by the drafting group to the Advisory Committee at its seventh session (A/HRC/AC/8/2) (paragraph 1); it welcomed the submissions and comments received during its eighth session by various stakeholders and members of the Advisory Committee (paragraph 2); it also welcomed the initiatives of civil society actors to organize discussions on the draft declaration of the Advisory Committee; (paragraph 3); it requested the drafting group to finalize its work on the draft declaration on the right of peoples to peace in the light of the discussions held by the Advisory Committee at its eighth session, and to submit it to the HRC at its twentieth session (paragraph 4); it also requested the drafting group to include in its revision, inter alia: (a) Reference to the link between the right to peace and all civil, political, economic, social and cultural rights in article 1; (b) Reference to the importance of citizen security and a preventive approach; (c) Strengthening of gender mainstreaming in article 8; (d) Reference to the right to truth in article 11; (e) More explicit wording on a monitoring mechanism in article 13 (paragraph 5); it expressed the wish that a representative of the drafting group on the right of peoples to peace of the Advisory Committee be invited to participate in the discussions of the HRC on the draft declaration; (paragraph 6); it also expressed the wish that the drafting group be kept informed of the follow-up to the work of the HRC, and that it might be involved, in

783 A/HRC/AC/8/2, of 9 December 2011

784 A/HRC/AC/8/2, of 9 December 2011, paragraph 8

785 The complete oral statement delivered can be found webpage of the HRC Advisory Committee, 8th regular session. <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/Sessions.aspx>

786 *Ibidem* n. 785

787 *Ibidem* n. 785

788 *Ibidem* n. 785

appropriate ways, in the ongoing debate (paragraph 7); and it requested the Office of the United Nations High Commissioner for Human Rights to provide the drafting group with all the assistance necessary to enable it to accomplish its task (paragraph 8).

Pursuant to HR Council resolution 17/16 of 17 June 2011 and Advisory Committee (AC) recommendation 8/4 of 24 February 2012, the AC submitted to the HR Council its (third) draft declaration on the right to peace⁷⁸⁹.

2.4. First session of the 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. It also decided that the Working Group would meet for four working days prior to the twenty-second session of the HRC. It took place from 18 to 21 February 2013.

Some fifty representatives of States Members⁷⁹⁰ of the United Nations and twenty non-governmental organizations⁷⁹¹ attended the Working Group's meeting. In addition, two non-Member States were represented by observers⁷⁹². Additionally, four intergovernmental organizations were represented at the meetings of the Working Group⁷⁹³.

789 A/HRC/20/31, of 16 April 2012, Annex

790Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium, Benin, Bolivia (Plurinational State of), Botswana, Brunei Darussalam, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, the Czech Republic, the Democratic People's Republic of Korea, Ecuador, Egypt, Estonia, Ethiopia, France, Gabon, Germany, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Japan, Kuwait, the Lao People's Democratic Republic, Latvia, Libya, Luxembourg, Madagascar, Mali, Malaysia, Mauritania, Mexico, Monaco, Morocco, Nepal, the Netherlands, Nicaragua, Pakistan, Paraguay, Peru, the Philippines, Poland, Portugal, Qatar, the Republic of Korea, Romania, the Russian Federation, Saudi Arabia, Senegal, Singapore, South Africa, South Sudan, Spain, Sri Lanka, Sudan, the Syrian Arab Republic, Thailand, Tunisia, Turkey, Turkmenistan, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam and Yemen.

791African Commission of Health and Human Rights Promoters; American Association of Jurists; Associazione Comunità Papa Giovanni XXIII; Association of World Citizens; Bangwe et Dialogue; Association Points-Coeur; Centre Europe - Tiers Monde; Congregation of Our Lady of Charity of the Good Shepherd; Franciscans International; Initiatives of Change International; Institute for Planetary Synthesis; Institute of Global Education; International Association of Democratic Lawyers; International Association of Peace Messenger Cities (on behalf of 1,619 civil society organizations and cities); International Fellowship of Reconciliation; International Volunteerism Organization for Women, Education, Development; International Youth and Student Movement for the United Nations; Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco; Japan Federation of Bar Associations; Japanese Workers' Committee for Human Rights; Make Mothers Matter International; Nonviolent Peaceforce; North-South XXI; Rencontre africaine pour la défense des droits de l'homme; Soka Gakkai International; United Network of Young Peacebuilders; UN Watch; United Religions Initiative; U.S. Federation for Middle East Peace; VIVAT international; Women's World Summit Foundation; World Alliance for Citizen Participation (CIVICUS); Worldwide Organization for Women; and Zonta International.

792Holy See and the State of Palestine

793African Union, the European Union, the International Organization of la Francophone and the Organization of the Islamic Cooperation

The NGO participation was very active in the first session of the Working Group. Indeed, 13 NGOs submitted to the Working Group 15 written statements on particular articles contained in the draft UN Declaration on the right to peace (i.e. conscientious objection, peace education and training, human security, disarmament, right to development, private military and security companies, peacekeeping, resistance and opposition to oppression and the right of victims and vulnerable groups). In addition, the Japanese Federation of Bar Associations delivered an oral statement on human security and the Japanese approach to the right to peace.

In addition, the SSIHRL and the International Association of Peace Messenger Cities (IAPMC) submitted on behalf of 1.619 CSOs and cities worldwide to the Working Group, the tenth session of the Advisory Committee and the twentieth second session of the HRC, a joint CSO written statement entitled "CSO amendments to the Advisory Committee's draft declaration on the right to peace"⁷⁹⁴.

On 18 February 2013, Ambassador 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.

The session was opened by the Deputy High Commissioner for Human Rights. She underlined that because of war and armed conflict, millions of innocent lives, civilians, children, women, elder and displaced people are suffering grave consequences, such as death, starvation and other violence nested in an instable context, where the value of the human life is unbearably low. Although the right of peoples to peace has been recognised in some universal and regional instruments, she also recalled that the UN Charter contains provisions related to peace (i.e. Art. 1.1 and 2.2). Also she underlined that both the 1993 Vienna Declaration and the 2005 World Summit contain references "to the importance of peace as a precondition for the full enjoyment of fundamental human rights, as well as the impact of respect for human rights on the creation of a peaceful society"⁷⁹⁵.

The President of the HRC also participated in the opening of session. He referred both to Preamble of the Charter, which states that the United Nations was founded "to save succeeding generations from the scourge of war" and the proclamation of year 2000 as International Year for the Culture of Peace. In addition, he stressed that peace and human rights are intrinsically linked and that peace and security, development and human rights are the pillars of the United Nations system and foundations for collective security and well-being. All States, in accordance with the principles of the Charter, should use peaceful means to settle any dispute to which they are parties, he added⁷⁹⁶.

Pursuant paragraph 4 of the HRC resolution 20/15 the Chairperson of the Drafting Group on the right to peace at the Human Rights Council Advisory Committee participated and also delivered a general statement. She said that the right to peace include not only negative peace

794Doc. A/HRC/AC/10/NGO/2, 8 February 2013

795The complete oral statement delivered can be found in the webpage of the OEWG on the right to peace, First regular session,

<http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace1stsession.aspx>

796*Ibidem* n. 795

(absence of direct physical violence or war), 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. She also indicated that the right of each individual to peace is a condition for the enjoyment of the right to life and all other civil, political, economic, social and cultural rights. According to her, the concept of human security addresses structural violence and includes freedom from fear and from want. She added that human life and dignity is being violated every day and every minute through violence, wars and endemic injustices. In addition, she underlined that the international community have a “golden chance to address not only the prevention of wars and various forms of violence, but also structural violence, its underlying causes and to focus on the imbalances and the endemic injustices that render peace unjust”⁷⁹⁷.

In his opening remarks, the Chairperson-Rapporteur referred to the relevant provisions in which peace is actually based on, namely: the Charter of the United Nations, the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action and other human rights treaties. He also underlined the basic principles for conducting the session of the Working Group (i.e. transparency, inclusiveness, consensus, objectivity and realism). He also recalled that he convened informal consultations with Member States and civil society in preparation of the first meeting of the Working Group. At its first meeting, the agenda and the program of work were adopted without comments by the Working Group. There was a general debate followed by a preliminary reading, article by article, of the draft United Nations declaration on the right to peace prepared by the Advisory Committee⁷⁹⁸.

During the general debate, Cuba, Sri Lanka, Venezuela stressed that 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. On the other hand, the United States of America, EU, Canada, Australia 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 itself⁷⁹⁹.

Cote d’Ivoire 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. Venezuela 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 Syrian Arab Republic, Malaysia, Uruguay, Bolivia and Iran, 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 people⁸⁰⁰.

In addition, Cuba, Sri Lanka, Morocco, Syrian Arab Republic, Iran, Venezuela and Uruguay stressed that the future declaration should be guided by international law, basing itself on the UN Charter and the promotion of human rights and fundamental freedoms. However, it should

⁷⁹⁷*Ibidem* n. 795

⁷⁹⁸*Ibidem* n. 795

⁷⁹⁹*Ibidem* n. 795

⁸⁰⁰*Ibidem* n. 795

acknowledge the respect the principles of sovereignty, territorial integrity peaceful settlement of disputes, international cooperation and political independence of sovereign States as established by the UN Charter. Additionally, Egypt, Iran and Cuba indicated that the focus of the declaration should remain peace at the international level. The declaration needs to reflect this relation in a manner proportional and corresponding to the balance established within the UN Charter. Malaysia added that the Declaration should exclusively govern inter-state relations in the preservation of peace⁸⁰¹.

Peru 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. Canada, Uruguay and Egypt also agreed that the preservation of peace is the founder, goal and main objective of our organization. The United States of America, Australia, EU, Uruguay, GRULAC, Venezuela, Republic of Korea, Bolivia, Morocco and Canada 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, Cote d'Ivoire, Syrian Arab Republic, Bolivia and Cuba said that the right to peace is strongly inseparable from the most fundamental right, which is the right to life. Cuba, Sri Lanka and Egypt stated that peace is a precondition or pre-requisite to protecting and promoting the enjoyment of all human rights. Iran 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". Uruguay added that peace should be seen as an enabling right which allows people enjoy their civil, political, economic, social or cultural rights⁸⁰².

Iran, Cote d'Ivoire and Sri Lanka stated that the Declaration should reflect the preventive role of peace in regards to the human rights violations. Sri Lanka, Egypt and Venezuela also stressed the complementarity and interdependence of the three main pillars of the United Nations (i.e. peace, development and human right). Additionally, Morocco, Cote d'Ivoire, the Organization of the Islamic Conference and Senegal stressed to promote the culture of peace⁸⁰³.

In regards to the legal standards of the Declaration elaborated by the Advisory Committee, Singapore 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 the Republic of Korea, the drafters included many binding disparate issues to peace. In addition, the United States of America, Australia, EU, Indonesia, Iran, Syrian Arab Republic, Canada and Morocco 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 not⁸⁰⁴. 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, Egypt said that the major misgiving is to use undefined, ambiguous and un-grounded concepts that lack any

801 *Ibidem* n. 795

802 *Ibidem* n. 795

803 *Ibidem* n. 795

804 Disarmament (the United Nations Conference on Disarmament and the Arms Trade Treaty negotiations), peacekeeping (the Security Council), development (the Human Rights Council's Working Group on the Right to Development), peace education (the United Nations Educational, Scientific and Cultural Organization (UNESCO)), refugees (the United Nations High Commissioner for Refugees) and climate change (the United Nations Framework Convention on Climate Change and its accompanying institutions)

consensus in international law or to insert topics that do not have a slightest linkage to the purpose of the declaration. However, Cuba, Sri Lanka, Syrian Arab Republic, Iran and Senegal proposed to enforce as possible legal standards the private and military security companies, right to development, environment and education on peace and to eliminate any reference to human security, responsibility to protect, peacekeeping, contentious objection and refugees⁸⁰⁵.

Indonesia, Costa Rica and Morocco stated that the only way to progress the drafting of the Declaration is through consensus and dialogue. As indicated by Sri Lanka, “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”. In addition, Indonesia 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 formulations⁸⁰⁶.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador Christian Guillermet (Chairperson-Rapporteur), “... there was wide consensus among delegations that human rights, peace and development were interdependent and mutually reinforcing, and that the draft declaration should be guided by the Charter of the United Nations, in addition to a vast jurisprudence inspired by international law”⁸⁰⁷.

At the final meeting of its first session, on 21 February 2013, the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace welcomed the participation of the Deputy High Commissioner, the President of the HRC and the Chairperson of the Advisory Committee drafting group on the draft declaration on the right to peace and took note of the input received from Governments, regional and political groups, civil society and relevant stakeholders⁸⁰⁸.

In addition, following the discussions held during the Working Group and acknowledging that differences of views on the way forward remain, the Chairperson-Rapporteur recommended to the HRC the following: “1. That a second session of the Open-ended Intergovernmental Working Group be held before its twenty-fifth session; 2. That permission be given to him for the holding of informal consultations with Governments, regional groups and relevant stakeholders in the intersessional period; 3. That he be entrusted with the preparation of the 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, and to present the text before the second session of the Working Group for consideration and further discussion thereat”⁸⁰⁹.

On 13 June 2013, the HRC accepted the recommendations proposed by the Chairperson-Rapporteur in its resolution 23/16. It follows that the new text to be prepared by the

805 *Ibidem* n. 795

806 *Ibidem* n. 795

807 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador Christian Guillermet (Chairperson-Rapporteur), Doc. A/HRC/WG.13/1/2, 26 April 2013, par. 20-26

808 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 87

809 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 88

Chairperson-Rapporteur should be based on the discussions held during the first session of the working group and the inter-sessional informal consultations.

2.5. Informal consultations on the right to peace

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. Some twenty-eight representatives of States Members⁸¹⁰ of the United Nations and twenty non-governmental organizations⁸¹¹ attended the informal meeting. In addition, one non-Member

810 Algeria, Argentina, Australia, China, Colombia, Costa Rica, Cuba ,Czech Republic, Ecuador, Egypt, Indonesia, Italy, Japan, Lithuania, Mexico, Morocco, Pakistan, Philippines, Peru, Russian Federation, Singapore, Spain, Sri Lanka, The United Kingdom, United Arab Emirates, United States of America, Uruguay and Venezuela.

811 African Commission of Health and Human Rights Promoters; American Association of Jurists; Associazione Comunità Papa Giovanni XXIII; Association of World Citizens; Bangwe et Dialogue; Association Points-Coeur; Centre Europe - Tiers Monde; Congregation of Our Lady of Charity of the Good Shepherd; Franciscans International; Initiatives of Change International; Institute for Planetary Synthesis; Institute of Global Education; International Association of Democratic Lawyers; International Association of Peace Messenger Cities (on behalf of 1,619 civil society organizations and cities); International Fellowship of Reconciliation; International Volunteerism Organization for Women, Education, Development; International Youth and Student Movement for the United Nations; Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco; Japan Federation of Bar Associations; Japanese Workers' Committee for Human Rights; Make Mothers Matter International; Nonviolent Peaceforce; North-South XXI; Rencontre africaine pour la défense des droits de l'homme; Soka Gakkai International; United Network of Young Peacebuilders; UN Watch; United Religions Initiative; U.S. Federation for Middle East Peace; VIVAT international; Women's World Summit Foundation; World Alliance for Citizen Participation (CIVICUS); Worldwide Organization for Women; and Zonta International.

States was represented by observer⁸¹². Additionally, one intergovernmental organization was represented at the meetings of the Working Group⁸¹³.

The EU said that the TICO principles and the attempt to reach consensus is really important for them. They reiterated their position, although firm believers that peace and human rights are mutually reinforcing (EU) as spelled out in the UDHR (i.e. equal dignity and inalienable of all rights). They are convinced that the right to peace has no legal basis in international law and there is not a common definition on this topic. In the first session of the OEWG the EU showed its concerns about several elements included in the draft declaration. They requested that any possible future text should include its position and that they would be very keen to discuss the linkage between peace and human rights.

The **Russian Federation** stressed that the need to reach a consensual Declaration is really necessary. They stated that they would like to see the draft declaration as a follow up or an update of the 1984 Declaration, rather than an instrument creating new rights. They proposed to elaborate the concept of the right of peoples to peace and to take into account the human rights development that has occurred in the last 20 years. Recent developments could be taken into account without interfering in other fields in which the HRC has no mandate. While it will be useful to have a text, they do not want to discuss any draft outside the Working Group and HRC realm (i.e. environment or disarmament).

Cuba reiterated that the last resolution was proposed by CELAC and that this initiative counted with the support of the region. This is not now an initiative by Cuba alone. It was restated that, after the first session, it is now time to engage in real negotiations based on the text proposed by the Chairperson. Cuba supports a Declaration on the right of peoples to peace.

The **United States of America** showed its engagement to participate constructively in these type of meetings but their presence does not mean that they are prepared or willing to negotiate a text as they do not recognize the right to peace as such. Efforts in adopting the Advisory Committee draft declaration may jeopardize a number of activities within the HRC. Nonetheless, they would be keen to discuss the linkage between human rights and peace. They stressed the need to adopt a Declaration by consensus. They appreciated the TICO approach.

Egypt acknowledged that the informal consultations are a positive exercise in confidence building and pointed out that the mandate of the Working Group is to develop a declaration on the right to peace on the basis of the AC's draft. Egypt stated that the type of consensus to be reached should be carefully evaluated and that it should not diminish the current mandate of the WG. They proposed that the new text should be based on the AC Declaration and principles in which all delegations showed their agreement in January at the first session of the OEWG. In their opinion it was difficult to shape the scope of the declaration based on themes without a clear definition. Consultations should be carried out based on a text and once the Chairperson proposes a concrete document, informal consultations should be resumed. The February session of the OEWG is the time to take decisions.

Australia showed its concern about some topics included in the draft AC Declaration, which are difficult to accept in the new text (i.e. disarmament).

812Holy See

813European Union

The **United Kingdom** appreciated a lot that the Chairperson/Rapporteur wanted to share with them the draft text before the second session. They supported the EU views that the objective of any text discussed by the Working Group should be made clear, bearing in mind that many delegations are against the right to peace. They wanted to know the real objectives of the new text, because whether the Chairperson wants to elaborate the definition of the right to peace, then many delegations will have difficulties to negotiate such text. They again stressed that the Chairperson should work in the linkage between peace and human rights, rather than elaborating the contested right to peace.

Peru noted that entrenched positions may be not so distant above all. He said that all human beings want to live and enjoy peace. All we are doing here should be done in the framework of the HRC. The UN Charter offers guidance for the drafting of the declaration and we do not want to see anything outside the Charter. It is important to recall article 28 of the UDHR, which clearly shows that there is legal basis for the right to peace, basis that would need to be developed. We do not need to create new rights, as it is implicit there in a clear manner. They referred to the themes included in the nota verbal, in particular disarmament, to stress that the purpose of the current exercise is to see what is the connection of the latter themes with the enjoyment of peace. He wanted to see in the Declaration those measures to be undertaken by States to promote the enjoyment of peace. Many delegations raised the issue that some topics should be dealt in the Security Council. They partially agreed with them. Nonetheless, the main purpose of the Security Council is to restore peace. This is not to be done in the HRC. We want only to propose measures to be undertaken by States in order to promote the enjoyment of peace. Therefore, we do not want to have a discussion on disarmament or education, but only about what types of measures should be taken by States to promote peace. We do not want to create new rights, but only to develop one single right, the right of everyone to enjoy peace, which is closely linked to article 28 of the UDHR. They stressed that the UN Charter does not contain a definition about peace. The Working Group should develop the right of enjoying peace; nobody challenges peace, although this word has not a legal definition.

Singapore noted that the Charter may be a valuable instrument in drafting such a declaration, because it contains both the right to peace and the aspiration to reach peace. Taking into account that the establishment of the current WG is to develop the right to peace, we need a new approach to this matter. Even we may discuss the right to peace bearing in mind the list of themes proposed; he said that the right to peace seems an unclear and nebulous concept. In the list, we can propose some other 20 potential themes to be included. Therefore, the question is how we should select these topics. From his perspective, he believed that it would not be very productive to continue with this approach if we want to reach a consensus on this matter. They proposed to turn back to the meaning of peace in the context of the UN Charter to understand that it is linked to the inter-relationship among States and how States should behave among them to guarantee peace. We have in the UN Charter some important guidelines to consider and therefore, we need to define the inter-relationship among States, including the following principles, namely: the respect of sovereignty, territorial integrity, non intervention in domestic jurisdiction of any State, protection of security measures and public safety, the peaceful settlement of conflicts and advancing the common understanding, tolerance and cooperation among countries. These are some of the key elements which could help us in the whole discussion in the field of inter-relationship among States and also give us more clarity in our work, instead of going to the thematic issues.

Cuba showed his agreement with Mr. Guillermet about the need that the Declaration should be brief and concise as expressed in the first session of the OEWG. They reiterated that all legal

principles and principle ideas are there, and therefore, they proposed to start the negotiation process with the UN Charter. As to the proposed themes, they said that instead of establishing divisions between civil and political rights, and economic, social and cultural rights, we would prefer to have the same themes as included in the agenda of the HRC (i.e. Item 3: general reference to civil, political rights, economic, social and cultural rights, including the right to development). If you do not have peace, you cannot develop your country. They stated that article 28 of the UDHR is really pertinent and it was the main inspiration for us to go forward with this issue in both the UNGA and the HRC. Furthermore, he proposed to make a general reference to the democratic and equitable and international order.

Ecuador stated that CELAC continues to support the work of the Chairperson and of the Working Group. It was the first resolution presented by CELAC. The Universal Declaration of Human Rights is crucial to ensure equality and inter-independence between economic, social and cultural rights, and civil and political rights and the right to development. They proposed to elaborate all rights in the same footing.

Indonesia said that nobody can say no to peace. The problem is when we go down to the details about how we can reach peace. For this reason, we should work on principles. In the wake of Egypt, he stated that the draft declaration prepared by the AC must not be forgotten and that encroachment of themes should be avoided. Besides, we should learn about the experience of the UN system and bodies in the promotion of peace to avoid duplications. Since our starting point is the UN Charter, we are discussing about the relationship about nations. It is the result of the Westphalia system. When we open the possibility to select some themes and not others in connection with the right to peace, then we are going to a clear competition among them. In the Asian HR Declaration, right to peace is the result of the enhancement of important principles for all Asian States (i.e. cooperation, neutrality and freedom) and that the implementation of this right in a national framework is a criteria that should be taken into account.

The **United States of America** echoed the inclusive process raised by the Indonesian colleague (i.e. the respect of the different area of competence within the UN spectrum and to keep this issue at the level of principles). The text should not have as an exclusively objective to define or re-define State relations, but enforcement of human rights. Disarmament is a good example about the relationship among States.

Sri Lanka said that the basis of the draft declaration should be the UN Charter.

Singapore saw general agreement on a number of concepts: the draft declaration, based on the UN Charter, should be consensual and inclusive (TICO approach), not based on ill-defined and controversial issues or concepts. It would not be necessary to re-invent the wheel and an update of the 1984 Declaration is a viable option without obligations. The right to peace is a nebulous concept, which is related to inter-relations among States (i.e. principle of sovereignty, not intervention in domestic affairs, peaceful settlement and international cooperation). He recognised the linkage with human rights.

On 4 November 2013, the Chairperson convened a meeting to consult NGOs. Similarly, he presented his roadmap and the modalities of consultation, as previously done during the informal consultations held with Member States. A significant number of NGOs was present during the informal consultations⁸¹⁴.

814Asociación Española para el Derecho Internacional de los Derechos Humanos (AEDIDH), Association

Some NGOs expressed their regret to the Chairperson on his decision to convene separate consultations for Member States and NGOs and indicated that this could affect the perception of transparency of the process and could also hamper their possibility of perceiving the way in which the consultations unfolded in the meeting with the States. The Chairperson reacted to these comments and indicated that his intention was to create a space in which both stakeholders could participate on equal footing, granting them the same amount of time and a space in which they can freely express their points of views.

The Chairperson reminded that it was important to keep in mind the need for a realistic approach in the context of the negotiations. Moreover, the Chairperson underscored the importance of finding points of convergence and to avoid those themes that might touch certain sensibilities of States. He also inquired on how to bring other NGOs to the negotiating table and asked about elements that NGOs seen as essential to the future declaration, and their added value. Finally, the Chairperson stated that following the submission of his text in December 2013, he will reconvene informal consultations with governments and NGOs.

The existence of the human right to peace is recognized by many organizations that have engaged with the process and they reiterated this view. There was general agreement in the room that there is no need to introduce a new concept of peace, which is a topic that has been discussed extensively in the United Nations.

In reaction to the questions proposed by the Chairperson, the following themes were identified as important to NGOs, which emphasized the wish to see them included in the text to be presented by the Chairperson: conscientious objection to military service, which is a first step to achieve the right to peace; education; freedom of expression, religion and belief; Extreme poverty and non-discrimination; migration and refugees; right to disarmament including Nuclear Disarmament and elimination of weapons of mass destruction; human security including freedom from fear and from want; right to health and environment; terrorism and hostage taking; the impact of foreign debt in the right to peace; double dimension of the right: individual and collective (minorities, mankind) and the gender perspective, recognition of the strong link between women and peace.

Several NGOs expressed their concern that in the process of negotiation, the pursuance of consensus could dilute the main purpose of the draft declaration and in that event, they would rather prefer not to have a declaration on the right to peace. Although there was agreement that controversial issues should be avoided, NGOs noted that they attach great significance to issues that are seen as controversial by states, and then invited the Chairperson to take this element into account.

Comunità Papa Giovanni XXIII (APG23), Ban All Nukes Generation, CIVICUS World Alliance for Citizen Participation, Commission Africaine des Promoteurs de la Santé et des Droits de l'Homme, David M. Kennedy Center for International Studies and Latter-day saint Charities, Dominicans for Justice and Peace (Order of Preachers), Foundation for Gaia, Foundation of Japanese Honorary Debts, IIMA - Istituto Internazionale Maria Ausiliatrice, Institute for Planetary Synthesis, International Association of Democratic Lawyers (IADL), International Disability Alliance, International Federation of University Women (IFUW), International Movement ATD Fourth World, Japanese Workers' Committee for Human Rights, International Fellowship of Reconciliation, Mouvement contre le racisme et pour l'amitié entre les peuples, PEN International Planetary Association for Clean Energy, Soka Gakkai International, Village Suisse ONG and WWSF Women's World Summit Foundation.

3. Results of the debate

The Open Ended Working-Group on the right to peace concluded in its first session that there were some governmental delegations and other stakeholders, which recognize the existence of the right to peace as a soft law instrument. On the other hand, several other delegations stated that a stand-alone “right to peace” does not exist under international law. In their view, peace was not a human right, but above all a goal that could best be realized through the enforcement of existing human rights⁸¹⁵.

However, there were some points of concurrences among all delegations on the following issues: firstly, war and armed conflict are outlawed by international law; secondly, human rights and fundamental freedoms are massively violated in a context of war and armed conflict; thirdly, the principles of cooperation and protection of human rights are really important in the prevention of war and armed conflict; fourthly, the right to life is closely linked to the notion of peace and fifthly, the legal basis of the human rights legal system is the concept of human dignity.

In this section, all the later topics will be elaborated with the purpose of stressing that despite initial disagreements about the existence of the right to peace as a stand-alone right there were other points of concurrence. One of these agreements among delegations was the conclusion that human rights, peace and development were interdependent and mutually reinforcing and that in a context of war and armed conflict all human rights, in particular the right to life, are gravely violated.

3.1. The outlaw of war and armed conflict

War became a part of human society a long time ago, and for many centuries it dominates historical records. Men became warriors because it went with the job of being a prince or lord, and foot soldiers because it went with the job of being a lord's servant. Since most people are peaceable and peace-loving, and no-one wants to be killed, anyone would think that war would be universally regarded as the human race's greatest tragedy.

As stated by Mr. Christian Guillermet-Fernández⁸¹⁶ in the Conference Henri Lafontaine⁸¹⁷ held at the Uppsala University (Sweden) on 11th December 2013, the aspiration to create a society in which war plays little or no part in the life of our fellows have fired human imagination throughout the history of mankind. It follows that we are obliged to see that war and peace perpetually alternate and that peace is always an endless project, even a dream, to be in brotherhood realized by everyone over the earth.

In three thousand years, from 1.500 BC to 1860, eight thousand peace treaties have been signed⁸¹⁸. The existence of a peace treaty is clear evidence that the total triumph of peace over

815 Paragraph 20-21, Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador Christian Guillermet (Chairperson-Rapporteur), Doc. A/HRC/WG.13/1/2, 26 April 2013

816 Deputy Permanent Representative of Costa Rica to the United Nations Office in Geneva and Chairperson-Rapporteur of the UN Intergovernmental Working Group on the right to peace

817 Challenges for a Peaceful World, An Agenda for the XXIst Century

818 VALBERT, *Revue des Deux Mondes*, 1894, p. 692

conflict has not still occurred and that peace is always in a state of project and perspective. Therefore, the champions on peace have only obtained half-triumphs in its attempts to reach a more peaceful world, because “peace has always conducted to a war”⁸¹⁹.

Since the XVIIth century the State-system in the world has developed through war and peace, and specially the signature of Treaties of Peace, which have had as their main purpose to conclude multiple wars. In accordance with well-known scholars, since the creation of the League of Nations there have existed three main periods of peace treaties⁸²⁰, namely: firstly, from Westphalia in 1648 to the recognition of the American Independence in 1783, in which the treaties were focused in the interests of sovereigns and reigning families⁸²¹; secondly, from 1793 to 1859, in which there was an increasing recognition of the rights of States⁸²² and thirdly, from 1859 to 1919, in which attention was paid to the new principles of international law (i.e. right of nationalities, not necessarily races, but populations whose languages, literature, habits and customs and religious worship, are different from surrounding populations).

Despite that there have been many attempts to achieve peace in different regions of the world, and in particular the European continent, there are only a few times the Europeans have enjoyed transient success⁸²³. Most of wars occurred in the latest centuries have been caused because of the vanity of Heads of State to maintain in a thoughtless way the combative instinct of their peoples. All the glorious and provocative exhibitions of force and war have developed in the minds of the human population through the conquest of other territories⁸²⁴.

During the XIXth century outstanding endeavours were undertaken by the international community to limit the suffering caused to the wounded military personnel on the battlefields and to alleviate its effects. In 1864 the first treaty on the protection of military victims of warfare was drawn up and signed in Geneva on the initiative of Henry Dunant. All treaties and covenants on international humanitarian law later adopted throughout the XXth century were not focused on the real problems caused by armed conflicts or the multiple issues raised by war, but only in those rules needed to bring a better protection for the vulnerable victims of warfare⁸²⁵.

In 1899 the so-called “The Peace Conference”, which took place at the Hague, adopted several important Conventions and Declarations⁸²⁶ with the aim of strengthening the international

819 BOUTHOU, G., *Huit mille traits de paix*, René Julliard, Sequana, Paris, 1948, p. 12-13

820 Sir PHILLIMORE, W.G.F., *Three centuries of treaties of peace and their teaching*, John Murray, London, 1919, p. 1-9

821 Treaty of Pyrenees (1659): between Spain and France; Treaty of Oliva (1660): nations bordering on the Baltic; Treaties of Aix-la-Chapelle (1668), Nimeguen (1678) and Ryswick (1679): borders in France; Treaty of Utrecht (1713): it was one of the first treaties which dealt with the French colonial possessions in America; Treaty of Versailles (1783): it established the independence of the United States

822 Treaty of Campo Formio (1797): it divided the territories of Venice between Austria and France; Congress of Vienna (1815): it concluded a period of twenty-three years of warfare under the leadership of Napoleon I

823 Sir PHILLIMORE, W.G.F., *op.cit.*, note 820, p. 1-9

824 EICHNER, L., *La paix des peuples ou essai d'une Confédération Internationale*, Librairie des Sciences Politiques et sociales, Marcel Rivière, Paris, p. 33-34

825 In 1949 four Geneva Conventions, which are still in force today, were adopted, each of them dealing with the protection of a specific category of persons who are not, or are no longer, taking part in hostilities: First Convention: on the care of the wounded and sick members of armed forces in the field; Second Convention: on the care of the wounded, sick and shipwrecked members of armed forces at sea; Third Convention: on the treatment of prisoners of war and Fourth Convention: on the protection of civilian persons in time of war.

826 Sir BARCLAY, T., *Problems of international practice and diplomacy with special reference to the Hague Conferences and Conventions and other general agreements*, Boston Book Company and Sweet-Maxwell Ltd., Boston and London, 1907, p. 1-21

mechanisms aimed to promoting the pacific settlement of disputes⁸²⁷, the regulation of the laws and customs of war by land⁸²⁸, the maritime warfare⁸²⁹ or the prohibition of some special projectiles, explosives and bullets⁸³⁰. Afterwards, the second conference, held again at the Hague in 1907, adopted thirteen treaties⁸³¹ and also did prefigure later 20th-century attempts at international cooperation.

The Martens Clause⁸³², introduced into the preamble to the 1899 Hague Convention II on Laws and Customs of War on Land and after slightly modified in the 1907 Hague conventions, proclaimed that

“Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience”.

The clause was included in the additional protocols of 1977, and in particular in articles 1 paragraph 2 of Protocol I⁸³³ (which covers international conflicts) and the fourth paragraph of the preamble to Protocol II⁸³⁴ (which covers non-international conflicts)⁸³⁵. In addition, although several national and international courts have considered the Martens Clause in their judgments⁸³⁶, in none of these cases have the laws of humanity or the dictates of the public

827 Convention for the pacific settlement of international disputes

828 Convention relating to the laws and customs of war by land

829 Convention for the adoption to maritime warfare of the principles of the Geneva Convention of the 22nd August 1864

830 Three Declarations on the following matters: 1. Prohibition of the launching of projectiles and explosives from balloons or by other similar new methods; 2. Prohibition of the use of projectiles the only object of which is the diffusion of asphyxiating or deleterious gases and 3. Prohibition of the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope, of which the envelope does not entirely cover the core, or is pierced with incisions

831 (I): Convention for the Pacific Settlement of International Disputes; (II): Convention respecting the Limitation of the Employment of Force for Recovery of Contract Debts; (III): Convention relative to the Opening of Hostilities; (IV): Convention respecting the Laws and Customs of War on Land; (V): Convention relative to the Rights and Duties of Neutral Powers and Persons in case of War on Land; (VI): Convention relative to the Legal Position of Enemy Merchant Ships at the Start of Hostilities; (VII): Convention relative to the Conversion of Merchant Ships into War-ships; (VIII): Convention relative to the Laying of Automatic Submarine Contact Mines; (IX): Convention concerning Bombardment by Naval Forces in Time of War; (X): Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention (of 6 July 1906); (XI): Convention relative to Certain Restrictions with regard to the Exercise of the Right of Capture in Naval War; (XII): Convention relative to the Establishment of an International Prize Court; (XIII): Convention concerning the Rights and Duties of Neutral Powers in Naval War; (XIV): Declaration Prohibiting the Discharge of Projectiles and Explosives from Balloons

832 Friedrich Fromhold Martens was a diplomat and jurist in service of the Russian Empire who made important contributions to the science of international law. He represented Russia at the Hague Peace Conferences and helped to settle the first cases of international arbitration.

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

834 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

835 The wording in both is identical but slightly modified from the version used in the Hague Convention of 1907: “Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience”

836 Decision of the US military tribunal III in Nuremberg on 10 February 1948 in the case [United States v. Krupp]; Decision of the Netherlands court of cassation on 12 January 1949 in the procedure against SS-Obergruppenführer [Hanns Rauter], general commissioner for the safety organization in the Netherlands from

conscience been recognised as a new and independent right. The clause has served as guideline to the understanding and interpretation of existing rules of international law.

The Hague Conventions of 1899 and 1907 continue to stand as symbols of the need for restrictions on war and the desirability of avoiding it altogether. After World War II, the judges at Nuremberg Trials found that by 1939, the rules laid down in the 1907 Hague Convention were recognised by all civilized nations and were regarded as declaratory of the laws and customs of war.

On 28 June 1919 the Peace Treaty of Versailles was signed as a conclusion of World War I. In accordance with its Preamble, the promotion of international co-operation and the achievement of peace and security in the world should be achieved by the following means: firstly, the acceptance of obligations not to resort to war; secondly, the prescription of open, just and honorable relations between nations; thirdly, the firm establishment of the understandings of international law as the actual rule of conduct among Governments; and fourthly, the maintenance of justice and a scrupulous respect for all treaty obligations. In addition, it was recognised in its article 8, in the line of the first Hague Conference of 1899⁸³⁷, that "... the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations".

The Preamble of the Covenant of the League of Nations is still far from banning absolutely the phenomenon of war. The drafters of the Covenant of the League did not dare to condemn all wars, because they still conceived war as a means to reach other political interests⁸³⁸. The right to war was recognised and regrettably legitimized in only certain cases in the Covenant. The formal condemnation of war, as an indispensable condition for the maintenance of peace, was unfortunately muted⁸³⁹.

The Covenant only imposes Member States to respect the following obligations before resorting to war, namely: submission of the dispute to arbitration or inquiry to the Council⁸⁴⁰, establishment of a Permanent Court of International Justice⁸⁴¹ or good offices by the Secretary

1940 to 1945; Decision Brussels military courts ("Conseil de guerre de Bruxelles") in the K.W. case on 8 February 1950; Decision of the International Criminal Tribunal for the Former Yugoslavia on 8 March 1996 over the permission of the accusation during the process against [Milan Martić] (case IT-95-11, decision IT-95-11-R61); Decision of the Constitutional Court of Colombia of 18 May 1995 for the constitutionality of Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (decision C-225/95); The International Court of Justice in the advisory opinion on the Legality of the Threat or Use of Nuclear Weapons advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, issued on 8 July 1996M Judgment of the German Federal Constitutional Court on 26 October 2004 for the compatibility of the expropriations in the former Soviet zone of occupation between 1945 and 1949 with international law (decision BVerfG, 2 BvR 955/00 of 26.10.2004).

837 The first Hague Conference held in 1899 adopted unanimously the following resolution : « The Conference is of opinion that the restriction of military budgets, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind »

838 RAUCHBERG, « Les obligations juridiques des membres de la société des nations pour le maintien de la paix », *Académie de Droit International*, Paris, 1932, p. 66-67

839 AKHAVI, *L'Échec de la S.D.N. dans l'organisation pratique de la paix ses causes, son avenir*, Librairie du Recueil Sirey, Paris, 1937, p. 123-124

840 Art. 12 : « The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council. In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.»

841 Art. 14: « The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and

General⁸⁴². In the case that some Member decides to resort to war in disregard of the previous provisions, then the League shall ipso facto condemn them for having committed an act of war against all other Members of the League⁸⁴³.

On 16 January 1920 the birth of the new world will be recorded in history, because the League of Nations held its first session and definitively substituted the reign of force by the rule of law. The fathers of the new political and juridical structure, among them President Woodrow Wilson, wanted to construe the architecture of the future humankind over the accumulated ruins derivated from war⁸⁴⁴. As recalled by the participants at the Conference, “We do not despair of constituting such a Society of Nations for the abolition of war. We hope, indeed, that something of the kind may be created in our own day. There is no need for haste....”⁸⁴⁵.

On 16 October 1925, several nations⁸⁴⁶ adopted the Treaty of Mutual Guarantee or the so-called Locarno Pact by which they mutually undertook in its article 2 that they will in no case attack or invade each other or resort to war against each other, with the exception of the following situations, namely: the right of legitimate defence, an action taken in pursuance of Article 16 of the Covenant of the League of Nations or an action as the result of a decision taken by the Assembly or by the Council of the League of Nations. In this line, on 24 September 1927 the VIII Assembly of the League of Nations adopted a resolution by which Member States banned all wars of aggression and recalled their obligation to settle the disputes by peaceful means.

The renunciation of war as an instrument of national policy was successfully banned for the first time in history in 1928 thanks to the efforts made by the Foreign Ministers of France and United States of America. Signatory states of the famous Briand-Kellogg Pact promised not to use war to resolve disputes or conflicts. Since this agreement was concluded outside the League of Nations, it still remains a binding treaty under international law. Indeed, the treaty is perpetual as it contains no clause of limitation, no provision for determination or denunciation⁸⁴⁷. It follows that the condemnation of war as a legal provision is currently in force and it should take therefore into consideration by the international community.

The Pact against war is one of the shortest international treaties in the contemporary diplomatic history. It is composed only by two main dispositions, the condemnation of war (art. 1) and the obligation of States to settle their disputes by peaceful means (art. 2). The selfish and voluntary war was totally outlawed by this international agreement. Nevertheless, in accordance with the treaty, the use of force would be only possible in case of self-defense and between those States

determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.”

842 Art. 15: « ... Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof. For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible...”

843 Art. 16: “Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nations and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not...”

844 BOURGEOIS, L., *L'Œuvre de la Société des Nations (1920-1923)*, Payot, 1923, Paris, p. 10-11

845 BRAILSFORD, H.N., *A League of Nations*, Oxford Street, London, 1917, p. 15

846 Germany, Belgium, France, Great Britain and Italy

847 HUNTER MILLER, D., *The Peace Pact of Paris: a study of the Briand-Kellogg treaty*, G.P. Putnam's sons, New York/London, 1928, p. 148 and MANDELSTAM, A., *L'Interprétation du pacte Briand-Kellogg par les gouvernements et les parlements des États signataires*, Éditions A. Pedone, Paris, 1934, p. 1-24

signatories and no-signatories of the treaty. After its final adoption, sixty countries adhered to the treaty, which demonstrates that the peace hopes in that time were deeply rooted in the world⁸⁴⁸.

Additionally, on 15-17 January 1928, American States attending the Sixth International Conference held in La Havana (Cuba) also adopted a resolution which expressed unqualified condemnation of war as instrument of national policy.

At the opening session of the United Nations Conference, 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”. The United Nations is a response to the two world wars and the intention of the member States to “... save succeeding generations from the scourge of war ...”⁸⁴⁹.

In order to create a more peaceful world, the Charter of the United Nations established in its article 1 and 2 the following “purposes and principles”, inter alia: the prohibition of acts of aggression or other breaches of the peace, the development of friendly relations among nations, the self-determination of peoples, the enhancement of international co-operation, the promotion of human rights and fundamental freedoms, the settlement of international disputes by peaceful means, the prohibition of threat or use of force against the territorial integrity or political independence of any state. These principles codified in the previous articles of the Charter constitute the basic foundational principles of the whole body of international law.

The Purposes and principles of the UN Charter have been expressly included in the *Declaration on Preparation on Societies to Live in Peace*⁸⁵⁰ of 1978, the *Declaration on the Right of Peoples to Peace*⁸⁵¹ of 1984 and the *Declaration on a Culture of Peace*⁸⁵² of 1999. In addition,

848 BALBAREU, Cécile, *Le Pacte de Paris (pacte Briand-Kellogg sur le mise de la guerre hors la loi)*, Thèse de doctorat, Librairie Universitaire à Paris, 1929, p. 73-78

849 Paragraph 1, Preamble of the UN Charter

850 1. 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, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States and the UNGA Resolution 3314 (XXIX) on the definition of aggression; 2. Strengthening of the cooperation in peace: Charter of the United Nations; 3. Respect of the right of self-determination of peoples, independence, sovereignty, territorial integrity and independence: Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on the Strengthening of International Security and the Declaration on the Deepening and Consolidation of International Détente.

851 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. It emphasizes that ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the UN Charter (art. 3)

852 1. Recalled in its Preamble the Charter of the United Nations, including the purposes and principles embodied therein; 2. Recognized also in its Preamble that peace not only is 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; 3. A culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on the 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; the respect for and promotion of all human rights and fundamental freedoms and the commitment to peaceful settlement of conflicts (art. 1); 4. The fuller development of a culture of peace is integrally linked to the promotion of peaceful settlement of conflicts, mutual respect and understanding and international cooperation; the compliance with international obligations under the Charter of the United Nations and international law; the promotion and universal respect for and observance of all human rights and fundamental freedoms; development of dialogue, negotiation, consensus-building and peaceful resolution of differences and the realization of the right of all peoples, including those living under colonial or other forms of alien domination

all these peace laws strongly demanded that the policies of States be directed towards the elimination and eradication of war⁸⁵³, the prohibition of propaganda for war⁸⁵⁴ and the moral disarmament⁸⁵⁵.

On 10 November 1998, the UNGA adopted resolution 53/25 on the International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001–2010)⁸⁵⁶ by which it

“aware that the task of the United Nations to save future generations from the scourge of war requires transformation towards a culture of peace, which consists of values, attitudes and behaviours that reflect and inspire social interaction and sharing based on the principles of freedom, justice and democracy, all human rights, tolerance and solidarity, that reject violence and endeavour to prevent conflicts by tackling their root causes to solve problems through dialogue and negotiation and that guarantee the full exercise of all rights and the means to participate fully in the development process of their society”

The Charter of the United Nations states clearly that the threat or use of force against other States is unlawful. Since 1945, war has no longer been an acceptable way to settle differences between States. However, the Charter has not completely outlawed the use of force. Indeed, States retain the right to defend themselves, individually or collectively, against attacks on their independence or their territory, in response to a (legal or illegal) use of force. The Charter's prohibition of the use of force does not encompass internal armed conflicts (or civil wars). Chapter VII of the Charter allows member States the use of force in collective action to maintain or restore international peace and security.

In accordance with the Uppsala University's Conflict Data Program (UCDP), in 2012 there were registered 32 active armed conflicts, which is a reduction by five since the year before. Six of these conflicts⁸⁵⁷ reached the intensity of 'War'⁸⁵⁸. Despite this the total number of battle-related deaths increased dramatically during the year. Only at six times in the 24 years that have passed since the end of the Cold War has UCDP reported higher levels.

or foreign occupation, to self-determination (art. 2).

853 Declaration on the Right of Peoples to Peace: Preamble: “Expressing 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”.

Art. 3: “Emphasizes 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 of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations”

854 Declaration on Preparation on Societies to Life in Peace: Preamble “Further recalling the Universal Declaration of Human Rights, of 10 December 1948, as well as the International Covenant on Civil and Political Rights, of 16 December 1966, and bearing in mind that the latter states, inter alia, that any propaganda for war shall be prohibited by law”; art. 1.3 “In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression” and 2.2 “Therefore, to discourage and eliminate incitement to racial hatred, national or other discrimination, injustice or advocacy of violence and war”

855 Declaration on a Culture of Peace: Preamble “Recalling also the Constitution of the United Nations Educational, Scientific and Cultural Organization, which states that “since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed”

856 Doc. A/RES/53/25 International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001–2010), 19 November 1998, Preamble, para. 5

857 Afghanistan, Pakistan, Somalia, Sudan, Syria and Yemen

858 An ‘armed conflict’ is defined as “a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year”. If more than 1,000 battle-related deaths are recorded in one calendar year the conflict has reached the intensity of ‘War’

On 20 January 2014, the Permanent Mission of Costa Rica in Geneva stated in the context of the special session on the Republic Central Africa that “a day like today we should ask the international community why they do not recognize by consensus a right to peace as it would enable us to act effectively in the prevention of human rights violations in situations, such as the RCA lives today. If it is not possible, unless the international community and in particular this Council should make efforts to work on the prohibition or progressive abolition of war and conflict as the best vaccine against the systematic violations of human rights in conflict situations. All human beings have the right to live in a context in which peace, human rights and development are fully respected”.

Since we have not yet developed a society that is prepared to acknowledge and entirely reject war as an option, the international community has always elaborated international rules which limit the effects of war. In the latest years, civil society movements have promoted the adoption of important legal instruments aimed to protecting the population in a context of warfare and also limiting the trade and use of certain arms⁸⁵⁹. Although the pacifist movements were not capable of avoiding World Wars in the XXth century or other wars during the Cold War times and after, they have been very successful in their efforts to limit certain effects derived from war.

Nowadays the international community has the legal resources to eliminate progressively war and armed conflicts over the earth through the respect of international law, the promotion of the culture of peace and the friendship among all peoples and nations. The United Nations should again proclaim that war is unlawful from the legal perspective, as well as, totally incompatible with peace and a clear abuse of human rights, and in particular the right to life.

Additionally, taking into account that in a situation of armed conflict, fundamental freedoms are gravely violated, then the parts in conflict should respect the main ratified international human rights instruments during the military confrontation. To solve this matter on 27 February 2012, the UNGA adopted the resolution 66/99 on effects of armed conflicts on treaties (i.e. human rights law) by which the International Law Commission stated that “the existence of an armed conflict does not ipso facto terminate or suspend the operation of treaties” (art. 3); “the existence of an armed conflict does not affect the capacity of a State party to that conflict to conclude treaties in accordance with international law” (art. 8.1) and “the termination of or the withdrawal from a treaty, or the suspension of its operation, as a consequence of an armed conflict, shall not impair in any way the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law in dependently of that treaty” (art. 10).

3.2. The linkage between human rights and war and armed conflict

In accordance with the latest practices of the Security Council, the classical security threats have been principally focused on proliferation and arms control, terrorism, internal armed conflict and piracy. However, the protection of individuals has increasingly emerged as an

859 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa, 1997); Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Paris, 1993) and the Arms Trade Treaty (New York, 2013)

additional goal. It follows that the Security Council has also begun to focus on particular groups of civilians, namely women and children, and their protection in armed conflict⁸⁶⁰.

In regards to the human rights violations, most of the commentators and States in the early years objected that such violations were considered as potential threats to the peace. Currently, all cases involving large-scale violence “do not lend themselves to broader conclusions on whether human rights violations in and of themselves can constitute threats to peace”⁸⁶¹.

However, the Security Council has recently recognised that non-military sources of instability should be also considered as threats to peace and security:

“The absence of war and military conflicts among States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social and humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters”⁸⁶²

At the 2005 World Summit the world leaders reaffirmed their commitment to the universal and indivisible nature of human rights⁸⁶³. The increasing importance attributed to human rights within the constitutional structure of the United Nations is evidenced by the creation of the HRC alongside the SC and ECOSOC. Although the HRC was not elevated to a principal organ, its status was raised by establishing it as a subsidiary organ of the UNGA.

On 1 January 2014, **His Holiness Pope Francisco** stated in his message on the celebration of the world day of peace that “we cannot however fail to observe that international agreements and national laws – while necessary and greatly to be desired – are not of themselves sufficient to protect humanity from the risk of armed conflict. A conversion of hearts is needed which would permit everyone to recognize in the other a brother or sister to care for, and to work together with, in building a fulfilling life for all.”⁸⁶⁴.

In the Universal Periodic Review (UPR) of the Federation of Russia held on 29 April 2013, Georgia showed before the HRC its concern about the deliberate disregard and systematic breach by Russia, as occupying Power, of the human rights and humanitarian law obligations in the Georgian regions of Abkhazia and Tskhinvali⁸⁶⁵. In regards to the recommendations made by Georgia about these regions, Russia said that these could not be accepted since they

860UNSC Res. 1325 (31 October 2000); UNSC Res. 1820 (19 June 2008); UNSC Res. 1888 (30 September 2009); UNSC Res. 1960 (16 December 2010); UNSC Res. 1612 (26 July 2005) and UNSC Res. 1882 (4 August 2009)

861SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 1.286

862 UNSC Presidential Note (31 January 1992), UN Doc. S/23500, 3

863Paragraph 121: “We reaffirm that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and that all human rights must be treated 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, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms”.

⁸⁶⁴ See at

http://www.vatican.va/holy_father/francesco/messages/peace/documents/papa-francesco_20131208_messaggio-xlvi-giornata-mondiale-pace-2014_en.html#_ftn4

865 Doc. A/HRC/24/13, Report of the Working Group on the Universal Periodic Review on Federation of Russia, 8 July 2013, par. 141

were not adjusted to the resolutions 5/1⁸⁶⁶ and 16/21⁸⁶⁷ of the HRC. Both resolutions recognise that the main purpose of the UPR is only to promote the universality, interdependence, indivisibility and interrelatedness of all human rights through a genuine dialogue and mutual cooperation among all stakeholders.

Additionally, in the UPR of Azerbaijan held on 30 April 2013, Armenia stated that the national report prepared by Azerbaijan contained unsubstantiated allegations against Armenia and that the conflict of Nagorno-Karabakh and its consequences were the result of the policy of aggression carried out by Azerbaijan⁸⁶⁸. Azerbaijan regretted that the Republic of Armenia had used this forum to tarnish the image and reputation of Azerbaijan. On the question of the self-determination of the Armenian minority, Azerbaijan expressed its view that the international law does not allow that the Armenian minority made use of the right to self-determination as a pretext to create their own state⁸⁶⁹. Therefore, Azerbaijan rejected the recommendations presented by the Republic of Armenia, as “these recommendations reflect the biased and invasion policy of Armenia and as “recommendation” on Nagorno-Karabakh is contrary to as well as abuse of the UPR mechanism”⁸⁷⁰.

In regards to the statement delivered by the Turkish delegation on the legality of its intervention in Cyprus in 1974 during the UPR of Cyprus held on 4 February 2014⁸⁷¹, the President of the Council reminded delegations the following:

“Questions that were political and territorial in nature did not come in the framework of the UPR Working Group’s mandate, especially because they were subject to the attention of other bodies that were more competent in the area (The council) should focus on human rights issues and avoid politicizing the debate”⁸⁷²

After, both the Russian Federation, Greece, Egypt and Armenia made a point of order to support the President’s ruling and to stress that the main mandate of the UPR Working Group and the Council is to review the human rights situation of countries without addressing political debates or historical retrospectives⁸⁷³. Therefore, the Council shall only be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all⁸⁷⁴. Consequently, it will never focus on situations related to existence of any

866 Doc. A/HRC/RES/5/1 on the Institution-building of the United Nations Human Rights Council, 18 June 2007

867 Doc. A/HRC/RES/16/21 on the Review of the work and functioning of the Human Rights Council, 12 April 2011

868 Doc. A/HRC/24/13, Report of the Working Group on the Universal Periodic Review on Azerbaijan, 5 July 2013, par. 97

869 Doc. A/HRC/24/13, *op. cit.*, note 868, par. 107

870 Doc. A/HRC/24/13/Add.1, Report of the Working Group on the Universal Periodic Review on Azerbaijan, 19 September 2013 (addendum), par. 2

871 Doc. A/HRC/WG.6/18/L.12, Report of the Working Group on the Universal Periodic Review on Cyprus, 6 February 2014

872 Doc. A/HRC/WG.6/18/L.12, *op. cit.*, note 871, par. 69

873 Doc. A/HRC/WG.6/18/L.12, *op. cit.*, note 871, par. 81-84

874 Doc. A/RES/60/251 on the Human Rights Council, 3 April 2006. Art. 2

threat or breach of the peace or territorial conflicts, because the competent body to do it shall be always the Security Council in accordance with the UN Charter, and in particular its Chapter VII.

In accordance to the Preamble of resolution 60/251 of the HRC, development, peace and security and human rights are interlinked and mutually reinforcing⁸⁷⁵. However, the UNGA clearly decided that the Council should address situations of gross and systematic violations of human rights⁸⁷⁶ and also contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies⁸⁷⁷.

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 Council⁸⁷⁸. 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 Darfur⁸⁷⁹, Myanmar⁸⁸⁰, Democratic Republic of the Congo⁸⁸¹, Cote d'Ivoire⁸⁸², Libyan Arab Jamahiriya⁸⁸³ and Central African Republic⁸⁸⁴.

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 victims⁸⁸⁵. Its primary objective is to

875Para. 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

876Doc. A/RES/60/251 on the Human Rights Council, 3 April 2006. Art. 3

877Doc. A/RES/60/251, *op. cit.*, note 876. Art. 5.f

878Doc. A/RES/60/251, *op. cit.*, note 876. Art. 10

879Doc. A/HRC/S-4/101, situation of human rights in Darfur, 13 December 2006

880Doc. A/HRC/S-5/1, situation of human rights in Myanmar, 2 October 2007

881Doc. A/HRC/S-8/1, situation of human rights in the east of the Democratic Republic of the Congo, 1 December 2008

882Doc. 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

883Doc. A/HRC/S-15/1, situation of human rights in the Libyan Arab Jamahiriya, 25 February 2011

884Doc. 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

885Statement delivered by Spain, HRC special session on Darfur, 12 December 2006; Chile on Democratic Republic of the Congo, 28 November 2008

safeguard the human rights of all persons⁸⁸⁶ and to address the desperate human rights crisis⁸⁸⁷. 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 violence⁸⁸⁸ and finding a peaceful and durable solution to the specific conflict⁸⁸⁹. Furthermore, it is imperative of the Council to have a greater understanding of the causes and consequences of conflict in order to decrease and alleviate the suffering of victims⁸⁹⁰ through the adoption of particular recommendations⁸⁹¹.

On the other hand, the Security Council 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 taken⁸⁹². Although the Security Council has recognised the increasing linkage between human rights and peace and security, the operative section of resolutions in Darfur⁸⁹³, Democratic Republic of the Congo⁸⁹⁴, Cote d'Ivoire⁸⁹⁵, Libyan Arab Jamahiriya⁸⁹⁶ and Central African Republic⁸⁹⁷ 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

886Statement 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

887Statement 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

888Statement 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

889Statement delivered by Niger, HRC special session on the Central African Republic, 20 January 2014

890Statement delivered by Mexico, HRC special session on Democratic Republic of the Congo, 28 November 2008

891Statement delivered by Argentina on Myanmar, 2 October 2007

892Art. 39 of the UN Charter

893Doc. S/RES/1714 (2006), 6 October 2006

894Doc. S/RES/1857 (2008), 22 December 2008

895Doc. S/RES/1962 (2010), 20 December 2010

896Doc. S/RES/2016 (2011), 27 October 2011

897Doc. S/RES/2134 (2014), 28 January 2014

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 freedoms⁸⁹⁸, 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)⁸⁹⁹. 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 situation⁹⁰⁰. To achieve a genuine peace and stability, the country in conflict should firstly immediately cease all type of violence (i.e. cease-fire)⁹⁰¹. Secondly, States should re-establish again the full respect and

898Statement delivered by Peru, Italy, Mexico, Greece, Norway, Chile on Myanmar, 2 October 2007; Switzerland, African Union, Pakistan, United Kingdom, Ghana, Panama, Maldives, Belgium on Democratic Republic of the Congo, 28 November 2008; Jordan, Egypt, Sweden, Australia, European Union, Norway, United States of America, Maldives, Republic of Korea, Brazil, Burkina Faso, Mauritius on Cote d'Ivoire, 23 December 2010; Zambia, European Union, Indonesia, Switzerland, France, Malaysia, Argentina, Netherland, Azerbaijan, African Union, Estonia, United States of America on Darfur, 12 December 2006; Norway, Japan, Malaysia, Belgium, Jordan, Republic of Korea, Guatemala, Germany, Honduras, Turkey, OIC, Liechtenstein, Romania, Afghanistan, African Union, Iran, Bulgaria, Canada, Lithuania, Costa Rica, Portugal, South Africa, Sweden, Luxembourg on Libyan Arab Jamahiriya, 25 February 2011; Peru, Chile, United Kingdom of Great Britain, Algeria, Germany, Gabon, Montenegro, United States of America, Japan, Italy, Morocco, Romania, Austria, Estonia, South Africa, Viet Nam, Republic of Congo, Brazil, Togo, Lithuania, Spain, Belgium, Norway, Canada, Hungary, Slovakia, Holy See, Luxembourg, Paraguay, Chad, Israel on the Central African Republic, 20 January 2014

899Statement delivered by France, Peru, Switzerland, Australia, Norway, Sweden, Luxembourg, Denmark, Finland, Czech Republic, Slovakia, Poland, Belgium on Myanmar, 2 October 2007; Switzerland, United Kingdom, Zambia, Canada, Italy, Slovakia, Chile, Ghana, Argentina, Germany, Uruguay, Republic of Korea, Nigeria, Norway, Denmark, Holy See, Ireland, Panama, Finland, Israel, New Zealand, Maldives, Belgium on Democratic Republic of the Congo, 28 November 2008; Austria, Spain, European Union, United Kingdom, Norway, United States of America, Maldives, Republic of Korea, Brazil, Mauritius, Zambia, Switzerland, Mexico, Chile on Cote d'Ivoire, 23 December 2010; Sudan, Ghana, Germany, France, United Kingdom, Poland, Canada, UNFPA, Ireland, Albania, Sweden, Chad, UNICEF, Slovakia, Luxembourg, UNHCR, Slovenia, Norway on Darfur, 12 December 2006; European Union, Nigeria, France, Poland, Maldives, Uruguay, Spain, Belgium, Jordan, Ireland, Netherland, Indonesia, Denmark, Liechtenstein, Romania, Bulgaria, Portugal, South Africa on Libyan Arab Jamahiriya, 25 February 2011; African Union, European Union, Mexico, Argentina, France, Czech Republic, United Kingdom of Great Britain, Ireland, Germany, Montenegro, United States of America, Morocco, Austria, Mexico, Estonia, South Africa, Viet Nam, African Union, Lithuania, Spain, Belgium, Australia, Norway, Hungary, Slovakia, Luxembourg, Croatia, Latvia, Paraguay, Poland, Niger, Liechtenstein, Switzerland on the Central African Republic, 20 January 2014

900Statement delivered by Romania, Netherland, Australia, Denmark, Colombia, Poland, Belgium on Myanmar, 2 October 2007; Holy See on Democratic Republic of the Congo, 28 November 2008; Turkey, Switzerland, Mexico on Cote d'Ivoire, 23 December 2010; Zambia, Senegal, Albania, United States of America on Darfur, 12 December 2006; European Union, Maldives, Norway, Jordan, Slovakia, Guatemala, Ecuador, Netherland, Germany, India, Australia, Turkey, Liechtenstein, New Zealand, Colombia, Iran, Lithuania on Libyan Arab Jamahiriya, 25 February 2011; Holy See on the Central African Republic, 20 January 2014

901Statement delivered by the United Kingdom, Germany, Romania, Indonesia, Mexico, Netherland, New Zealand, Finland, Chile, Poland on Myanmar, 2 October 2007; Switzerland, Pakistan, India, United Kingdom, Canada, Italy, Angola, Ghana, Bangladesh, Germany, Uruguay, Indonesia, Nigeria, Norway, Holy See, Ireland, Finland, New Zealand on Democratic Republic of the Congo, 28 November 2008; Ecuador, Indonesia, Austria,

implementation of fundamental rights and freedoms⁹⁰² and thirdly, to identify the most appropriate solutions for a peaceful settlement of the crisis and to promote a national dialogue and reconciliation⁹⁰³.

At the 7015th meeting of the Security Council, held on 6 August 2013, in connection with the Council's consideration of the item entitled "Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security", the President of the Security Council stressed the importance of a coordinated international response to causes of conflict and recognized the need for the development of effective long-term strategies aimed to eradicating poverty, strengthening development cooperation and assistance and promoting respect for human rights and fundamental freedoms⁹⁰⁴.

Additionally, the HRC has stressed that the roots of conflicts which have recently shaken some specific countries, where population live below poverty, are not new⁹⁰⁵. In accordance with the statements delivered by the different stakeholders during the Special Sessions, States should apply long-term strategies for development⁹⁰⁶, reduce poverty⁹⁰⁷, finish with the impunity/rule

Peru, Sweden, European Union, Norway, Maldives, Republic of Korea, Brazil, Malaysia on Cote d'Ivoire, 23 December 2010; Algeria, European Union, Switzerland, Malaysia, United Kingdom, Poland, India, Senegal, Azerbaijan, Egypt, Democratic People's Republic of Korea, Ireland, African Union, Luxembourg, UNHCR, Brazil, Australia, Chile, Iran, United States of America, Hungary, Norway, on Darfur, 12 December 2006; Pakistan, France, Poland, Norway, Chile, Japan, Malaysia, Angola, Belgium, Jordan, Slovakia, Netherland, Peru, OIC, Afghanistan, Colombia, African Union, Bulgaria, Canada, Lithuania, Costa Rica, Czech Republic, Sweden, Luxembourg on Libyan Arab Jamahiriya, 25 February 2011; African Union, Republic of Congo, United Kingdom of Great Britain, Indonesia, Germany, Italy, Estonia, Sierra Leone, Maldives, South Africa, Brazil, Turkey, Egypt, Tunisia, Croatia, Latvia, Thailand, Poland, UNICEF, Switzerland on the Central African Republic, 20 January 2014

902Statement delivered by Zambia, France, United Kingdom, Germany, Romania, Republic of Korea, Australia, Greece, New Zealand, Denmark, Slovakia, Colombia, Belgium, Estonia on Myanmar, 2 October 2007; Netherland, Italy on Democratic Republic of the Congo, 28 November 2008; Ecuador on Cote d'Ivoire, 23 December 2010; Argentina, Iran on Darfur, 12 December 2006; United Kingdom, Mexico, Maldives, Chile, Argentina, Republic of Korea, United States of America, Thailand, Netherland, India, Indonesia, Australia, Holy See, Paraguay, Bolivia, Lithuania, Costa Rica, Czech Republic on Libyan Arab Jamahiriya, 25 February 2011; European Union, Mexico, Indonesia, Germany, Egypt on the Central African Republic, 20 January 2014

903Statement delivered by Romania, Republic of Korea, Indonesia, Mexico, Netherland, Greece, Singapore, Thailand, Norway, Morocco, Denmark, Chile, Slovakia, Latvia, Poland, Belgium on Myanmar, 2 October 2007; Holy See, New Zealand on Democratic Republic of the Congo, 28 November 2008; Indonesia, Maldives, Brazil, Chile on Cote d'Ivoire, 23 December 2010; South Africa on Darfur, 12 December 2006; Angola, Cuba, Switzerland, Bangladesh, Nicaragua, Indonesia, Turkey, Peru, New Zealand, Paraguay, Bolivia, Iran, Bulgaria, Portugal, South Africa, Sweden on Libyan Arab Jamahiriya, 25 February 2011; African Union, Mexico, Argentina, Germany, Italy, Sierra Leone, Maldives, Mexico, Venezuela, Cuba, Republic of Congo, Brazil, African Union, Turkey, Tunisia, Spain, Angola, Canada, Slovakia, Thailand, Paraguay on the Central African Republic, 20 January 2014

904Doc. S/PRST/2013/12, 6 August 2013

905 African Union, Pakistan, Bangladesh, Norway on Democratic Republic of the Congo, 28 November 2008; Brazil on the Central African Republic, 20 January 2014

906Sudan on Darfur, 12 December 2006; Cuba, Mexico, Luxembourg on Myanmar, 2 October 2007; Cuba, Bolivia, Algeria, Sudan on Democratic Republic of the Congo, 28 November 2008; Brazil on Cote d'Ivoire, 23

of law⁹⁰⁸ and strengthen international cooperation with the human rights mechanism⁹⁰⁹ and among nations⁹¹⁰ in order to reduce the cycle of violence and consolidate universal peace.

3.3. The role of human rights in the prevention of war and armed conflict

On 31 January 1992, the first ever Summit Meeting of the Security Council 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.

December 2010; Brazil on Libyan Arab Jamahiriya, 25 February 2011; Ireland, Cuba, Indonesia, Brazil, Canada, Holy See, Paraguay on the Central African Republic, 20 January 2014

907United Kingdom of Great Britain, Cuba, New Zealand on Myanmar, 2 October 2007; Cuba, Bolivia on Democratic Republic of the Congo, 28 November 2008; Brazil, Angola, Cuba on Libyan Arab Jamahiriya, 25 February 2011; Central African Republic, Ireland, Cuba, Sierra Leone, Brazil on the Central African Republic, 20 January 2014

908Finland, Switzerland, France, Argentina, Finland, Netherland, Ireland, Slovakia, Luxembourg, Portugal, Estonia, United States of America, Slovenia, Hungary on Darfur, 12 December 2006; European Union, Mauritius, Japan, Canada, Italy, Norway, Luxembourg, Liechtenstein, Cambodia on Myanmar, 2 October 2007; Switzerland, United Kingdom of Great Britain, Canada, Chile, Mexico, Norway, Denmark, Holy See, Panama, New Zealand, Belgium on Democratic Republic of the Congo, 28 November 2008; Thailand, Jordan, Indonesia, Austria, Sweden, Australia, United Kingdom of Great Britain, Norway, Brazil, Burkina Faso, Switzerland, Mexico, Chile on Cote d'Ivoire, 23 December 2010; France, United Kingdom of Great Britain, Mexico, Maldives, Norway, Uruguay, Argentina, Japan, Malaysia, Belgium, Jordan, Slovakia, United States of America, Thailand, Germany, India, Peru, Liechtenstein, Afghanistan, Canada, Costa Rica, Portugal, Sweden on Libyan Arab Jamahiriya, 25 February 2011; African Union, European Union, Republic of Congo, Argentina, France, Peru, Czech Republic, Germany, Montenegro, United States of America, Italy, Austria, Estonia, Maldives, South Africa, Republic of Congo, Egypt, Lithuania, Spain, Belgium, Australia, Norway, Hungary, Slovakia, Holy See, Slovenia, Luxembourg, Croatia, Thailand, Poland, Liechtenstein, UNICEF, Switzerland, Republic Democratic of Congo on the Central African Republic, 20 January 2014

909Cuba, Finland, Pakistan, Indonesia, Switzerland, Romania, France, Malaysia, India, Canada, Egypt, Albania, Luxembourg, Italy on Darfur, 12 December 2006; France, Italy, Mexico, Netherlands, Australia, Norway, Morocco, Liechtenstein, Chile, Poland, Viet Nam, Belgium, Cambodia, European Union on Myanmar, 2 October 2007; Switzerland, Netherland, Canada, Slovakia, Chile, Mexico, Argentina, Uruguay, Republic of Korea, Algeria, Belgium on Democratic Republic of the Congo, 28 November 2008; Spain on Cote d'Ivoire, 23 December 2010; Malaysia, Paraguay, Bulgaria on Libyan Arab Jamahiriya, 25 February 2011; European Union, Mexico, France, Peru, Germany, Japan, Italy, Estonia, Belgium, Australia, Hungary on the Central African Republic, 20 January 2014

910Cuba, Finland, Switzerland, Malaysia, United Kingdom of Great Britain, Canada, Nigeria, Uruguay, Senegal, Azerbaijan, Spain, Luxembourg, Chile on Darfur, 12 December 2006; European Union, African Union, Mauritius, Japan, Cuba, Switzerland on Myanmar, 2 October 2007; Zambia, Ghana, Bangladesh, Mexico, Cuba, Norway, Ireland, Finland, Maldives on Democratic Republic of the Congo, 28 November 2008; Thailand, Sweden, Republic of Korea, Brazil, Chile on Cote d'Ivoire, 23 December 2010; Bolivia on Libyan Arab Jamahiriya, 25 February 2011; Cuba, Morocco, Venezuela, Togo, Lithuania, Spain, Slovakia, Slovenia on the Central African Republic, 20 January 2014

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”⁹¹¹. 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 prosperity⁹¹².

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”⁹¹³

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 future⁹¹⁴.

Armed conflicts continue to bring fear and horror to humanity. Since the creation of the United Nations in 1945 until 1992, over 100 major 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 world⁹¹⁵.

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”⁹¹⁶.

911An 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

912An agenda for peace, *op. cit.*, note 911, p. 5

913An agenda for peace: preventive diplomacy and related matters, Doc. A/RES/47/120, General Assembly, 10 February 1993

914An agenda for peace, *op. cit.*, note 913, p. 86

915An agenda for peace, *op. cit.*, note 911, p. 13-18

916Supplement 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

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 system⁹¹⁷.

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. 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. 55⁹¹⁸, creates the basis for elaborating a more comprehensive and long-term approach to conflict prevention⁹¹⁹.

Both the United Nations Millennium Declaration adopted by the UNGA in its resolution 55/2⁹²⁰ and the resolution 1318 (2000) adopted by the Security Council⁹²¹ 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 prevention⁹²².

917Prevention of armed conflict, Report of the Secretary-General, Doc. A/55/985-S/2001/574, 7 June 2001, p. 18-19

918Art. 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”.

919Prevention of armed conflict, *op. cit.*, note 917, p. 19

920Art. 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”

921Art. 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”

922Art. 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

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”⁹²³.

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”⁹²⁴.

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 disputes⁹²⁵. 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*⁹²⁶.

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 political, is the surest preventive strategy and the most effective way of avoiding the emergence of conflict”⁹²⁷.

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

conflict prevention and crisis management, peaceful settlement of disputes, as well as in post-conflict peace-building”

923Prevention of armed conflict, *op. cit.*, note 917, p. 18-94

924Doc. UNGA Resolution 57/337 on Prevention of armed conflict, 18 July 2003, p. 11

925Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, p. 25

926Doc. UNGA 48/141 on the High Commissioner for the promotion and protection of all human rights, 20 December 1993, p. 4 (f)

927Doc. 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

observers or fact-finders; the establishment of international courts; and proposals for the establishment of a rapid reaction force⁹²⁸.

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”⁹²⁹. 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 violence⁹³⁰. The priority of the special procedures is that the interests of justice are served and to assist in ensuring that all human rights are protected⁹³¹.

By virtue of their independence and the nature of their mandates, the different mandate holders are “well placed to function as early warning mechanisms, as alarm bells,” according to the High Commissioner for Human Rights, Navi Pillay⁹³². 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”⁹³³.

3.4. The linkage between the right to life and peace

The right to life as a fundamental and universal human right of everyone has been spelled out in the UDHR⁹³⁴, ICCPR⁹³⁵, the African Charter on Human and Peoples' Rights (ACHPR)⁹³⁶,

928Doc. E/CN.4/2000/12, *op. cit.*, note 927, p. 94

929Statement 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

930Statement 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

931Statement 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

932In <http://www.ohchr.org/EN/NewsEvents/Pages/KeyRoleEarlyWarning.aspx>

933Doc. UNGA Resolution 68/160 on enhancement of international cooperation in the field of human rights, 21 February 2014, p. 6

934Art. 3: “Everyone has the right to life, liberty and security of person”

the European Convention on Human Right (ECHR)⁹³⁷ and the American Convention on Human Rights (ACHR)⁹³⁸. 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 meaning⁹³⁹. Since the right to life is non-derogable right in accordance with Art. 4(2) of the ICCPR⁹⁴⁰, 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 law⁹⁴¹.

Since the right to life should not be narrowly interpreted, it 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 Washington⁹⁴². This elaboration was later inserted in both the Preamble of the UN Charter⁹⁴³ without being discussed in substance in the San Francisco Conference and the North Atlantic Treaty⁹⁴⁴. The UNGA has quite often referred to this

935Art. 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

936Art. 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

937Art. 2 (1): “Everyone’s right to life shall be protected by law....” Signed on 4 November 1950 in Rome.

938Art. 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

939NOWAK, M., *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, Engel Publisher, Kehl/Strasbourg/Arlington, 2005, p. 104

940Art. 4 (2): “No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision”.

941RAMCHARAN, B., “The Right to Life”, *Netherlands International Law Review* (NILR), 1983

942“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

943Preamble, paragraph 5: “...to practice tolerance and live together in peace with one another as good neighbours...”

944 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

commitment⁹⁴⁵. However, some resolutions use the term “neighbours” in a narrow geographical sense⁹⁴⁶, while others have a more far-reaching meaning⁹⁴⁷.

In addition, some legal international instruments (i.e. Declaration on the Strengthening of International Security⁹⁴⁸ and the Declaration on the Deepening and Consolidation of International Détente⁹⁴⁹) and GA resolutions (i.e. Measures to be taken against propaganda and the inciters of a new war⁹⁵⁰) 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 entitled with the right to live in peace and freedom and to equal participation without discrimination in economic, social, cultural, civil and political life⁹⁵¹.

The *Vienna Declaration and Programme of Action* of 1993 recalled the obligation to establish conditions to promote social progress and better standards of life in larger freedom in the following terms:

“Recalling also the determination expressed in the Preamble of the Charter of the United Nations to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighbourliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples”⁹⁵²

The *Declaration and Programme of Action on a Culture of Peace* adopted by the UNGA in 1999 recognised the importance of life in the 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: (a)

945Doc. UNGA Res. entitled “Peaceful and neighbourly relations among States”, A/RES/1236(XII) (14 December 1957); UNGA Res. entitled “Measures aimed at the implementation and promotion of peaceful and neighbourly relations among States”, A/RES/1301 (XIII) (10December 1958) and UNGA Res. entitled “Development and strengthening of good neighbourliness between States”, A/RES/34/99 (14 December 1979)

946Doc. 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)

947Doc. UNGA Res 2625 (XXV) of 24 October 1970

948 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

949Preamble, 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

950Preamble, 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

951 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

952 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, para. 2

Respect for life, ending of violence and promotion and practice of non-violence through education, dialogue and cooperation”⁹⁵³.

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 life⁹⁵⁴.

In the first of these General Comments, adopted on 27 July 1982 (16th 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...”⁹⁵⁵. In its second General Comment, adopted on 2 November 1984 (23rd 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 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”⁹⁵⁶.

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”⁹⁵⁷.

In its resolution 1982/7 adopted on 19 February 1982, the CHR expressed its firm conviction that all peoples and all individuals have an inherent right to life, and that 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. Afterwards, in its resolution 1983/43, adopted on 9 March 1983, the Commission also reaffirmed that “for people in the world today there is no more important question than that of preserving peace and ensuring the cardinal right of every human being, namely the right to life”⁹⁵⁸.

On 7 December 1987, the UNGA adopted the resolution 42/99⁹⁵⁹ by 129⁹⁶⁰ to 9⁹⁶¹ with 15 abstentions⁹⁶², by which reaffirmed that “all peoples and individuals have an inherent right to

953 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 1

954 MOLLER, J. TH. and ZAYAS, A. *United Nations Human Rights Committee Case Law 1977-2008: a Handbook*, Kehl/Strasbourg, Engel Publisher, 2009, p. 144

955 Doc. General Comment No. 6: The right to life (art. 6): 30 April 1982, para. 2

956 Doc. General Comment No. 14: The right to life (art. 6): 9 November 1984, para. 5

957 NOWAK, M., *op.cit.*, note 939, p. 109

958 Doc. Resolution 1983/43 of the Commission on Human Rights, adopted on 9 March 1983, para. 1.

959 General Assembly resolution entitled “Human rights and use of scientific and technological developments”, Res. 42/99 of 7 December 1987. Twenty-one sponsors: Afghanistan, Angola, Bulgaria, Byelorussian, Cuba, Czechoslovakia, Democratic Yemen, Ethiopia, German Democratic Republic, Hungary, Lao People’s Democratic

life and that the safeguarding of this cardinal right is an essential condition for the enjoyment of the entire range of economic, social and cultural, as well as civil and political rights” and stressed that a “world without nuclear weapons and violence would open vast opportunities for the joint efforts of all nations aimed at solving urgent humanitarian problems...”.

In its turn of reply after the vote, Japan said that they did not believe that the main thrust of the text was directly related to the agenda item— human rights and scientific and technological developments⁹⁶³.

Speaking for the Nordic countries, Sweden said that although they supported proposals which could help stop the arms race, they were of the opinion that those issues should be considered in the relevant forums⁹⁶⁴. They had reservations on paragraph 6 similar to those they had on article 20 of the 1966 ICCPR on the same subject⁹⁶⁵. They also had reservations on the third preambular paragraph which referred to Assembly resolutions they had not been able to support⁹⁶⁶.

Afterwards, on 8 December 1988, the UNGA adopted the resolution 43/111⁹⁶⁷ without vote, by which it reaffirmed that “all people have an inherent right to life”; recalled “the historic responsibility of Governments of all countries of the world to preserve civilization and to ensure that everyone his inherent right to life” and called upon “Governments and

Republic, Libyan Arab Jamahiriya, Mongolia, Nicaragua, Nigeria, Poland, Romania, Syrian Arab Republic, Ukrainian, USSR and Viet Nam.

960Afghanistan, 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, 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, Jamaica, 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 Lucia, Saint Vincent and the Grenadines, Senegal, Seychelles, Sierra Leone, Singapore, Samoa, Sao Tome and Principe, Saudi Arabia, 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.

961Belgium, France, Germany, Federal Republic of, Israel, Italy, Netherlands, Portugal, United Kingdom and United States.

962Australia, Austria, Canada, Denmark, Finland, Greece, Iceland, Ireland, Japan, Luxembourg, New Zealand, Norway, Spain, Sweden, Turkey

963Doc. Yearbook of the United Nations (1987), p. 828

964Doc. Yearbook of the United Nations (1987), p. 828

965“Again calls upon all States that have not yet done so to take effective measures with a view to prohibiting, in accordance with the International Covenant on Civil and Political Rights, any propaganda for war, in particular the formulation, propounding and dissemination of and propaganda for doctrines and concepts aimed at unleashing nuclear war”

966“Recalling the Declaration on the Strengthening of International Security, the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind and the Declaration on the Right of Peoples to Peace...”

967General Assembly resolution entitled “Human rights and use of scientific and technological developments: the right to life”, Res. 43/111 of 8 December 1988.

intergovernmental and non-governmental organizations to intensify their efforts with a view to strengthening mutual understanding and trust in the spirit of peace and respect for human rights". In this resolution, the UNGA does not refer to the threat posed by nuclear weapons to mankind.

At its forty-eight session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1996/16 of 29 August 1996, showed its concern because of the alleged use of weapons of mass destruction both against members of the armed forces or against civilian populations and urged all States to be guided in their national policy by the need to curb the production and the spread of weapons of mass destruction or with discriminate effect (i.e. nuclear weapons, chemical weapons, fuel-air bombs, napalm, cluster bombs, biological weaponry and weaponry containing depleted uranium)⁹⁶⁸. In addition, it recognized the long-term consequences of the use of such weapons upon human life and health and upon the environment⁹⁶⁹.

The ICJ has recently ordered provisional measures in a number of cases which have linked peace and justice through the right to life⁹⁷⁰, although these measures have on occasion had limited effect. The Advisory Opinion about the *legality of the use by a State of nuclear weapons in an armed*⁹⁷¹ conflict is a "significant example of the potential for using the Court's advisory jurisdiction to curtail the abuse of human rights... and in particular the right to life"⁹⁷².

On 17 January 2014, the Japan Federation of Bar Associations adopted a new Opinion concerning the draft Declaration on the Right to Peace in which it stated that "in light of the lessons learned from the World War II which was provoked by the action of the government, the Constitution of Japan declared the right to live in peace as the right of all peoples of the world in its Preamble.... This clearly shows the manifestation of importance in establishing the right of individuals to live in peace, free from fear and want, in order not to repeat the horrors of war".

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,

968Sub-Commission resolution 1996/16 entitled "International peace and security as an essential condition for the enjoyment of human rights, above all the right to life", 34th meeting, 29 August 1996, adopted by 15 votes to 1, with 8 abstentions, para. 1

969Sub-Commission resolution 1996/16 entitled "International peace and security as an essential condition for the enjoyment of human rights, above all the right to life", 34th meeting, 29 August 1996, Preamble, paragraph 4

970*Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Yugoslavia), Provisional Measures Order, ICJ Reports 1993, 3; *Land and maritime boundary between Cameroon and Nigeria* (Cameroon v. Nigeria), Provisional Measures Order, ICJ Reports 1996, 13; *LaGrand* (Germany v. United States), ICJ Reports 1999 and *Vienna Convention on Consular Relations* (Paraguay v. United States) ("Bread"), ICJ Reports 1998.

971Nuclear Weapons, Adv. Op., ICJ Reports 1996, 66

972GARLAND, R., "The International Court of Justice and human rights in the 1990s –linking peace and justice through the right to life" in YEE, S. and TIEYA, W., *International Law in the Post-Cold War World*, Routledge Studies in International Law, London and New York, 2001, p. 398-408

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 terms⁹⁷³: “*Man has a right 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*”⁹⁷⁴

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 life⁹⁷⁵ and article 28 its ultimate or utopian aspiration⁹⁷⁶. 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”⁹⁷⁷. 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 rights⁹⁷⁸.

The conception of human rights and freedoms contained in article 28 was firstly presented by the then President of the United States, Franklin D. Roosevelt in his “Four Freedoms”⁹⁷⁹ 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 UN 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/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 co-operative 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 all⁹⁸⁰.

973 RAMCHARAN, B., *op.cit.*, note 941, p. 307-308

974 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

975 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”

976 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”.

977 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

978 G. ALFREDSSON, G. and EIDE, A. (eds), *op.cit.*, note 977, p. 606

979 Four Freedoms: speech, worship, fear and want.

See in <http://americanrhetoric.com/speeches/fdrthefourfreedoms.htm>

980 G. ALFREDSSON, G. and EIDE, A. (eds), *op.cit.*, note 977, p. 614

3.5. Human dignity

The second recital of the Preamble of the Universal Declaration of Human Rights 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.

In accordance with the first recital of the Preamble of the UDHR⁹⁸¹, 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 world⁹⁸².

The first recital speaks of “inherent dignity” and of “inalienable rights”, both of which phrases are closely linked to Enlightenment ways of thinking⁹⁸³. 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”⁹⁸⁴. 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”.

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 peoples⁹⁸⁵.

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

981 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”

982 MORSINK, J., *op.cit.*, note 121, p. 313

983 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....”

984 MORSINK, J., *op.cit.*, note 121, p. 281

985 Doc. E/CN4/AC1/SR.2, p. 2

“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”⁹⁸⁶

Human dignity has become a ubiquitous idea and central concern of international law⁹⁸⁷. 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”⁹⁸⁸. The inclusion of human dignity in the contemporary international law is a response to the widespread revulsion of the horrors of the Second World War⁹⁸⁹. Therefore, it prohibits the worst excesses possible in war⁹⁹⁰ and claims the observance of minimal standards of civil, political and social recognition⁹⁹¹. 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”⁹⁹².

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”⁹⁹³

Human dignity has played an important role in several social and political movements that occurred in the 20th century. It has been shaped by the reaction against Nazi ideology, dictatorships and communism⁹⁹⁴. Therefore, it was not surprising that three of the main responsables of the Second World War incorporated this concept in their national constitutions⁹⁹⁵, or that it came to the fore with the fall of several dictatorships in Europe⁹⁹⁶.

986 Furundzija, ICTY, Trial Chamber II, Judgment of 10 December 1998, at §185.

987 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

988 RILEY, S., “Human dignity: comparative and conceptual debates”, *International Journal of Law in context*, 2010, n. 6, p. 119

989 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

990 International humanitarian law

991 Human Rights law

992 RILEY, S., *op.cit.*, note 988, p. 123-124

993 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, para. 2

994 MCCRUDDEN, C., “Human dignity and judicial interpretation of human rights”, *The European Journal of International Law*, 2008, Vol. 19, n. 4, p. 662

995 **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, language, 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”

The most dramatic increase came in the 1990s following the fall of the Berlin Wall and the transition to democracy in central and Eastern Europe under the influence of Germany⁹⁹⁷. This latter country also played a major role in the drafting of the new South African constitution post-apartheid⁹⁹⁸.

In addition, the term is featured in a wide range of declarations and treaties⁹⁹⁹. Human dignity has become a central and recurrent concept in the reasoning of supreme courts and constitutional courts throughout the world¹⁰⁰⁰ 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”¹⁰⁰¹.

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 dispute peacefully and in a spirit of respect for human dignity and of tolerance and non-discrimination”¹⁰⁰².

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”¹⁰⁰³.

Human dignity can be divided into three components: “*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”¹⁰⁰⁴.

996 **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”

997 MCCRUDEN, C., *op.cit.*, note 994, p. 673

998 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”

999 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

1000 Germany, India, USA, South Africa, France, Colombia, Israel, and Canada

1001 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

1002 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 9.b

1003 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

1004 BARROSO, L.R., *op.cit.*, note 1001, p. 392

4. Conclusions

In accordance with the Charter of the United Nations, peace is a Purpose and Principle of the international community. In particular, Art. 1.2 states that the United Nations should "...to take other appropriate measures to strengthen universal peace". Additionally, the Charter indicates in its Art. 2.3 that the Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered".

Most of declarations or resolutions adopted by the UNGA only contain political statements and therefore, have no binding effect in international law. Although the UNGA has adopted many declarations without binding obligations, it does not mean that these instruments have not influenced the development of international law. Normally, these legal instruments have been regarded as reflecting customary law on relevant topics and consequently, they have set out standards of behaviour or ideals which the international community aspires to achieve. In addition, resolutions can be understood as authoritative interpretation by the Assembly of the various principles of the United Nations Charter.

Along the different phases of the debate on the right of peoples to peace, relevant regional groups opposed the resolutions on the right of peoples to peace by arguing that the text deals almost exclusively with the relations between states, whereas it should focus on the relationships between states and their citizens and the obligation of states to respect human rights, which mandate corresponds to the Council. They also reiterated that most of the issues raised in the text should be treated in other international bodies with the mandate and competence to do so. Finally, they stated that the absence of peace is not an argument to disregard human rights.

The Open Ended Working-Group on the right to peace concluded in its first session that there were some governmental delegations and other stakeholders, which recognize the existence of the right to peace as a soft law instrument. On the other hand, several other delegations stated that a stand-alone "right to peace" does not exist under international law. However, there were some points of coincidence among all delegations on the following issues: firstly, war and armed conflict are outlawed by international law; secondly, human rights and fundamental freedoms are massively violated in a context of war and armed conflict; thirdly, the principles of cooperation and protection of human rights are really important in the prevention of war and armed conflict; fourthly, the right to life is closely linked to the notion of peace and fifthly, the legal basis of the human rights legal system is the concept of human dignity.

Chapter IV

The implementation of the right to live in peace, human rights and development

1.Introduction; 2.The influence of human dignity in the right to live in peace, human rights and development; 2.1.Intrinsic values; 2.2.Autonomy; 2.3.Community values;3.Positive measures to realize the right to live in peace, human rights and development;3.1.Measures to be adopted by States; 3.1.1.Disarmament; 3.1.2.Private military and security companies;3.1.3.Peace education and training; 3.1.3.Fight against racism, racial discrimination, xenophobia and related intolerance; 3.2.Measures to be exercised by individuals or groups; 3.2.1.Right to conscientious objection to military services; 3.2.2.Resistance and opposition to oppression; 3.3.Measures to be implemented by States as a value of the international community; 3.3.1.Human security; 3.3.2.Peacekeeping; 3.3.3.Right to Development; 3.3.4.Environment; 3.3.5.Rights of victims and vulnerable groups; 3.3.6.Refugees and migrants; 3.4.Final comments

1. Introduction

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. ILO¹⁰⁰⁵, FAO¹⁰⁰⁶, WHO¹⁰⁰⁷ and UNESCO¹⁰⁰⁸); the 2000 UN Millennium

1005The 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”.

1006The 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.

1007The 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”.

1008The 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”

Declaration¹⁰⁰⁹ and the 2005 World Summit Outcome Document; the Security Council 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 objective of this section is to analyze the legal standards proposed by the Advisory Committee in its draft Declaration in light of the notion of human dignity, human rights, fundamental freedoms and a culture of peace. In addition, the different legal sources and comments by stakeholders about each standard will be taken into account. All these elements will be absolutely necessary to realize progressively the right of everyone to live in peace, human rights and development across the earth.

2. The influence of human dignity in the right to live in peace, human rights and development

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 mental¹⁰¹⁰.

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 equally¹⁰¹¹. 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

1009Para. 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.

1010BARROSO, L.R., *op.cit.*, note 1001, p. 363-364

1011MCCRUDEN, C., *Equality and Non-Discrimination, in English Public Law*, Oxford, David Feldman ed., 2004 and BAYEFSKY, A., "The principle of Equality and Non-discrimination in International law", *Human Rights Quarterly*, 1990, Vol. 11, p. 5-19

realized through individual human rights¹⁰¹². As principle, it is never defined in a single and uniform fashion.

The traditional international law was not very concerned with the concept of discrimination, except in relation to sovereignty. Nevertheless, “the Second World War triggered an unprecedented concern for human rights protection which led to guaranteeing them for all without discrimination”¹⁰¹³.

The principle is now one of the most frequently protected principles of international human rights law. It is often guaranteed in form of a general non-discrimination clause in the enjoyment of human rights¹⁰¹⁴, but also sometimes as an independent principle of non-discrimination¹⁰¹⁵. These principles are spelled out in several universal human rights instruments (i.e. UDHR, ICCPR, International Convention on the Elimination of All Forms of Racial Discrimination).

Additionally, the European Convention on Human Rights in its article 14 has guaranteed non-discrimination in the exercise of other rights in the Convention¹⁰¹⁶. The principle of equality, and especially of equal treatment, is also protected by the European Social Charter¹⁰¹⁷. The European Committee of Social Rights regularly expresses the idea that the non-discrimination regime included in the Charter is aimed to ensuring real and effective equality more generally¹⁰¹⁸ and considers it as one of the essential values of the Charter¹⁰¹⁹. Due to the

1012 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

1013 BESSON, S., “Evolutions in Non-Discrimination Law within the EHHR and the ESC systems: it takes to tango in the Council of Europe”, *American Journal of Comparative Law*, Vol. 60, 2012, p. 154

1014 Art. 2 of the **Universal Declaration of Human Rights**: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”; **International Covenant on Civil and Political Rights**, art 2.1: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” and art. 3 “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”; **International Covenant on Economic, Social and Cultural Rights**, art. 2.2: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

1015 **International Covenant on Civil and Political Rights**, art 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

1016 Art. 14: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1017 Art. 19: The right of migrant workers and their families to protection and assistance

1018 See Complaint No 13/2002 of the European Committee of Social Rights, *Autisme-Europe v. France*, 4 November 2004, paragraph 52: “In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality”.

principle of non-discrimination is so closely linked to every right in the Charter; it is sometimes considered a right to non-discrimination¹⁰²⁰.

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”¹⁰²¹

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 law¹⁰²².

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”¹⁰²³

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...”¹⁰²⁴ 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”¹⁰²⁵.

1019 See Complaint No 58/2009 of the European Committee of Social Rights, *COHRE v. Italy*, 25 June 2010, paragraph 78: “Furthermore, the measures in question reveal a lack of respect of the essential values set forth by the European Social Charter (among others, human dignity and non discrimination) whose nature and intensity goes beyond ordinary breaches of the Charter. Moreover, these aggravated violations do not only affect individuals as victims or the relationship between these individuals and the respondent state: they challenge the community interest and the fundamental common standards shared by Council of Europe Member States (human rights, democracy and the rule of law)”

1020 BRILLAT, « Le principe de non-discrimination dans la jurisprudence du Comité européen des droits sociaux », *Septième journées d'études du Pole européen Jean Monnet*, 2010, p. 407-424

1021 *South West African cases*, ICJ Reports, 1966, para. 299.

1022 BEDI, *The Development of Human Rights Law by the Judges of the International Court of Justice*, Portland Oregon, Hart Publishing: Oxford, 2007, p. 107

1023 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, para. 9

1024 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 12

1025 *Declaration and Programme of Action on a Culture of Peace*, *op. cit.*, note 1019, art. 9.b

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 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...”¹⁰²⁶.

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 shelter¹⁰²⁷. 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”¹⁰²⁸.

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”¹⁰²⁹.

Additionally, the *Vienna Declaration and Programme of Action* of 1993 recognised 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”¹⁰³⁰.

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 remembrance¹⁰³¹.

1026 Doc. A/RES/60/1, *World Summit Outcome document*, General Assembly, 24 October 2005, paragraph 4-5

1027 BARROSO, L.R., *op.cit.*, note 1001, p. 371

1028 Doc. A/RES/60/1, *World Summit Outcome document*, General Assembly, 24 October 2005, paragraph 4

1029 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 1

1030 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, para. 2

1031 BODNAR, J., *The “Good War” in American Memory*, Maryland, Johns Hopkins University Press, 2010, p.

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”.

When the Committee on the Preamble of the UDHR studied all drafts for the Preamble submitted by different delegations, the Committee came up with a draft which did not include a reference to the Roosevelt’s four freedoms. However, the concept of the Four Freedoms became part of the personal mission undertaken by First Lady Eleanor Roosevelt regarding her inspiration behind the UDHR.

In accordance with second recital of the Universal Declaration of Human Rights “... 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”.

On 17 January 2014, the Japan Federation of Bar Associations adopted a new Opinion concerning the draft Declaration on the Right to Peace by which “the right to live in peace without a threat of war or other horrors has been long recognized as one of fundamental freedoms in international laws of human rights as well. Prior to the establishment of the UN, United States President Franklin Roosevelt proposed “freedom from fear” as one of fundamental freedoms for people in the 1941 State of the Union address known as the Four Freedoms speech..... Around the same time, this trend was followed by the Constitution of Japan which provides in the Preamble that “[w]e recognize that all peoples of the world have the right to live in peace, free from fear and want”. According to them, “in order to achieve “freedom from fear”, it is therefore essential to draft and approve a declaration which proclaims “the right to live in peace” and detailed human rights which derive from such right”.

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”¹⁰³².

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”¹⁰³³.

1032 D. Hammarskjöld, *Tal, Ett urval redigerat av Wilder Foot* (Speeches, A selection Edited by Wilder Foot) (Norstedt, Stockholm, 1962, p. 144

1033 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

The founders of the United Nations had always given equal importance to people's security and to territorial security. As far back as June 1945, Edward R. Stettinius Jr., US secretary of state reported this to his government on the results of the San Francisco Conference:

“The battle for peace has to be fought on two fronts. The first is the security front where victory spells freedom from fear. The second is the economic and social front where victory means freedom from want. Only victory on both fronts can assure the world of an enduring peace [...] No provisions that can be written into the Charter will enable the Security Council to make the world secure from war if men and women have no security in their homes and their jobs”¹⁰³⁴.

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”¹⁰³⁵.

When Kofi Annan launched *In Freedom from Fear*¹⁰³⁶ 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 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”¹⁰³⁷.

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)¹⁰³⁸.

Both the concept of freedom from want and fear were deeply developed in the main peace laws adopted by the United Nations since 1945 (i.e. Declaration on Preparation of Societies for Life in Peace of 1978, Declaration on the Right of Peoples to Peace of 1984 and Declaration on a

1034 United Nations Development Program, *Human Development Report*, Oxford University Press, 1994, p. 24

1035 Doc. A/RES/60/1, *World Summit Outcome document*, General Assembly, 24 October 2005, paragraph 143

1036 Report of the Secretary-General: *In Larger Freedom: Towards Development, Security and Freedom for All*, UN Doc. A/59/2005, 21 March 2005

1037 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

1038 KANG, G., “The three freedoms of the United Nations in Northeast Asia”, *Korea Observer*, Vol. 36, 2005, No. 4, p. 719-720

Culture of Peace of 1999). It was principally focused on the following topics: elimination of threat of war¹⁰³⁹, arm races¹⁰⁴⁰, general and complete disarmament¹⁰⁴¹ -in particular nuclear disarmament¹⁰⁴²-, mass media¹⁰⁴³, environment¹⁰⁴⁴, education¹⁰⁴⁵, the right to development¹⁰⁴⁶,

1039 **Declaration on Preparation of Societies for Life in Peace:** “it recalled that, in the Final Document of the Tenth Special Session of the General Assembly the States Members of the United Nations solemnly reaffirmed their determination to make further collective efforts aimed at strengthening peace and international security and eliminating the threat of war,...” (Preambular paragraph 10); **Declaration on the Right of Peoples to Peace:** “expressing 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” (Preambular paragraph 3); **Declaration on a Culture of Peace:** “It recalled the Constitution of the United Nations Educational, Scientific and Cultural Organization, which states that “since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed” (Preambular paragraph 2)

1040 **Declaration on Preparation of Societies for Life in Peace:** “a basic instrument of the maintenance of peace is the elimination of the threat inherent in the arms race...” (art. 1.6).

1041 **Declaration on Preparation of Societies for Life in Peace:** “... agreed that, in order to facilitate the process of disarmament, it was necessary to take measures and pursue policies to strengthen international peace and security and to build confidence among States” (Preambular paragraph 10); “... as well as efforts towards general and complete disarmament, under effective international control, including partial measures with that end in view, in accordance with the principles agreed upon within the United Nations and relevant international agreements” (art. 1.6).

1042 **Declaration on Preparation of Societies for Life in Peace:** “It stressed with utmost concern that the arms race, in particular in the nuclear field, and the development of new types and systems of weapons, based on modern scientific principles and achievements, threaten world peace” (Preambular paragraph 9); **Declaration on the Right of Peoples to Peace:** “aware 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” (Preambular paragraph 5) and “emphasizes 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” (art. 3)

1043 **Declaration on Preparation of Societies for Life in Peace:** “calls upon all States 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” (art. 2.1); **Declaration on a Culture of Peace:** “the educative and informative role of the media contributes to the promotion of a culture of peace” (art. 7).

1044 **Declaration on a Culture of Peace:** “a culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on the efforts to meet the developmental and environmental needs of present and future generations...” (art. 1)

1045 **Declaration on Preparation of Societies for Life in Peace:** “It recognized the essential role of Governments, as well as governmental and non-governmental organizations, both national and international, the mass media, educational processes and teaching methods, in promoting the ideals of peace and understanding among nations” (Preambular paragraph 7); **Declaration on a 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” (art. 4)

1046 **Declaration on a Culture of Peace:** “a culture of peace is ... the respect for and promotion of the right to development ...” (art. 1)

gender equality¹⁰⁴⁷, freedom of expression and opinion¹⁰⁴⁸, fight against poverty¹⁰⁴⁹ and the elimination of violence and conflicts¹⁰⁵⁰.

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”¹⁰⁵¹. 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 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 sense¹⁰⁵².

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”¹⁰⁵³.

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

1047 **Declaration on a Culture of Peace:** “a culture of peace is ... the respect for and promotion of equal rights and opportunities for women and men...” (art. 1)

1048 **Declaration on a Culture of Peace:** “a culture of peace is ... the respect for and promotion of the right of everyone to freedom of expression, opinion and information and the 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 (art. 1);

1049 **Declaration on a Culture of Peace:** “the fuller development of a culture of peace is integrally linked to the eradication of poverty and illiteracy and reduction of inequalities within and among nations; the promotion of sustainable economic and social development and the advancement of understanding, tolerance and solidarity among all civilizations, peoples and cultures, including towards ethnic, religious and linguistic minorities” (art. 3);

1050 **Declaration on a Culture of Peace:** “it expressed deep concern about the persistence and proliferation of violence and conflict in various parts of the world (Preambular paragraph 6).

1051 BARROSO, L.R., *op.cit.*, note 1001, p. 374

1052 ROBINSON, M., “From Human Rights to People’s Rights: fifty years after the Universal Declaration”, *Diritti dell’uomo, diritti dei popoli*, 2002, p. 29.

1053 Doc. A/RES/60/1, World Summit Outcome document, General Assembly, 24 October 2005, paragraph 5

understanding at all levels of society and among nations; and fostered by an enabling national and international environment conducive to peace.”¹⁰⁵⁴.

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 justice¹⁰⁵⁵.

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”¹⁰⁵⁶.

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...”¹⁰⁵⁷.

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 war¹⁰⁵⁸.

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 transparency¹⁰⁵⁹.

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

1054 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 1.i

1055 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

1056 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 23

1057 Report of the Director-General of the UNESCO entitled on “Towards a culture of peace”, Doc. A/51/395, 23 September 1996, para.12

1058 Paragraph 2, UDHR: “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind ...”

1059 MCGUINNESS, M., *op.cit.*, note 1050, p. 764

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”¹⁰⁶⁰

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”¹⁰⁶¹.

Since 2006 the has regularly adopted a resolution without vote entitled “The rule of law at the national and international levels”¹⁰⁶² by which it reaffirmed that rule of law and international law is essential for peaceful coexistence and cooperation among States¹⁰⁶³; that it is essential for the realization of economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights¹⁰⁶⁴ and that it should guide the activities of the United Nations and of its Member States¹⁰⁶⁵.

3. Positive measures to realize peace through human rights and international law

Positive action is a concept of great importance in the context of antidiscrimination laws, which have been adopted by several international human rights instruments¹⁰⁶⁶ and openly applied by

1060 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, para. 9

1061 Doc. A/RES/60/1, *World Summit Outcome document*, General Assembly, 24 October 2005, paragraph 5

1062 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

1063 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”

1064 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”

1065 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”

1066 Art. 26 of the **International Covenant on Civil and Political Rights**: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any

courts¹⁰⁶⁷. It includes all measures aimed to make positive steps to alter existing social practices so as to eliminate patterns of group exclusion and disadvantage¹⁰⁶⁸. 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 wars¹⁰⁶⁹. 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 action¹⁰⁷⁰.

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.

The “right to life” and the “right to live” are not –or should not be– terms with necessarily different meanings and legal content by being considered as equivalent, interdependent and interrelated. However, the right to life is the manifest aspect of the right to live, and the right to live exists and is exercised as a result of recognition of, and respect for, the right to life¹⁰⁷¹. In other words, the right to live is the active exercise of inalienable right to life, which has as a main purpose the full and free development of the human dignity and personality¹⁰⁷².

ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”; **Convention on the Elimination of All Forms of Discrimination against Women**: Art. 2.e: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake ... to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”; Art. 4.1 “Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved”, Art. 4.2: “Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory”; **International Convention on the Elimination of All Forms of Racial Discrimination**, Art. 2.1.c: “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end ... Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists”.

1067 European Court of Human Rights and Constitutional Courts: USA, Germany, South-Africa

1068 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.

1069 L. WADDINGTON, “Reassessing the Employment of People with Disabilities in Europe From Quotas to Anti-Discrimination Laws”, 1996, 18 *Comparative Labour Law Review* 62

1070 O’CINNEIDE, *Positive action*, University College, London, p. 23

1071 GROSS ESPIELL, H., “Right to life and right to live”, in D. Premont, *Essays on the right to life*, Association of International Consultants on Human Rights, Brussels, 1988, p. 43 and OKECHUKWU, H., *The right to life and the right to live: Ethics of international solidarity*, Series XXIII, Theology, Vol./Bd. 387, European University Studies, Paris

1072 BALANDA, L., « Le droit de vivre »; VEUTHEY, M., « Le droit à la survie, fondement du droit humanitaire » and P. RICHARD, P., « Droits de l’homme, paix et désarmement. Éléments essentiels de la garantie du droit de vivre », in PREMONT, D., *Essays on the right to life*, Brussels, Association of International Consultants on Human Rights, 1988

Therefore, the “recognition of the right to life and the affirmation of the right to live 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 at his disposal for this purpose”¹⁰⁷³.

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.

The *Declaration on Preparation of Societies for Life in Peace* recommends that governmental and nongovernmental organizations should initiate appropriate actions towards the implementation of the present Declaration¹⁰⁷⁴ and fully implements principles enshrined in it¹⁰⁷⁵. In accordance with the Declaration these principles are the following, namely: recognition of the right to life in peace; qualification of the war of aggression as a crime against peace; prohibition of the propaganda of war; strengthening of the cooperation in peace; respect of the right of self-determination of peoples, independence, sovereignty, territorial integrity and independence; elimination of the threat inherent in the arms race; discouragement of all manifestation and practices of intolerance, racism, racial discrimination, colonialism, apartheid and other human rights and fundamental freedoms; discouragement of advocacy of hatred and prejudice.

The *Declaration on the right of peoples to peace* appeals to “all States and international organizations to do their utmost to assist in implementing the right of peoples to peace through the adoption of appropriate measures at both the national and the international level”¹⁰⁷⁶. Among these measures, it could be stressed 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...”¹⁰⁷⁷.

The *Declaration and Programme of Action on a Culture of Peace* states that the actions to be taken in the field of international peace and security should be as follows: general and complete disarmament; military conversion; inadmissibility of acquisition of territory by war; confidence-building measures and efforts for negotiating peaceful settlements; elimination of illicit production and traffic of small arms and light weapons; support initiatives from post-conflict situations, such as demobilization, reintegration of former combatants into society, as well as refugees and displaced persons; refraining from any unilateral measure; economic and social development by the population of the affected countries, in particular women and children; full enjoyment of a standard of living adequate for health; refraining from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State; humanitarian impact of sanctions; promotion of greater involvement of women in prevention and resolution of conflicts; creation of corridors of peace

1073 GROSS ESPIELL, H., *op.cit.*, note 1066, p. 43-45

1074 Art. 3.1

1075 Art. 3.2

1076 Art. 4

1077 Art. 3

to ensure delivery of humanitarian supplies and encouragement of training in techniques for the understanding, prevention and resolution of conflict¹⁰⁷⁸.

Additionally, in order to promote the culture of peace the *Declaration and Programme of Action* proposes as actions to promote respect for all human rights the full implementation of the *Vienna Declaration and Programme of Action*¹⁰⁷⁹ and the encouragement of development of national plans of action for the promotion and protection of all human rights¹⁰⁸⁰.

Additionally, the *Proclamation of the International Year of Peace* adopted in 1985 stated that 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 threat - respect for the principle of non-use of force, the resolution of conflicts and peaceful settlement of disputes, confidence-building measures, disarmament, 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, elimination of racial discrimination and apartheid, the enhancement of the quality of life, satisfaction of human needs and protection of the environment¹⁰⁸¹.

The effective implementation of positive measures or actions in the field of peace, human rights, fundamental freedoms and dignity, and consequently the progressive elimination of armed conflict and war, can be only realized through the international cooperation among States.

As indicated by the *Declaration on Culture of Peace*, “peace not only is 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”¹⁰⁸². Furthermore, the *Vienna Declaration* stated that the “... enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations...”¹⁰⁸³. Finally, the *World Summit Conference* acknowledged that “collective security depends on effective cooperation, in accordance with international law, against transnational threats”¹⁰⁸⁴.

The principle of international co-operation, which is spelled out in the UN Charter¹⁰⁸⁵, indicates that the function of the United Nations is to curtail the likelihood of war through the cooperation among States¹⁰⁸⁶. It will be aimed to solving problems in the economic, social, cultural, or humanitarian field.

1078 Art. 16

1079 Art. 11.a

1080 Art. 11.b

1081 Doc. UNGA Res. 40/3 (24 October 1985), U.N. Doc. A/RES/40/3

1082 Preamble, paragraph 4

1083 Art. 1

1084 Art. 7

1085 Art. 1.3: “The Purposes of the United Nations are ... 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”

1086SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 110

The ICJ concluded in the Nuclear Test cases the linkage between the principles of international co-operation and good faith.

“One basic principle governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international cooperation, in particular in an age when this co-operation in many fields is becoming increasingly essential”.

The good faith principle is considered a fundamental principle¹⁰⁸⁷, which informs and shapes, the observance of existing rules of international law and constrains the manner in which rules may legitimately be exercised¹⁰⁸⁸. This provision combines moral ideas on correct action (honesty, seriousness, loyalty) and strictly legal contents (ban on the abuse of legal rights)¹⁰⁸⁹.

In the San Francisco Conference, the Colombian delegate declared that this principle constituted the leitmotiv of the new relations to be built by States: “The United Nations... must proclaim that international life requires a minimum of morality as a normative principle of conduct for peoples. This minimum cannot be anything else than full good faith and respect for the pledged word”¹⁰⁹⁰.

The Advisory Committee Declaration on the right to peace stressed in its standard on obligations and implementation that States should strengthen the effectiveness of the United Nations in its dual functions of preventing violations and protecting human rights and human dignity. In addition, the HRC is invited to set up a special procedure to monitor respect for and the implementation of the right to peace¹⁰⁹¹.

1087 Art. 2 (2) of the UN Charter: “All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter”; art. f of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations: “Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States”

1088 CHRISTINA VOIGHT, A., *op.cit.*, note 610, p. 12

1089 SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 15, p. 173

1090 UNCIO VI, 72

1091 Article 13. Obligations and implementation

1. The preservation, promotion and implementation of the right to peace constitute a fundamental obligation of all States and of the United Nations as the most universal body harmonizing the concerted efforts of the nations to realize the purposes and principles proclaimed in the Charter of the United Nations.

2. States should cooperate in all necessary fields in order to achieve the realization of the right to peace, in particular by implementing their existing commitments to promote and provide increased resources to international cooperation for development.

3. The effective and practical realization of the right to peace demands activities and engagement beyond States and international organizations, requiring comprehensive, active contributions from civil society, in particular academia, the media and corporations, and the entire international community in general.

4. Every individual and every organ of society, keeping the present Declaration constantly in mind, shall strive to promote respect for the right to peace by progressive measures, national and international, to secure its universal and effective recognition and observance everywhere.

5. States should strengthen the effectiveness of the United Nations in its dual functions of preventing violations and protecting human rights and human dignity, including the right to peace. In particular, it is for the General Assembly, the Security Council, the Human Rights Council and other competent bodies to take effective measures to protect human rights from violations that may constitute a danger or threat to international peace and security.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "... With regard to article 13, many delegations felt that, generally speaking, its wording was slightly vague and ambitious. Regional and South-South cooperation could be the vehicles for the correct implementation of the right to peace. It was also stated that the preservation, promotion and implementation of the right to peace constituted a fundamental obligation of all States, individually and collectively. Collective State action was encouraged in coordination with the United Nations. All human beings, individually and collectively, had a right and a duty to contribute to the enjoyment of the right to peace. The Working Group then returned to discussing the definition of the right to peace. Some delegations reiterated that it would be difficult to impose obligations regarding an undefined legal concept and that its implementation would not be feasible. It was also noted that the contents of paragraphs 4 and 5 would be difficult to apply because of the lack of clarity of the terminology used. A debate on paragraph 6 was considered by many delegations as premature"¹⁰⁹².

All main legal standards or positive measures proposed by the Advisory Committee in its Declaration on the Right to Peace were already included in both the *Declaration and Programme of Action of Vienna and Culture of Peace* (i.e. purposes and principles of the UN Charter, human security, disarmament, peace education and training, right to conscientious objection to military service, mercenaries, resistance and opposition to oppression, peacekeeping, right to development, environment, rights of victims and vulnerable groups and refugees and migrants). Furthermore, the *World Summit Outcome Document* again reiterated these measures and standards in 2005.

3.1. Rights and measures to be adopted by States

3.1.1. Disarmament

There is a close linkage between disarmament and international human rights law. The Human Rights Committee recognized in its General Comment No. 14 on nuclear weapons and the right to life (Art. 6 ICCPR) of 9 November 1984, that the "designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront humankind today". It also stated that "the development and proliferation of weapons of mass destruction not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all".

This approach also found expression in the UN Charter¹⁰⁹³, the Declaration on the Right to Development¹⁰⁹⁴ and the Final Document of the 1987 International Conference on the

6. The Human Rights Council is invited to set up a special procedure to monitor respect for and the implementation of the right to peace and to report to relevant United Nations bodies.

¹⁰⁹²Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 80-81

¹⁰⁹³Article 26 of the UN Charter envisages an international system based on the "least diversion for armaments of the world's human and economic resources".

Relationship between Disarmament and Development¹⁰⁹⁵. In addition, both the Declaration on the Preparation of Societies for Life in Peace¹⁰⁹⁶ and the Declaration on the Right of Peoples to Peace¹⁰⁹⁷ focused their attention on the efforts towards general and complete disarmament, under effective international control. Furthermore, it should be recognized the establishment of Peace Zones free from nuclear weapons¹⁰⁹⁸, as well as the Beijing Declaration and Platform for Action¹⁰⁹⁹ and Security Council resolution 1325 (2000) on women, peace and security.

The *Declaration and Programme of Action on a Culture of Peace* proclaimed disarmament as an action to promote international peace and security: “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”¹¹⁰⁰.

The Advisory Committee Declaration on the right to peace highlighted in its standard on disarmament that States should be engaged actively in the strict and transparent control of arms trade, to proceed to further disarmament, to create and promote peace zones and nuclear weapon-free zones and to allocate the resources freed to disarmament to the economic, social and cultural development¹¹⁰¹.

1094The Preamble reaffirmed that "there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries". In addition, article 7 states 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".

1095The Conference was the basis to define the relationship between disarmament and development; examine the magnitude and consequences of military expenditure on the world economy and on development; and explore ways to release resources for development through disarmament.

1096Art. 6 states that "a basic instrument of the maintenance of peace is the elimination of the threat inherent in the arms race, as well as efforts towards general and complete disarmament, under effective international control..."

1097Art. 3 emphasizes 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 of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations".

1098The current treaties establishing peace zones free of nuclear weapons are the following: Antarctic (1961); Outer Space (1967); Tlatelolco (Latin America and Caribbean, 1969); Seabed (1972); Rarotonga (South Pacific, 1986); Bangkok (ASEAN, 1997); MNWFS Mongolia (2000); Semei (Central Asia, 2009) and Pelindaba (Africa, 2009).

1099 "The full participation of women in decision-making, conflict prevention and resolution and any other peace initiative are essential to the realization of lasting peace". The United Nations Fourth World Conference on Women: *Action for equality, development and peace*, Beijing, China, September 1995, par. 22

1100 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 16.a

1101 Art. 3 on disarmament:

1. States shall engage actively in the strict and transparent control of arms trade and the suppression of illegal arms trade.
2. States should proceed in a joint and coordinated manner and within a reasonable period of time to further disarmament, under comprehensive and effective international supervision. States should consider reducing military spending to the minimum level necessary to guarantee human security.
3. All peoples and individuals have a right to live in a world free of weapons of mass destruction. States shall urgently eliminate all weapons of mass destruction or of indiscriminate effect, including nuclear, chemical and biological weapons. The use of weapons that damage the environment, in particular radioactive weapons and weapons of mass destruction, is contrary to international humanitarian law, the right to a healthy environment and the right to peace. Such weapons are prohibited and must be urgently eliminated, and States that have utilized them have the obligation to restore the environment by repairing all damage caused.

In its seventh session of the Advisory Committee, held at the Palais des Nations (Geneva) from 8 to 12 August 2011, **Cuba** said that as to the practical content of the right of peoples to peace, we agree with several of the areas identified in the draft declaration (i.e. development, disarmament and the environment). **Uruguay** asked to clarify the meaning and how the fair distribution of natural resources would be achieved¹¹⁰².

In its eighth session, held at the Palais des Nations (Geneva) from 20 to 24 February 2012, **Cuba** proposed to include in the draft Declaration a provision about the threat of nuclear weapons¹¹⁰³.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "... a number of delegations drew the link between disarmament and the right to peace, without the intention of discussing disarmament as such but to highlight the above-mentioned link, and the will of States to undertake negotiations with such an aim. Others felt that the HRC was not the appropriate venue for discussing the question of disarmament. It was suggested that the issues of disarmament, peacekeeping and the proliferation of weapons of mass destruction should be addressed by other specialized bodies including the Conference on Disarmament, the United Nations Department of Peacekeeping Operations and the United Nations Security Council. It was noted that these organizations and bodies should continue to lead international efforts, given their expertise in the field. Some delegations felt the need to take a general approach when discussing the issue of disarmament in view of both its sensitive nature and extensive scope. Other delegations focused on the need for greater transparency vis-à-vis military spending and the need to free up resources and redistribute them to the poorest sections of the society. It was proposed to subdivide paragraph 1 of article 3 into two paragraphs, the first one to address the aim to achieve, within a reasonable period of time, general disarmament, and the second about actively engaging in strict and transparent regulation and control of arms trade. The underlying idea was to encourage States to engage in negotiations aimed at reducing military spending without impinging on the area of national sovereignty"¹¹⁰⁴.

In its informal consultations conveyed by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October to 4 November 2013, the EU agreed in terms that we are not creating new human rights. They said that there are some themes included in both the first AC draft and your list, which are not helpful in this context (i.e. disarmament). The **USA** believed that issues like "disarmament" are already dealt in other forums.

The joint NGO written statement A/HRC/12/NGO/30 entitled "Peace and Disarmament as solidarity rights", stated that the First Committee of the UNGA on Disarmament and International Security highlighted that the use of illicit small arms and light weapons

4. States are invited to consider the creation and promotion of peace zones and of nuclear weapon-free zones.

5. All peoples and individuals have the right to have the resources freed by disarmament allocated to the economic, social and cultural development of peoples and to the fair redistribution of natural wealth, responding especially to the needs of the poorest countries and of groups in situations of vulnerability.

1102 *Ibidem* n. 769

1103 *Ibidem* n. 769

1104 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 42-44

(SALW)¹¹⁰⁵ constitutes a clear threat to peace consolidation. Besides, Mrs Barbara Frey - *Special Rapporteur on the issue of prevention of human rights violations committed with SALW*- indicated¹¹⁰⁶ that “this type of weapons has a devastating impact on human rights standards, such as the right to life, liberty and security of persons”, but especially for women¹¹⁰⁷. As added by the meeting of experts on the traditional and new forms of mercenarism¹¹⁰⁸, mercenary activities may also pose a threat to a broad range of human rights as a consequence of the close relationship prevailing between the new forms of mercenary activities and arms trafficking. The launching of strong public information campaigns on education and culture of peace are, inter alia, necessary to combat violence in all regions and globally¹¹⁰⁹. The final outcome document of the International Conference on the Relationship between disarmament and development¹¹¹⁰ 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 pillars on which should be built enduring international peace and security. As a consequence of the growing interdependence and interrelationship among nations and global issues, multilateralism provides the international framework within which the relationship between disarmament, development and security should be shaped¹¹¹¹. It follows that the human rights to peace, disarmament and development as solidarity rights require the union of interests or purposes among all countries of the world, social cohesion and international cooperation to give them effect¹¹¹². 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 control¹¹¹³. 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 peace¹¹¹⁴. Besides, Security Council 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”.

¹¹⁰⁵ General Assembly, First Committee, *General and complete disarmament: consolidation of peace through practical disarmament measures*, A/RES/51/45(N), 1996

¹¹⁰⁶ The United Nations Disarmament Yearbook, vol. 26, 2001, 172-176 (UN publications sales No. E.02.IX.1)

¹¹⁰⁷ Please see the conclusions of the report issued by the International Action Network on Small Arms (IANSA) on the Global Week of Action Against Gun Violence, 2008 (<http://www.iansa.org>): women are paying an increasingly heavy price for the worldwide unregulated multi-billion dollar trade in small arms

¹¹⁰⁸ Par. 69, *The right of people to self-determination and its application to peoples under colonial or alien domination or foreign occupation*, report of the HCHR, E/CN.4/2001/18, 14 February 2001

¹¹⁰⁹ Par. 59 and conclusions, *The right of people to self-determination and its application to peoples under colonial or alien domination or foreign occupation*, report of the HCHR, E/CN.4/2005/23, 18 January 2005

¹¹¹⁰ 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

¹¹¹¹ *Ibidem*, p. 19

¹¹¹² Report by Mr. Rudi Muhammad Rizki, Independent Expert on human rights and solidarity rights, presented to the Sixty-second session of the Commission on Human Rights, E/CN.4/2006/96, 1 February 2006, par. 16

¹¹¹³ 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

¹¹¹⁴ The United Nations Fourth World Conference on Women: *Action for equality, development and peace*, Beijing, China, September 1995, par. 22

3.1.2. Private military and security companies

At the 72nd plenary meeting on 4 December 1989, the UNGA adopted without vote resolution 44/34, the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*. It entered into force on 20 October 2001 and as of May 2013, the convention had been ratified by 32 states¹¹¹⁵.

In accordance with the *UN Mercenary Convention*, “any person who recruits, uses, finances or trains mercenaries, as defined in article 1 of the present Convention¹¹¹⁶, commits an offence for the purposes of the Convention” (art. 2); “States Parties shall not recruit, use, finance or train mercenaries for the purpose of opposing the legitimate exercise of the inalienable right of peoples to self-determination, as recognized by international law, and shall take, in conformity with international law, the appropriate measures to prevent the recruitment, use, financing or training of mercenaries for that purpose” (art. 5.2) and “Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in the present Convention ... “ (art. 9.1).

On 27 September 2013, the HRC adopted by 31 votes in favor, 15 against and 1 abstention the resolution entitled “The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination” by which it *recalled* “all relevant resolutions that, inter alia, condemn any State that permits or tolerates the recruitment, financing, training, assembly, transit or use of mercenaries with the objective of overthrowing the Governments of States Members of the United Nations, especially those of developing countries, or of fighting against national liberation movements, and recalling also the relevant resolutions and international instruments adopted by the UNGA, the Security Council, the Economic and Social Council, the African Union and the Organization of African Unity, inter alia, the Organization of African Unity Convention for the Elimination of Mercenarism in Africa”; reaffirmed “that the use of mercenaries and their recruitment, financing, protection and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations”; urged “once again all States to take the necessary steps and to exercise the utmost vigilance against the threat posed by the activities of mercenaries, and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly,

1115 Italy, Seychelles, Maldives, Suriname, Uruguay, Barbados, Belarus, Congo, Cameroon, Togo, Cyprus, Georgia, Turkmenistan, Azerbaijan, Saudi Arabia, Uzbekistan, Mauritania, Ukraine, Belarus, Angola, Qatar, Senegal, Croatia, Libya, Costa Rica, Mali, Belgium, Guinea, New Zealand, Liberia, Moldova, Peru, Cuba, Honduras and Syria

1116 For the purposes of the present Convention, 1. A mercenary is any person who: (a) Is specially recruited locally or abroad in order to fight in an armed conflict; (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party; (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; (d) Is not a member of the armed forces of a party to the conflict; and (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces. 2. A mercenary is also any person who, in any other situation: (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at: (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or (ii) Undermining the territorial integrity of a State; (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation; (c) Is neither a national nor a resident of the State against which such an act is directed; (d) Has not been sent by a State on official duty; and (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

financing, training, protection and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State or to dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination”; encouraged “States that import the military assistance, consultancy and security services provided by private companies to establish regulatory national mechanisms for the registering and licensing of those companies in order to ensure that imported services provided by those private companies neither impede the enjoyment of human rights nor violate human rights in the recipient country” and requested “the Working Group to continue to monitor mercenaries and mercenary-related activities in all their forms and manifestations, including private military and security companies, in different parts of the world, including instances of protection provided by Governments to individuals involved in mercenary activities, and to continue to update the database of individuals convicted of mercenary activities”¹¹¹⁷.

The PMSCs should be accountable for human rights violations in accordance with the international human rights law¹¹¹⁸. In addition, related national legislation will never be successful without a coordinated response by the international community to the increasing role of the private sector in war and peace.

The Advisory Committee Declaration on the right to peace highlighted in its standard on private military and security companies that States should refrain from outsourcing inherently State military and security functions to private contractors and ensure that private military and security companies, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international humanitarian law and international human rights law¹¹¹⁹.

1117 Doc. A/HRC/24/L.29, The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, 23 September 2013

1118The UN Code of Conduct for Law Enforcement Officials of 1979; the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana from 27 August to 7 September 1990; the OUA Convention for the elimination of mercenarism in Africa of 1997; the UN non-binding Guidelines on the Use of Military and Armed Escorts for Humanitarian Convoys of 2001 and the 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 of 2005.

1119 Article 6. Private military and security companies

Article 6. Private military and security companies

1. States shall refrain from outsourcing inherently State military and security functions to private contractors. For those activities that may be outsourced, States shall establish a national and an international regime with clear rules regarding the functions, oversight and monitoring of existing private military and security companies. The use of mercenaries violates international law.

2. States shall ensure that private military and security companies, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international humanitarian law and international human rights law. They shall take such legislative, administrative and other measures as may be necessary to ensure that such companies and their personnel are held accountable for violations of applicable national or international law. Any responsibility attributable to a private military or security company is independent and does not eliminate the responsibility that a State or States may incur.

3. The United Nations shall establish, together with other international and regional organizations, clear standards and procedures for monitoring the activities of private military and security companies employed by these organizations. States and the United Nations shall strengthen and clarify the relationship and accountability of States and international organizations for human rights violations perpetrated by private military and security companies employed by States, intergovernmental and international non-governmental organizations. This shall

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "...many delegations agreed that private military and security companies needed to be regulated at both the national and international levels and that their activities had to conform to the norms set out in international humanitarian law and human rights law. This view was also shared by non-governmental organizations. Other delegations, however, noted that national-level regulation was the most effective and appropriate way to promote respect for human rights by these companies, and encouraged the sharing of national practices in this area. Many delegations suggested that a brief and general reference to private military and security companies would be appropriate in this declaration and should not be entirely omitted. A reference to terrorism and terrorist organizations should also be added. Some delegations opposed the inclusion of an article on private military and security companies for reasons of redundancy and inconsistency with other efforts in this field, namely in the context of the Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination, and the Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies. They considered it unhelpful to engage in parallel negotiations on the subject »¹¹²⁰.

3.1.3. Peace education and training

The right to education on peace and human rights is deeply rooted in international human rights instruments (i.e. the Universal Declaration of Human Rights¹¹²¹, the UN Convention on the Rights of the Child¹¹²², the ICESCR¹¹²³) and the Declaration on the Preparation of Societies for Life in Peace¹¹²⁴. At the regional level, reference should be made to the 2000 Dakar Framework

include the establishment of adequate mechanisms to ensure redress for individuals injured by the action of private military and security companies.

1120 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 54-55

1121 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".

1122 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.

1123 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".

1124 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".

for Action, Education for All¹¹²⁵ and the Protocol of San Salvador on Economic, Social and Cultural Rights¹¹²⁶).

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 security¹¹²⁷.

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 ..." ¹¹²⁸ 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..."¹¹²⁹.

Additionally, the Declaration and Programme of Action of Vienna emphasized the obligation to facilitate access to education for people with disabilities¹¹³⁰, vulnerable groups –in particular migrant workers-¹¹³¹ and women¹¹³². As to the human rights education, the Declaration should promote the values of peace, social justice, democracy, tolerance and development¹¹³³.

1125 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".

1126 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".

1127 Report submitted by the Special Rapporteur on the Right to Education, Mr. Vernor Muñoz Villalobos, E/CN.4/2006/45, 8 February 2006, par. 18

1128 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, art. 33

1129 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, art. 33

1130 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..."

1131 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"

1132 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..."

1133 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

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..."¹¹³⁴.

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"¹¹³⁵. 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)¹¹³⁶.

The Advisory Committee Declaration on the right to peace stressed 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, they recognised 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 censorship¹¹³⁷.

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...."

1134 Report of the Director-General of the UNESCO entitled on "Towards a culture of peace", Doc. A/51/395, 23 September 1996, para.22

1135 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 4

1136 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, 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"

1137 **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

In the seventh session of the Advisory Committee, held at the Palais des Nations (Geneva) from 8 to 12 August 2011, **Uruguay** proposed to include a reference to tolerance and the right to education¹¹³⁸.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "... there was broad consensus in the Working Group to support the inclusion of a provision concerning peace education and training, which were described as a central component of the present draft. A number of delegations highlighted the vital importance of peace education and training for bringing about a culture of peace. Peace education and training should not only focus on development, but should also contribute to changing the conduct of everyone. Several non-governmental organizations stressed the enabling and empowering nature of education. Some delegations felt nevertheless that article 4 needed redrafting in the interest of succinctness and greater clarity. It was felt by some that paragraph 5 was too prescriptive for States and that the reference to the revision of national laws and policies was not relevant here. Non-governmental organizations encouraged the inclusion of peace education in every educational system, and the need to train teachers on peace education was also highlighted. Some delegations felt that it was important to refer to another existing relevant and complementary instrument, the United Nations Declaration on Human Rights Education and Training, adopted by the UNGA in its resolution 66/137 of 19 December 2011, and to specific elements contained in that Declaration, including awareness-raising campaigns, mass media, the private sector and others. On the other hand, while it was recognized that human rights education and training was a subject of another United Nations declaration, it would be difficult to find any added value in duplicating work already carried out in the context of UNESCO. The pertinence of the prohibition of war propaganda was also highlighted. The issue of censorship as referred to in paragraph 3 was also debated, and certain delegations acknowledged that the right to access information without censorship was not an absolute right, and that limitations were legitimate in certain cases. A number of delegations

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:

(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.

1138 *Ibidem* n. 769

suggested using the previously agreed language “racism, racial discrimination, xenophobia and related intolerance” instead of just “xenophobia”¹¹³⁹.

In its informal consultations conveyed by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October to 4 November 2013, the EU said there are other main themes to be considered (i.e. the linkages between peace and human rights, ways of increasing states' capacity of protecting human rights within their jurisdiction, education measures). USA indicated that the Declaration should be addressed how the prevention measures to be taken by States can prevent human rights violations and abuses (i.e. human rights education).

The joint NGO written statement A/HRC/8/NGO/33 entitled “Right to Education on Peace and Human Rights” stated that taking into account that the right to education cannot be viewed in isolation, it can be concluded that the fulfillment of the right to education would allow the enjoyment of, *inter alia*, the right to freedom of opinion and expression and the right to participation¹¹⁴⁰ of all human beings in a more just society. As stressed in several international human rights instruments, education should be directed not only to the full development of the human personality and the respect of human rights and fundamental freedoms, but also to the promotion of mutual understanding and respect, gender equality, friendship among all nations, racial or religious groups and the maintenance of peace¹¹⁴¹. The right to education requires enforceable individual entitlements to education, safeguards for human rights in education and instrumentalization of education to the enjoyment of all human rights through education. As stated by UNESCO, “the inclusion of human rights in education is a key element of a quality education”¹¹⁴². Thus, richly endowed education systems may be faulted for their failure to halt intergenerational transmission of racism or xenophobia¹¹⁴³. It follows that a successful human rights education system should be able to eliminate any and all types of inequality, exclusion or discrimination based on prejudices, bias and discriminations transmitted from generation to generation. As stated by the current 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 security¹¹⁴⁴. As stressed by the United Nations, the exclusion of the poorest from education perpetuates social inequalities in many parts of the world¹¹⁴⁵. Denial of the right to education leads to denial of other human rights and the perpetuation of poverty. It could be concluded that the recognition and enforcement of this fundamental human right is vital to creating stable and prosperous societies. As highlighted by the UNESCO *Declaration*

¹¹³⁹ Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 49-53

¹¹⁴⁰ Report submitted by the Special Rapporteur on the Right to Education, Mr. Vernor Muñoz Villalobos, E/CN.4/2005/50, 17 December 2004, par. 66

¹¹⁴¹ Article 26.2 of the Universal Declaration on Human Rights, article 29.1 of the UN Convention on the Rights of the Child, article 13 of the International Covenant on Economic, Social and Cultural Rights and article 13.2 of the Protocol of San Salvador on Economic, Social and Cultural Rights

¹¹⁴² UNESCO Executive Board, Elements for an overall UNESCO strategy on human rights, (165 EX/10) para. 31

¹¹⁴³ Report submitted by the by the late Special Rapporteur on the Right to Education, Ms Katarina Tomasevski, E/CN.4/2004/45, 15 January 2004, par. 53; DANIELI, Y. (Ed.), *International Handbook of Multigenerational Legacies of Trauma*, New York, Kluwer Academic/ Plenum Publishing Corporation, 1998

¹¹⁴⁴ Report submitted by the Special Rapporteur on the Right to Education, Mr. Vernor Muñoz Villalobos, E/CN.4/2006/45, 8 February 2006, par. 18

¹¹⁴⁵ United Nations, *1985 Report on the World Social Situation*, New York, 1985, Sales No. E.85.IV.2, p. 34

and *Integrated Framework of Action on Education for Peace, Human Rights and Democracy*¹¹⁴⁶, education should develop non-violent conflict resolution through the promotion of peace, tolerance, solidarity, compassion, sharing and caring. Consequently, human rights education should be aimed at building a universal culture of human rights through the encouragement and promotion of attitudes directed to peace building and maintenance¹¹⁴⁷. Education, both formal as 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 transformation¹¹⁴⁸.

3.1.4. Fight against racism, racial discrimination, xenophobia and related intolerance

As requested in Article 4 of *the International Convention on the Elimination of All Forms of Racial Discrimination*¹¹⁴⁹, 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 18¹¹⁵⁰ 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 elimination of all forms of racism, racial discrimination, xenophobia and related intolerance is one of the most important purposes to realize by the international community in order to fully enjoy human rights and culture of peace¹¹⁵¹.

¹¹⁴⁶ Declaration on the 44th session of the International Conference on Education (Geneva, October 1994) endorsed by the General Conference of UNESCO at its twenty-eight session, Paris, November 1995, par. 9

¹¹⁴⁷ OHCHR, *The Plan of Action for the First Phase (2005-2007) of the World Programme for Human Rights Education*, Geneva, 2005

¹¹⁴⁸ Dakar Framework for Action, *Education for all: meeting our collective commitments*. Text adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000, goal 6

¹¹⁴⁹ Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969

¹¹⁵⁰ **Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) of 27 May 2008, pp. 234-236 (Spanish text)**

¹¹⁵¹ Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 15: “... The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts in cooperating and coordinating their activities against these evils”; Art. 19: “The World Conference on Human Rights considers the elimination of racism and racial discrimination, in particular in their institutionalized forms such as apartheid or resulting from doctrines of racial superiority or exclusivity or contemporary forms and manifestations of racism, as a primary objective for the international community and a worldwide promotion programme in the field of human rights. United Nations organs and agencies should strengthen their efforts to implement such a programme of action related to the third decade to combat racism and racial discrimination as well as subsequent mandates to the same end. The World Conference on Human Rights strongly appeals to the international community to contribute generously to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination”; art. 20: “The World Conference on Human Rights urges all Governments to take immediate measures and to develop

In its seventh session of the Advisory Committee, held at the Palais des Nations (Geneva) from 8 to 12 August 2011, **Bolivia** expressed its concern about the lack of inclusion of indigenous peoples in various articles of the text. **Pakistan** stated that the draft Declaration has no reference to religious intolerance, negative stereotyping, stigmatization of and discrimination, incitement to violence, and violence against persons based on religion or belief. Recent incidents of religious intolerance and disrespect of religions have once again underscored the need to combat such ever increasing trends with political, administrative and legal means without any delay¹¹⁵².

In its eighth session, held at the Palais des Nations (Geneva) from 20 to 24 February 2012, **Uruguay** suggested that the right to truth should be included in the draft Declaration as already suggested by NGOs and a reference to indigenous peoples as vulnerable groups should be understood merely as an example without excluding any other type of vulnerable groups¹¹⁵³.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "...there was an overall understanding to adopt a general approach when discussing the principles contained in the article. There was a recommendation to delete any reference to individual groups as outlined in the third paragraph. Others stressed the importance of incorporating concepts that enjoyed international consensus. Several delegations preferred to incorporate the language found in the Vienna Declaration and Programme of Action, particularly when referencing, inter alia, racism, racial discrimination and xenophobia. It was indicated that the United Nations framework and regional human rights treaties provided remedies for victims of human rights violations. Reference was made to the current work undertaken by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. Ratification of the Rome Statute of the International Criminal Court was encouraged»¹¹⁵⁴.

In the informal consultations conveyed by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October to 4 November 2013, the said that there are some themes included in both the first AC draft and

strong policies to prevent and combat all forms and manifestations of racism, xenophobia or related intolerance, where necessary by enactment of appropriate legislation, including penal measures, and by the establishment of national institutions to combat such phenomena"; Art. 21: "The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to appoint a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The World Conference on Human Rights also appeals to all States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to consider making the declaration under article 14 of the Convention"; art. 22: "The World Conference on Human Rights calls upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion. The Conference also invites all States to put into practice the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief"; *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 3.1: "The fuller development of a culture of peace is integrally linked to ... eliminating all forms of racism, racial discrimination, xenophobia and related intolerance"

1152 *Ibidem* n. 769

1153 *Ibidem* n. 769

1154 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, Par. 73-75

your list, which are not helpful in this context (i.e. racism). The USA believed that three areas could be addressed: 1) How the promotion and protection of existing human rights contributes to peace: women's human rights, access to justice and the rule of law, non-discrimination in the progressive realization of economic, social and cultural rights; 2) how the enforcement of rights of members of vulnerable groups contributes to peace (i.e. the ensuring of members of vulnerable groups have meaningful access to the structures and benefits of their societies and the consultations in the context of indigenous people) ; 3) How the prevention measures to be taken by States can prevent human rights violations and abuses (i.e. transparency, the role of civil society and human rights defenders).

The joint NGO written statement A/HRC/10/NGO/113 entitled “Human right to peace versus racism, racial discrimination, xenophobia and other forms of intolerance” stated that in recent years the reported acts of incitement to racial, ethnic and religious hatred have dramatically increased in the world. In all Continents vulnerable communities, especially members of minorities, are victims of public utterances calling for intolerance and discrimination and, in some cases, physical and psychological violence. They are often associated with certain types of crimes, such as drug trafficking, illegal immigration, pick-pocketing or shoplifting¹¹⁵⁵. Furthermore, as a result of the overriding focus on prioritizing security over the international human rights law in the prevailing political context, treatment of immigrants, refugees and asylum-seekers is characterized by suspicion that they may be dangerous¹¹⁵⁶. 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 differences¹¹⁵⁷. 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 peace¹¹⁵⁸ and therefore to the human right to 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. Although societies are the outcome of lengthy historical processes involving contact between peoples, cultures and religions, the central problem of most modern societies lies in the fundamental contradiction between the framework of the nation state, the expression of an exclusive national identity and the dynamic of multiculturalization¹¹⁵⁹. 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 religions¹¹⁶⁰. This new social vision should lead to peace. The concept of clash of civilizations, cultures, ethnic identities or religions has been the new front of the cold war theorists. This ideology has not only shaped the world view of a growing number of influential politicians and media leaders, but it also became a new paradigm for some

¹¹⁵⁵Report submitted by Mr Doudou Diène, former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E/CN.4/2004/18, 21 January 2004, par. 8

¹¹⁵⁶Report submitted by Mr Doudou Diène, A/HRC/7/19, 20 February 2008, par. 51 and 65

¹¹⁵⁷Report submitted by Mr. Doudou Diène, *supra* note 3, par. 5

¹¹⁵⁸Report submitted by Mr Doudou Diène, E/CN.4/2006/54, 13 January 2006, par. 5

¹¹⁵⁹Report submitted by Mr Doudou Diène, Addendum E/CN.4/2006/16, 18 January 2006, par. 29-30

¹¹⁶⁰Report submitted by Mr Doudou Diène, , E/CN.4/2003/24, 30 January 2003, par. 13-15

intellectuals and academics. The ideological paradigm was based both on the use of the defence of national identity and security¹¹⁶¹, and the creation of an enemy in the process of the construction of a national identity. 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 understanding¹¹⁶²; 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 Action¹¹⁶³. 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 dialogue¹¹⁶⁴. Nevertheless, racial discrimination and xenophobia will rise dramatically up in our societies unless States would adopt effective measures designed to correct persistent forms of structural racism and to eradicate social inequalities which represent the legacy of slavery and colonialism, and feed poverty. 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 peace¹¹⁶⁵, 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”¹¹⁶⁶. 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 ...”¹¹⁶⁷. As we are approaching the 15th Anniversary of the Beijing Declaration and Programme of Action, it should be reaffirmed that all forms of gender-based violence should be eliminated. Moreover, gender-based violence, such as battering and other domestic violence, sexual abuse, sexual slavery and exploitation, and international trafficking in women and children, prostitution, pornography and sexual harassment, are often aggravated by or resulting of racism, cultural prejudice, racial discrimination and xenophobia¹¹⁶⁸. 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. 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

¹¹⁶¹Report submitted by Mr. Doudou Diène, *supra* note 1155, par. 56

¹¹⁶²Report of the Regional Preparatory Meeting for Africa for the Durban Review Conference (Abuja, 24-26 August 2008), A/CONF.211/PC.3/4, 3 September 2008, par. 10 and 18

¹¹⁶³Report of the Regional Conference for Latin America and the Caribbean, Preparatory to the Durban Review Conference held in Brasilia on 17-19 June 2008, A/CONF.211/PC.3/3, 29 September 2008, par. 20

¹¹⁶⁴Compilation of conclusions and recommendations adopted by the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action, doc. A/CONF.211/PC.2/7, 15 April 2008, par. 19

¹¹⁶⁵Durban Declaration and Programme of Action, Preamble, par. 21

¹¹⁶⁶Reports of preparatory meetings activities at the international, regional and national levels, Durban Review Conference, Preparatory Committee, A/CONF. 211/PC.3/5, 10 October 2008, p. 7, par. 10

¹¹⁶⁷*Ibidem*, p. 1161, paragraph 29

¹¹⁶⁸Beijing 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), par. 225

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 prevailing¹¹⁶⁹. This is in flagrant violation of the Charter of the United Nations and relevant international human rights treaties. To efficiently implement main human rights standards, States should promote dialogue among cultures and religions, enhance respect for the dignity of peoples of diverse racial origin and belief, including indigenous peoples and people of African descent; and finally, promote the human right to peace. As requested in Article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination*¹¹⁷⁰, 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 18¹¹⁷¹ 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. In addition, the Committee on the Elimination of Racial Discrimination requested States to take all necessary measures in order to avoid any form of discrimination against immigrants, in particular asylum-seekers of Roma origin¹¹⁷² and undocumented non-citizens¹¹⁷³.

The joint NGO written statement A/HRC/9/NGO/47 entitled “Indigenous peoples and the human right to peace” stated the right to peace as a fundamental human right has been recognized in the *United Nations Declaration on Human Rights of Indigenous Peoples* by indicating that the indigenous peoples have the right to live in freedom, peace and security¹¹⁷⁴. It was followed by the draft *American Declaration on the Rights of Indigenous Peoples*. The Working Group drafting the former Declaration recognised that the right to peace is a collective right with an individual dimension¹¹⁷⁵. Furthermore, the OAS Working Group of the above mentioned draft declaration underlined that indigenous peoples have both the right to peace and security, and the right to recognition and respect of their own institutions for the maintenance of international peace and security¹¹⁷⁶. Nevertheless, the persistent plight of indigenous peoples in many parts of the world continues to be an affront to humanity. It follows that the realization of the rights contained in the current human rights instruments, including the UN Declaration on Human Rights of Indigenous Peoples, could become a useful means so that an increasing number of the world’s indigenous peoples can truly live in dignity and peace¹¹⁷⁷. In the recent

¹¹⁶⁹ According to Yakin Ertürk, Special Rapporteur on violence against women, “the positive cultural elements should be emphasized, while the oppressive elements in culture-based discourses should be demystified”, paragraph 52, A/HRC/4/34, 17 January 2007

¹¹⁷⁰ Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969

¹¹⁷¹ Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) of 27 May 2008, pp. 234-236 (Spanish text)

¹¹⁷² General Recommendation XXVII on discrimination against Roma, Fifty-seventh session (2000), HRI/GEN/1/Rev.9 (Vol. II) of 27 May 2008, pp. 30-35 (Spanish text)

¹¹⁷³ General Recommendation XXX on discrimination against non-citizens, Sixty-fifth session (2005), *ibidem*, pp. 44-49 (Spanish text)

¹¹⁷⁴ Article 7 of the United Nations Declaration on Human Rights of Indigenous People, as adopted by resolution A/Res/61/295, of 2 October 2007

¹¹⁷⁵ Commission on Human Rights, Working Group on Indigenous People, Chairperson-Rapporteur: Luis Enrique Chávez (Peru), E/CN.4/2002/98, 6 March 2002, par. 56-59

¹¹⁷⁶ Article 30 of the draft *American Declaration on the Rights of Indigenous People*

¹¹⁷⁷ OHCHR, statement by Acting High Commissioner for Human Rights Kyung-Wha Kang, and S. James Anaya, the Special Rapporteur on human rights and fundamental freedoms of indigenous people on commemoration of the International Day of the World’s Indigenous People, 9 August 2008

decades Constitutions of numerous States have recognised indigenous peoples as specific groups of national population. In other States special laws have been enacted to protect their specificity. However, indigenous peoples are still being subject to forced assimilation, integration and the denial of their rights. As acknowledged by the *Programme of Action of the International Conference on Population and Development* (Cairo, 1994), the situation of indigenous peoples, which is often characterized by discrimination and oppression, has in many instances become institutionalized in laws and governance structures. **Racial discrimination** and other human rights abuses which indigenous peoples have endured and continue to suffer – including extrajudicial killings, enforced disappearance, torture, intimidation or harassment¹¹⁷⁸ –, have resulted in their marginalisation and social exclusion. As observed by José Martínez Cobo, the Special Rapporteur of the former Sub-Commission on the problem of discrimination against indigenous populations, “in many countries indigenous peoples are at the bottom of the socio-economic scale”¹¹⁷⁹. To close the gap as regards the disparities in human development, the *Durban Declaration and Plan of Action* urges States and international financial and development institutions to ensure that their policies and practices contribute to the eradication of racism through inclusive participation of all communities and groups in development projects¹¹⁸⁰. The *Beijing Declaration and Platform for Action of the Fourth UN World Conference on Women* of 1995 recognized the need to ensure full respect for the human rights of all women in general¹¹⁸¹, including indigenous women. As stressed by the former Special Rapporteur on indigenous peoples, “the threefold discrimination women suffer (for being women, indigenous and poor) marginalizes even further regarding economic and political sphere”¹¹⁸². Currently, many indigenous women are submitted to discriminatory practices within communities, such as forced marriages, frequent domestic violence, dispossession of property and other forms of male patriarchal domination. Moreover, women are often excluded from participative processes and decision-making on development projects and programmes in indigenous communities¹¹⁸³. Thus, taking into account that the realization of equal rights for women at all levels and in all areas of life contributes to the achievement of a just and lasting peace¹¹⁸⁴ their marginalization and discrimination impedes the social, economic and cultural development of the indigenous peoples as a whole. As included by the Preamble of the UN Convention on the right of the child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”. *A succession of UN Special Rapporteurs on the Sale of Children, Child Prostitution and Child Pornography*¹¹⁸⁵ as well as two World Congresses against the

¹¹⁷⁸ Report of the former Special Rapporteur on human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, A/HRC/4/32, 27 February 2007, par. 53

¹¹⁷⁹ José R. Martínez Cobo, Study of the problem of discrimination against indigenous populations (E/CN.4/Sub.4/1986/7 and Add.1-4. Addendum 4, containing the conclusions, proposals and recommendations of the Special Rapporteur, was issued as a United Nations Publication, Sales No. E.86.XIV.3

¹¹⁸⁰ A group of NGO entitled World Agency Racism Network (WARN), based on Geneva, is supporting the objective of the Durban Declaration and Programme of Action to promote global mobilisation against racism. They have included among objectives the promotion of the human right to peace.

¹¹⁸¹ Please, see the Convention on the Elimination of All Forms of Discrimination against Women

¹¹⁸² Report of the former Special Rapporteur on human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, supra n. 10, par. 67

¹¹⁸³ Report of the former Special Rapporteur on human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Doc. A/HRC/6/15, 15 November 2007, par. 55

¹¹⁸⁴ Decade for women: Equality, Development and Peace, *Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women*, A/RES/40/108, adopted on 13 December 1985

¹¹⁸⁵ Report submitted by Juan Miguel Petit, *UN Special Rapporteur on the Sale of Children, Child Prostitution and*

Commercial Sexual Exploitation of Children -respectively Stockholm 1996 and Yokohama 2001- has amply demonstrated the vulnerability of indigenous children to all forms of sexual and labour exploitation. Since **Education** is an indispensable tool that can help humankind, including indigenous peoples in particular, to move towards the ideals of peace, freedom and social justice¹¹⁸⁶, cultural diversity should be given paramount importance in any formal or informal educational system. Nevertheless, culture, languages, traditions and knowledge of indigenous peoples continue to be discriminated in the programmes, curricula and teaching methods of many countries. In addition, indigenous communities are occasionally forced to sacrifice important aspects of their identity and, in some cases, the underlying goal of State educational systems is to assimilate indigenous peoples into the dominant group¹¹⁸⁷. As stated by the UNESCO *Universal Declaration on Cultural Diversity*, “the 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”. In conclusion, not only should indigenous education be broadened at all levels of national education with anti-racist and multicultural methods that reflect respect for cultural, ethnic diversity and gender equality, but fair and equal access to a quality education should be provided to all. The spiritual and cultural link between the cultural identity of indigenous communities and their **ancestral lands** is often misunderstood by non-indigenous persons and is frequently ignored in the decision-making of many governments in the process of development. As stated by the *Human Rights Committee* (General Comment on Article 27 of ICCPR), “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the cases of indigenous peoples”¹¹⁸⁸. Although international human rights instruments recognise relationship between indigenous peoples and their lands, territories and resources, the insecurity of their land rights continues to be one of the major causes of instability among indigenous communities, in particular due to illegal practices by outside private corporations that usurp indigenous lands without negotiation, compensation and lack of social responsibility. As stressed by the *Committee on the Elimination of Racial Discrimination*, the world indigenous peoples have been, and are still being, deprived of their land and resources to commercial companies and State enterprises¹¹⁸⁹. The rapid deterioration of indigenous societies in many countries is due to the adoption of governmental practices which prioritize the economic or financial investment over the interests of the indigenous people. Therefore, as stated by article 32 of the United Nations Declaration “states should consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories”. As stated by Article 8 (j) of the UNESCO *Convention on Biological Diversity*, the conservation and sustainable use of biological diversity depends on knowledge, innovations and practices of indigenous and local communities. Thus, States should recognize the vital role of indigenous peoples in the environmental management and conservation of biological diversity, and foster their knowledge and their traditional methods of work in the sustainable use of biological resources. According to Principle 25 of the *Rio Declaration on Environment and Development*, adopted together with Agenda 21 by the Rio Earth Summit in 1992, “peace, development and environmental protection are interdependent and indivisible”.

Child Pornography, E/CN.4/2004/9, 5 January 2004, p. 118

¹¹⁸⁶ Report of the former Special Rapporteur on human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, E/CN.4/2005/88, 6 January 2005, par. 14

¹¹⁸⁷ *Ibidem*, par. 41-43

¹¹⁸⁸ Human Rights Committee, General Comment No. 23 on Article 27 of the International Covenant on Civil and Political Rights (CCPR/C/21/Rev.1/Add.5) adopted at its 1314th meeting (fiftieth session), 6 April 1994

¹¹⁸⁹ CERD, General Recommendation XXIII on Indigenous People, adopted in 1997, p. 3

Most **peace negotiations** with indigenous communities have only dealt with superficial issues. The roots of conflicts are seldom addressed and remain hidden only to re-emerge at a later time¹¹⁹⁰. The historical situation of land dispossession and social exclusion is not only the result of a larger picture of complex social problems related to a history of discrimination and marginalization, including poverty and unemployment¹¹⁹¹, but also the cause of tensions and conflict in many indigenous communities. To overcome these problems, the former Special Rapporteur on indigenous peoples indicated that “a fair and effective justice system is crucial in fostering reconciliation, peace, stability and development among indigenous peoples”¹¹⁹².

3.2. Rights to be exercised by individuals or groups

3.2.1. Right to conscientious objection to military service

The HRC decision 2/102 of 6 October 2006¹¹⁹³ and CHR resolutions 2004/35 of 19 April 2004¹¹⁹⁴ and 1998/77 of 22 April 1998¹¹⁹⁵, recognized the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in the Universal Declaration of Human Rights¹¹⁹⁶, the ICCPR¹¹⁹⁷ and General Comment No. 22 (1993) of the Human Rights Committee¹¹⁹⁸.

¹¹⁹⁰ See reports of the former Special Rapporteur on human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, on Guatemala (A/CN.4/2003/90, Add. 2, 24 February 2003), Mexico (A/CN.4/2004/80, Add. 2, 23 December 2003) and Colombia (A/CN.4/2005/88, Add. 2, 10 November 2004)

¹¹⁹¹ Report of the former Special Rapporteur on human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, A/CN.4/2006/78, Add. 4, 26 January 2006, par. 16

¹¹⁹² Report of the former Special Rapporteur on human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, A/CN.4/2004/80, 26 January 2004, par. 6

¹¹⁹³ On 6 October 2006, the HR Council decided without a vote "to transmit the views of the Sub-Commission on Promotion and Protection of Human Rights on the Human Rights Council's future expert advice mechanism to the Working Group established pursuant to Human Rights Council decision 1/104"

¹¹⁹⁴ Paragraph 3 "calls upon States that have not yet done so to review their current laws and practice in relation to conscientious objection to military service...."; and paragraph 4 "encourages States, as part of post-conflict-peace building, to consider granting and effectively implementing amnesties and restitutions of rights, in law and practices, for those who have refused to undertake military services on grounds of conscientious objection".

¹¹⁹⁵ The preamble of the resolution recognized that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives and that persons performing military service may develop conscientious objections. Paragraph 4 reminded "States with a system of compulsory military service, where such provision has not already been made, of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a noncombatant or civilian character, in the public interest and not of a punitive nature".

¹¹⁹⁶ Article 18 UDHR states that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".

¹¹⁹⁷ Art. 18 ICCPR states that "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice". In addition, Article 19.1 ICCPR states that "Everyone shall have the right to hold opinions without interference".

¹¹⁹⁸ Paragraph 11 of the General Comment states that "Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms

In addition, the OHCHR prepared an analytical report on conscientious objection to military service in accordance with HRC resolution 20/2. The report “sets out the international legal framework, with particular attention to new developments, for conscientious objection to military services, and includes information on the recognition of conscientious objection in international human rights law, the issue of its applicability to conscripts and those serving voluntarily, selective conscientious objection, the prohibition of repeated trial and punishment of unrecognized conscientious objectors, decision making processes and the right to information, alternative service, non discrimination between conscientious objectors, and the right to protection in international refugee law for conscientious objectors under certain circumstances. The report also contains information on best practices and remaining challenges in law and practice at the national level that relate to the above issues”¹¹⁹⁹.

On 27 September 2013, the HRC adopted without vote the resolution entitled “Conscientious objection to military service” by which “recognizes that the right to conscientious objection to military service can be derived from the right to freedom of thought, conscience and religion or belief”; “urges States with a system of compulsory military service, where such provision has not already been made, to provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature” and “urges States to respect freedom of expression of those who support conscientious objectors or who support the right of conscientious objection to military service”¹²⁰⁰.

The *World Conference on Human Rights* held in 1993 in Vienna called upon “all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion...”¹²⁰¹

The *Declaration and Programme of Action on a Culture of Peace* recognised freedom of expression as an element 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 ... respect for and promotion of the right of everyone to freedom of expression, opinion and information”¹²⁰².

The Advisory Committee Declaration on the right to peace highlighted in its standard on the right to conscientious objection to military service that States should have the obligation to prevent members of any military or other security institution from taking part in wars of aggression or other armed operations¹²⁰³.

under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief....”

1199 P. 1, Doc. A/HRC/23/22, Analytical report on conscientious objection to military service, Report of the High Commissioner for Human Rights, 29 April 2013

1200 Doc. A/HRC/24/L.23, Conscientious objection to military service, 23 September 2013

1201 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, art. 22

1202 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 1.h

1203 Article 5. Right to conscientious objection to military service

1. Individuals have the right to conscientious objection and to be protected in the effective exercise of this right.
2. States have the obligation to prevent members of any military or other security institution from taking part in

In its informal consultations convened by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October to 4 November 2013, **Morocco** indicated their reluctance to accept the inclusion in the text of the concept of contentious objection to military service, due to that these are problematic and do not enjoy from consensus at the international level.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "... many delegations asked for the deletion of any reference to the right to conscientious objection to military service due to the lack of international consensus on this issue, which, in their opinion, fell purely within the realm of the domestic legislation of each State. The subject was not considered relevant for the work of the Working Group and should not be examined further. A few delegations failed to see the value in duplicating discussions on an issue that had been addressed elsewhere, for example, by the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion or belief. It was recognized that conscientious objection to military service was subject to a sovereign decision of each State »¹²⁰⁴.

In its informal consultations conveyed by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October 31 to 4 November 2013, **Morocco** indicated showed their reluctance to accept the inclusion in the text of the concept of contentious objection to military service, due to that these are problematic and do not enjoy from consensus at the international level.

3.2.2. Resistance and opposition to oppression

The resistance to oppression is founded in the Preamble of the UDHR¹²⁰⁵ and was developed by the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (UNGA res. 2625 (XXV) of 24 October 1970) and other human rights instruments, which recognized inter alia the duty of every State to promote the realization of the right of peoples to self-determination¹²⁰⁶.

wars of aggression or other armed operations, whether international or internal, which violate the Charter of the United Nations, the principles and norms of international human rights law or international humanitarian law. Members of any military or other security institutions have the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms. The duty to obey military superior orders does not exempt from the observance of these obligations, and disobedience of such orders shall in no case constitute a military offence.

¹²⁰⁴Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 54-55

¹²⁰⁵The Preamble states that "... Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to **rebellion against tyranny and oppression**, that human rights should be protected by the rule of law..."

¹²⁰⁶The Declaration of Principles of International Law Concerning Friendly Relations states that "...Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and **self-determination of peoples**, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle".

Furthermore, other international human rights instruments recognized the right of peoples to self-determination, in particular Article 1 of the ICCPR and the ICESCR and the Declaration on the Right to Development¹²⁰⁷.

The right to resist oppression proposed by Cuba and Argentina to be incorporated as a right in the Universal Declaration of Human Rights was ultimately withdrawn in the recognition of the complex issues they raised. Similar proposals had been made at the Bogota Conference of Latin American States. Finally, it was decided to incorporate a brief reference to resistance to oppression in the Preamble of the UDHR rather than a separate right.

The Declaration and Programme of Action of Vienna of 1993 recognised 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”¹²⁰⁸

The *Declaration and Programme of Action on a Culture of Peace* recognised self-determination as an element of the culture of peace: “the fuller development of a culture of peace is integrally linked to ... realizing fully the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination...”¹²⁰⁹ and about the actions to promote sustainable economic and social development. It stressed the obligation to “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”¹²¹⁰.

The Advisory Committee Declaration on the right to peace highlighted in its standard on resistance and opposition to oppression that all peoples and individuals have the right to resist and oppose oppressive colonial, foreign occupation or dictatorial domination¹²¹¹.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), “...several delegations declared that they were not in favour of including a provision on resistance and opposition to oppression as worded by the Advisory Committee, objecting to controversial or ambiguous terms such as “dictatorial

1207 Article 1.2 of the Declaration on the Right to Development states that “the human right to development also implies the full realization of the **right of peoples to self-determination**, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources”.

1208 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, art. 2

1209 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 3.n

1210 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 10.j

1211 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.

domination” or “domestic oppression”. It was suggested to delete the article entirely. Other delegations opined that there was nevertheless some merit in mentioning, somewhere in the declaration, decolonization, the right of people to resist foreign occupation, and opposition by non-violent means, perhaps by rephrasing the article in a more positive way. It was also stated that many of these issues were addressed elsewhere, especially by the Special Committee on decolonization and in the context of the UNGA’s annual resolution on universal realization of the right of peoples to self-determination”¹²¹².

3.3. Rights and measures to be implemented by States as a value of the international community

3.3.1. Human security

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 Malnutrition¹²¹³, and the 2005 Outcome World Summit Document¹²¹⁴. In addition, it should be recalled the UN Secretary-General reports entitled "An agenda for peace. Preventive diplomacy, peacemaking and peacekeeping" of 1992¹²¹⁵ and "In Larger Freedom: Towards Development, Security and Human Rights for All" of 2005¹²¹⁶.

Additionally, it should be recalled that the concept of human security is closed linked with the right life. In particular, the Universal Declaration on the Eradication of Hunger and Malnutrition¹²¹⁷ and the Outcome World Summit Document¹²¹⁸ 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 ...”¹²¹⁹.

1212 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 60-61

1213 Principle h) states that “... **Peace and justice** encompass an economic dimension helping the solution of the world economic problems, the liquidation of under-development, offering a lasting and definitive solution of the food problem for all **peoples**...”

1214 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”

1215 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.

1216 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.

1217 Preambular paragraph a): “... the grave food crisis acutely jeopardizes the most fundamental principles and values associated with the right to life and human dignity ...”

1218 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...”

1219 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Art. 30

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”¹²²⁰ 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”¹²²¹.

The Advisory Committee links the notion of human security with freedom from fear and want in Art. 1 of the Declaration as follows: “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, 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”.

It follows that the UN expert body concentrates this notion with the right of everyone to be protected from genocide, war crimes, the use of force, the role of women in the prevention of conflicts, the fight against poverty and inequality, the democratic governance of military and related budgets and the strengthening of international rule of law¹²²².

In its seventh session of the Advisory Committee, held at the Palais des Nations (Geneva) from 8 to 12 August 2011, **Cuba** said there are some legal standards that deserve more detailed review and analysis. For example, Article 2 on human security. We believe that paragraph 3 of the Article could lead to misinterpretation and links it to the "responsibility to protect", a matter

1220 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 3

1221 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 10

1222 Art. 2 on human security:

- “2. All individuals have the right to live in peace so that they can develop fully all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence.
3. Everyone has the right to be protected from genocide, war crimes, the use of force in violation of international law, and crimes against humanity. If States are unable to prevent these crimes from occurring within their jurisdiction, they should call on Member States and the United Nations to fulfil that responsibility, in keeping with the Charter of the United Nations and international law.
4. States and the United Nations shall include in mandates of peacekeeping operations the comprehensive and effective protection of civilians as a priority objective.
5. States, international organizations, in particular the United Nations, and civil society shall encourage an active and sustained role for women in the prevention, management and peaceful settlement of disputes, and promote their contribution to building, consolidating and maintaining peace after conflicts. The increased representation of women shall be promoted at all levels of decision-making in national, regional and international institutions and mechanisms in these areas. A gender perspective should be incorporated into peacekeeping operations.
6. Everyone has the right to demand from his or her Government the effective observance of the norms of international law, including international human rights law and international humanitarian law.
7. Mechanisms should be developed and strengthened to eliminate inequality, exclusion and poverty, as they generate structural violence, which is incompatible with peace. Both State and civil society actors should play an active role in the mediation of conflicts, especially in conflicts relating to religion and/or ethnicity.
8. States should ensure democratic governance of military and related budgets, an open debate about national and human security needs and policies, defence and security budgeting, as well as accountability of decision makers to democratic oversight institutions. They should pursue people-oriented concepts of security, such as citizens’ security.
9. To strengthen international rule of law, all States shall strive to support international justice applicable to all States equally and to prosecute the crime of genocide, crimes against humanity, war crimes and the crime of aggression”.

that has been manipulated to be engaged in military adventures. Given that the international community has not agreed-upon limits, we should avoid any reference to this concept, because it could negatively affect the principles of sovereignty, territorial integrity, non-interference in the internal affairs of States and self-determination of peoples. **Pakistan** said that Art. 2.3 of the draft declaration attempts to introduce the notion of “responsibility to protect” with a view to protect populations from genocide, war crimes, the use of force in violation of international law, ethnic cleansing and crimes against humanity. We all know that discussions on the subject in the UNGA are at a very initial stage. It is important to recall that to-date, the only agreed framework and guidance on this issue is what is contained in paragraphs 138 and 139 of the 2005 World Summit Outcome Document. This was a delicate compromise considering the divergent views among the membership on this issue. Subsequent discussions in the UNGA have shown continuation of varying opinions, analysis and approaches to this issue. Keeping this perspective in mind, my delegation believes that it is premature to include this concept in the Declaration. In addition, they indicated that Art. 2.9 of the Draft Declaration contains a reference to the International Criminal Court. Since a large number of countries are not yet party to the Court, this reference is premature to be reflected in the Declaration. **Uruguay** noted that this article refers to the national security and human security as two isolated concepts. However, these concepts should be linked, since national security should strengthen human security. They suggested including a reference to discrimination as a cause of structural violence and the elimination of the causes of these phenomena. In this sense, the text is referred more to violence, as opposed to peace, that most basic issues, such as non-discrimination or discrimination against women¹²²³.

In its eighth session of the Advisory Committee, held at the Palais des Nations (Geneva) from 20 to 24 February 2012, **Cuba** stated that the human security cannot be an excuse to introduce the theory of the responsibility to protect. Russia stressed that the HR Council should not use the concept of human security to develop the responsibility to protect beyond the concept agreed on the 2005 Outcome Summit Document. **Uruguay** indicated that the concept of national security and human security appear as two isolated concepts, when these concepts should be linked, since national security strengthens human security. Moreover, they suggested that the gender approach to the maintenance of peace should go along with the suggestions provided by NGO¹²²⁴; discrimination as a source of structural violence should also be included to eliminate the causes of these phenomena¹²²⁵.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), “several delegations and non-governmental organizations pointed out that there was no universal definition of the concept of human security. The idea was currently being discussed in the UNGA. These delegations also asked for the deletion of ambiguous language and topics that did not enjoy international consensus. Other delegations noted that paragraphs 4, 5 and 8 were irrelevant to the declaration, while 1, 2 and 7 could be rephrased to make them applicable. The work currently being done by the Special Adviser on Human Security, among others, was highlighted. It was recommended that

1223 *Ibidem* n. 769

1224 Art. 12.3 of the Santiago Declaration: “States, international organizations, in particular the United Nations, and civil society shall facilitate the specific contribution of women to the prevention, management and peaceful settlement of disputes, and promote their contribution to building, consolidating and maintaining peace after conflicts. To this end, the increased representation of women shall be promoted at all levels of decision-making in national, regional and international institutions and mechanisms in these areas”.

1225 *Ibidem* n. 769

the Working Group avoid replicating the work being done by other United Nations forums or experts. It was also felt that many of the paragraphs contained ambiguous and ambitious language not based on any internationally agreed upon definition. Several delegations highlighted the link between security and the right to peace. They acknowledged that this nexus could not be considered without recognizing the issue of terrorism in general and its effects on the right to peace and human security in particular. Other delegations suggested that a reworded text could include language related to both the right to self-defence and combating terrorism. In this connection, it was suggested to include a reference to the fight against terrorism and the legal and legitimate exceptions related to the use of force as outlined in Article 51 of Chapter VII of the Charter of the United Nations. Other delegations highlighted the importance of respecting the principles of sovereignty and territorial integrity as established by the Charter of the United Nations¹²²⁶.

In its informal consultations convened by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October 31 to 4 November 2013, **Cuba** stated that the international community is not ready to go beyond the resolution on human security adopted by the UNGA. In case of that we can accept the human security; some delegations will try to incorporate the concept of responsibility to protect. The themes proposed the chairperson will need fine-tuning. The agreed in terms of that we are not creating new human rights. He said that there are some themes included in both the first AC draft and your list, which are not helpful in this context (i.e. human security, terrorism). **Morocco** indicated reluctance to accept the inclusion in the text of the concept of human security and responsibility to protect, due to that these are problematic and do not enjoy firm consensus at the international level. The **USA** stressed that as to the objections raised by Morocco and Cuba on the legal foundation of human security and responsibility to protect; they also expressed reluctance in regards to the right to development.

In accordance with the joint NGO written statement A/HRC/7/NGO/84 entitled “The eradication of extreme poverty as a condition to the full and effective enjoyment of the human right to peace”, extreme poverty is a universal and multidimensional phenomenon, which currently affects millions of people in both in rich and poor countries¹²²⁷. Thus, peace is not only economic and social justice, as important as it may be, it relies first on respect of the human dignity and self esteem of the poor¹²²⁸. As Mr. Leandro Despouy stated in 1996¹²²⁹ the lack of basic security, or the absence of one or more factors enabling families to assume basic responsibilities and to enjoy fundamental rights, leads to chronic poverty when it simultaneously affects several aspects of people’s lives, when it is prolonged and when it severely compromises people’s chances of regaining their rights and of reassuming their responsibilities in the foreseeable future. The lack of basic security destroys family ties and prevents people from taking responsibility for family planning and proper care of their children, thus increasing child mortality. Widespread extreme poverty inhibits the realization of human rights¹²³⁰ in general and political, civil, economic, social and cultural rights in particular¹²³¹.

¹²²⁶ Paragraph 42-44, Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador Christian Guillermet (Chairperson-Rapporteur), Doc. A/HRC/WG.13/1/2, 26 April 2013

¹²²⁷ Report submitted by Ms. M. Lizin, independent expert on human rights and extreme poverty, E/CN.4/2000/52, of 25 February 2000, paragraphs 10-11

¹²²⁸ 56th meeting of the Commission on human rights, E/CN.4/2003/L.11/Add.3, 22 April 2003, Paragraph 1.a

¹²²⁹ Final report submitted by the independent expert on human right and poverty to the Sub-Commission, E/CN.4/Sub. 2/1996/13, 28 June 1996, Annex III

¹²³⁰ Vienna Declaration and Programme of Action, World Conference on Human Rights, A/CONF. 157/23, 12 July 1993, paragraph 14

Today there exists a worldwide consensus that extreme poverty is the most global and permanent violation of human rights. People affected by chronic extreme poverty are at risk of becoming socially excluded from full participation in the society in which they live. Usually the poor, the unemployed, people belonging to ethnic minorities and other vulnerable groups remain “outsiders” and low in the social hierarchy¹²³². Moreover, the poor may express their despair and trauma through physical violence or conflict¹²³³. Thus, as stated by the Secretary-General of the United Nations, full realization of political, economic and social rights of all people is the solid way to maintain the social balance which is vital for a society to develop in peace. Conversely, war and the use of force may increase poverty since they hinder all aspects of development. To establish lasting peace, the right to enjoy the highest attainable standard of physical, mental and spiritual health should be central to creating and sustaining the capabilities that the poor need to escape from the scourge of poverty. As stressed by Mr. Paul Hunt, Special Rapporteur of the United Nations on the right to the highest attainable standard of health, ill health destroys livelihoods, reduces worker productivity, lowers educational achievement, limits opportunities and reduces human development¹²³⁴. A fundamental right which must be respected not only in times of peace but also in times of war, is the right to a minimum standard of living, including regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food supplies¹²³⁵. International human rights law is concerned particularly with vulnerable marginalised and minority groups who live in extreme poverty. The exponential increase in prostitution and trafficking of women and children is a perceptible reflection of the spread of poverty¹²³⁶.

3.3.2. Peacekeeping

United Nations peacekeeping missions are not the only protection actor on the ground. Moreover, they are not always deployed in contexts where civilians face serious risks. United Nations and other humanitarian organizations, including ICRC and various non-governmental organizations, play a long-established and critical role in seeking to enhance the protection of civilians in armed conflict, including in places that do not have a peacekeeping presence. States, the UN, its members and entities as well as the international community should recognize, scale up and support **unarmed civilian peacekeeping**. Civilians under threat of violent conflict have the right to physical protection and shall be offered unarmed civilian peacekeepers for their protection and in support of violence deterrence.

The World Conference on Human Rights held in Vienna in 1993 recognized “the important role of human rights components in specific arrangements concerning some peace-keeping

¹²³¹ GA resolution 53/146 of 8 March 1999, Human rights and extreme poverty, conclusion 3

¹²³² Report submitted by Mr. Arjun Sengupta, independent expert on human rights and extreme poverty, E/CN.4/2005/49, of 11 February 2005, paragraph 14

¹²³³ Report submitted by Ms. M. Lizin, independent expert on human rights and extreme poverty, E/CN.4/2001/54, of 16 February 2001, paragraph 93

¹²³⁴ Report submitted by Mr. Paul Hunt, independent expert on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2003/58, of 13 February 2003, paragraph 45 and 46

¹²³⁵ Report submitted by Mr. Jean Ziegler, Special Rapporteur on the right to food, E/CN.4/2002/58, of 10 January 2002, paragraph 72

¹²³⁶ Report submitted by Ms. M. Lizin, *supra* note 1222, paragraph 58

operations by the United Nations, 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”¹²³⁷.

The Advisory Committee Declaration on the right to peace highlighted in its standard on peacekeeping that peacekeeping missions and peacekeepers should comply fully with United Nations rules and procedures regarding professional conduct¹²³⁸.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), “...it was affirmed that peacekeeping missions were a necessary and valuable tool to support the right to peace. It was stressed that the Charter of the United Nations should act as the foundation for any discussions related to peacekeeping, which should not be considered exclusively within the context of United Nations peace missions. Others rejected the idea of incorporating the article since its language reflected negatively on peacekeepers and its inclusion would not provide added value. It was stated that human rights advisers had been included in peacekeeping operations and that those human rights components of peace missions were adequately guided and supported. Moreover, it was suggested that operational matters fell outside the mandate of the HRC »¹²³⁹.

In its informal consultations conveyed by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October to 4 November 2013, **Morocco** indicated their reluctance to accept the inclusion in the text of the concept of peacekeeping because they felt that these are problematic and do not enjoy firm consensus at the international level. The **USA** believed that issues like “peacekeeping” are already addressed in other forums.

3.3.3. Right to development

Several declarations and instruments support the relationship between development and peace, for instance, the Millennium Declaration¹²⁴⁰, the Declaration on the Right to Development¹²⁴¹ and the 2005 World Summit Outcome Document¹²⁴². In addition, a transformed partnership

1237 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, Preamble, art. 97

1238 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.

1239 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 62-63

1240 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**

1241 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”.

1242 The World Summit Outcome Document restated that **human rights, peace and development** are

based on equality between women and men is needed as a condition for people-centred sustainable development and world peace¹²⁴³. In addition, the role played by men and boys in advancing gender equality is vital¹²⁴⁴.

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 and cultural rights. It was adopted by a recorded vote of 34 in favour¹²⁴⁵ to 13 against¹²⁴⁶.

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”¹²⁴⁷.

Additionally, the Declaration and Programme of Action of Vienna focused the implementation of the right to development on the least developed countries¹²⁴⁸ and particular groups of people, such as women¹²⁴⁹, indigenous people¹²⁵⁰, minorities¹²⁵¹ and children¹²⁵².

interrelated and interdependent and that the fostering of one promotes the realization of the others.

1243 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

1244 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.

1245 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.

1246 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.

1247 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 10

1248 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”

1249 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....”

1250 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

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"¹²⁵³.

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"¹²⁵⁴. 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)¹²⁵⁵.

The Advisory Committee Declaration on the right to peace stressed in its standard on development that every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development and the right to the elimination of obstacles to the realization of the right to development¹²⁵⁶.

development..."

1251 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"

1252 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"

1253 Report of the Director-General of the UNESCO entitled on "Towards a culture of peace", Doc. A/51/395, 23 September 1996, para.11

1254 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 1

1255 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, 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"

1256 Article 9. Right to development

In its seventh session of the Advisory Committee, held at the Palais des Nations (Geneva) from 8 to 12 August 2011, **Cuba** said that as to the practical content of the right of peoples to peace, they agree with several of the areas identified in the draft declaration (i.e. development, disarmament and the environment). **Uruguay** considered that any reference to civil and political rights should be included. They also stated that this article should go in line with the terminology of the International Labour Organization. In addition to the reference to the work, there should also be included a reference to fair working conditions, which is named as decent work¹²⁵⁷.

In its eighth session, held at the Palais des Nations (Geneva) from 20 to 24 February 2012, **Cuba** said that it was also suitable to use the concept of development and not sustainable development. **Uruguay** suggested that the respect of civil and political rights should be linked with the promotion of development and that also the concept of sustainable development should be used to take measures to prevent negative environmental impacts and provide appropriate safeguards and peaceful settlement of disputes¹²⁵⁸.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "...several delegations emphasized the importance of the presence of the right to development in the draft declaration because of its direct link with the right to peace. Development, a key issue at the core of United Nations principles and activities, and peace were inextricably connected. A reference to the Declaration on the Right to Development should be included in the text of the draft declaration on the right to peace, which could eventually be reinforced in order to be more precise and robust on this important matter. It was noted that it would be more correct to discuss and use the word "development" rather than "sustainable development" because peoples were entitled to the realization of the right to full development and not only to sustainable development. Some delegations wished to include in paragraph 3 of article 9 additional elements, like coercive measures and sanctions, which prevented development and consequently affected the achievement of peace. Other delegations pointed out that article 9 contained redundant concepts which were largely dealt with in other forums, including ad hoc United Nations bodies, HRC mechanisms and

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.

1257 *Ibidem* n. 769

1258 *Ibidem* n. 769

international human rights standards. For instance, within the HRC, a specific special procedure mandate on extreme poverty and human rights existed and, in September 2012, the Council adopted the Guiding Principles on Extreme Poverty and Human Rights. Moreover, poverty was one of the targets included in the Millennium Development Goals (Goal 1 – Eradicate extreme poverty and hunger). In the same vein of other articles of the draft declaration, the issue of the right to development was a duplication of other initiatives within the HRC and other United Nations bodies”¹²⁵⁹.

In its informal consultations convened by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October 31 to 4 November 2013, **Cuba** stated that the Right to development should not be forgotten: peace is crucial for development. **Morocco** agreed to include the concept of the right to development and the interdependence of peace, human rights and development.

3.3.4. Environment

The relationship between right to peace, development and right to environment, as well as the obligation to ensure to present and future generations a life in peace and in harmony with nature, was recognized in the 1972 Stockholm Declaration¹²⁶⁰, the 1982 World Charter for Nature¹²⁶¹, the 1992 Convention on Biodiversity, the 1992 Rio Declaration on the Environment and Development¹²⁶², the 2002 Johannesburg Declaration on Sustainable Development¹²⁶³ and the outcome document of the 2012 Conference on Sustainable Development (“The future we want”)¹²⁶⁴.

On 28 March 2008, the HRC adopted its first resolution on “human rights and climate change” (res. 7/23) without vote by which the HRC showed its “concern that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights”; recognized “that climate change is a global problem and that it requires a global solution” and reaffirmed “the Charter of the United Nations, the Universal Declaration of Human Rights, the ICESCR, the ICCPR and the Vienna Declaration and Programme of Action”.

1259Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 65-68

1260Goal 6 states that “... for the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of **peace** and of worldwide economic and social development”.

1261The Preamble states that “competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of **peace** and cannot be achieved until mankind learns to live in peace and to forsake **war and armaments**.”

1262Principle 25 states that “**Peace**, development and environmental protection are interdependent and indivisible”

1263Principle 35 states that “we commit ourselves to act together, united by a common determination to save our planet, promote human development and achieve universal prosperity and **peace**”.

1264Principle 8 states that “we also reaffirm the importance of freedom, **peace** and security, respect for all human rights, including the right to development and the right to an adequate standard of living, including the right to food, the rule of law, gender equality, women's empowerment and the overall commitment to just and democratic societies for development”.

On 25 March 2009, the Council adopted resolution 10/4 “Human rights and climate change” without vote in which it, inter alia, notes that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights ...”; recognizes that the effects of climate change “will be felt most acutely by those segments of the population who are already in a vulnerable situation ...”, recognizes that “effective international cooperation to enable the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change ... is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts”, and affirms that “human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change”.

In September 2011, the HRC adopted its third resolution on “human rights and climate change,” resolution 18/22. This time, the resolution was tabled by the Philippines and Bangladesh, with the support of 43 co-sponsors including the Maldives, Germany, and Spain. Resolution 18/22 affirmed that human rights obligations, standards, and principles have the potential to inform and strengthen international and national policy making in the area of climate change, promoting policy coherence, legitimacy, and sustainable outcomes.

As indicated by the *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, “recent reports and studies identify climate change as a key challenge to global peace and stability. Equally, in 2007, the Security Council held a day-long debate on the impact of climate change on peace and security”. Moreover, it stressed that “... knowledge remains limited as to the causal linkages between environmental factors and conflict and there is little empirical evidence to substantiate the projected impacts of environmental factors on armed conflict”¹²⁶⁵.

The World Conference on Human Rights held in Vienna in 1993 reiterated “...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)”¹²⁶⁶ and “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”¹²⁶⁷.

The *Declaration and Programme of Action on a Culture of Peace* included environment as an action to promote sustainable economic and social development as follows: “incorporate capacity-building in development strategies and projects to ensure environmental sustainability, including preservation and regeneration of the natural resource base”¹²⁶⁸. Additionally, environment 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 ... efforts to meet the developmental and environmental needs of present and future generations”¹²⁶⁹.

1265 Doc. A/HRC/10/61, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, 15 January 2009, paragraph 61 and 64.

1266 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 36

1267 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 11

1268 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 10.f

1269 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 1.e

The Advisory Committee Declaration on the right to peace highlighted in its standard on environment that everyone has the right to a safe, clean and peaceful environment. States have the responsibility of mitigating climate change and shall take all the necessary measures to ensure development and protection of the environment¹²⁷⁰.

In its seventh session of the Advisory Committee, held at the Palais des Nations (Geneva) from 8 to 12 August 2011, **Cuba** said as to the practical content of the right of peoples to peace, we agree with several of the areas identified in the draft declaration (i.e. development, disarmament and the environment). **Uruguay** said the impact of international conflicts or disputes on the environmental issues should be mentioned¹²⁷¹.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "...some delegations expressed their concern about the lack of connection between the environment and the right to peace as the article was currently drafted. Furthermore, it was noted that the language used was confusing and inconsistent with agreed United Nations language. Many delegations indicated that the theme of the environment in the context of human rights was already being dealt with by HRC through its special procedures mechanisms, and expressed concern that such a provision would interfere and create duplication with regard to the work of the Council"¹²⁷².

In its informal consultations convened by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October to 4 November 2013, the EU agreed in terms of that we are not creating new human rights. He said that there are some themes included in both the first AC draft and your list, which are not helpful in this context (i.e. environment). The **USA** believed that issues like "environment" are already addressed in other forums.

1270 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.

1271 *Ibidem* n. 769

1272 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 70-71

3.3.5. Rights of victims and vulnerable groups

The components of this standard are the following, namely: the right of victims to an effective remedy¹²⁷³; rights of victims of enforced or involuntary disappearances which may amount to a crime against humanity¹²⁷⁴; the right of all persons deprived of their liberty to have the right to be treated humanely and to save conditions of living, under judicial supervision¹²⁷⁵; the protection of indigenous peoples¹²⁷⁶; and reference to the popular courts or tribunals of conscience and to institutions, methods, traditions or local customs of peaceful settlement of disputes¹²⁷⁷.

The *World Conference on Human Rights* held in Vienna in 1993 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

1273Article 8 UDHR states that “Everyone has the **right to an effective remedy** by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

Art. 2.3 ICCPR states that “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity”

Article 6 of the **International Convention on the Elimination of All Forms of Racial Discrimination** states that “States Parties shall assure to everyone within their jurisdiction **effective protection and remedies**, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals **just and adequate reparation or satisfaction** for any damage suffered as a result of such discrimination.”

Article 14.1 of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** states that “Each State Party shall ensure in its legal system that the victim of an act of torture obtains **redress** and has an enforceable **right to fair and adequate compensation**, including the means for as full rehabilitation as possible....”

Article 83 of the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** states that “Each State Party to the present Convention undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**...”

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 (General Assembly resolution 60/147, 16 December 2005)

1274**International Convention for the Protection of All Persons from Enforced Disappearance**, Articles 18.2, 20.2 and 22.

1275Contribution of the **Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** to the Advisory Committee, 23 February 2013.

1276Article 40 of the **UN Declaration on the Rights of Indigenous Peoples** states that “indigenous peoples have the right... to **effective remedies** for all infringements of their individual and collective rights.

1277Article 164.f of the **Programme of Action on a Culture of Peace** states that the “access to legal remedies should be facilitated for victims of discrimination and, in this regard, the innovation of conferring a capacity on national and other institutions, as well as relevant non-governmental organizations, to assist such victims should be seriously considered, and programmes should be developed to enable the most vulnerable groups to have access to legal system”. In addition, article 164.g states that “**new and innovative methods and procedures of conflict resolution, mediation and conciliation** between parties involved in conflicts or disputes based on racism, racial discrimination, xenophobia and related intolerance should be explored and, where possible, established”.

Article 40 of the **UN Declaration on the Rights of Indigenous Peoples** states that “Indigenous peoples have the right... to effective remedies.... Such a decision shall give due consideration to the **customs, traditions, rules and legal systems** of the indigenous peoples concerned and international human rights.”

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 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 assistance¹²⁷⁸.

The *Declaration and Programme of Action on a Culture of Peace* also focused its attention on the actions to promote the rights of vulnerable groups and victims –in particular, women: “actions to advance understanding, tolerance and solidarity: ... support actions that foster understanding, tolerance and solidarity throughout society, in particular with vulnerable groups” and “actions to ensure equality between women and men: ... 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”¹²⁷⁹.

The Advisory Committee Declaration on the right to peace highlighted in its standard on rights of victims and vulnerable groups that 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. In addition, it recognised that every victim of a human rights violation has the right to know the truth, and to the restoration of the violated rights¹²⁸⁰.

In its seventh session of the Advisory Committee, held at the Palais des Nations (Geneva) from 8 to 12 August 2011, **Uruguay** considered that it should also make reference to the causes of the violation of the rights of victims¹²⁸¹.

In its eighth session, held at the Palais des Nations (Geneva) from 20 to 24 February 2012, **Argentina** proposed to further elaborate the concept of right to truth, justice and non-repetition. **Uruguay** suggested that the right to truth should be included in the draft Declaration as already suggested by NGOs¹²⁸² and a reference to indigenous peoples as vulnerable groups should be understood merely as an example without excluding any other type of vulnerable groups¹²⁸³.

1278 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 29

1279 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 12.f and 14.d

1280 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.

1281 *Ibidem* n. 769

1282 Art. 11.3 of the Santiago Declaration: "The victims of human rights violations, the members of their families and society in general have the right to know the truth, not subject to statutory limitations"

1283 *Ibidem* n. 769

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "...there was an overall understanding to adopt a general approach when discussing the principles contained in the article. There was a recommendation to delete any reference to individual groups as outlined in the third paragraph. Others stressed the importance of incorporating concepts that enjoyed international consensus. Several delegations preferred to incorporate the language found in the Vienna Declaration and Programme of Action, particularly when referencing, inter alia, racism, racial discrimination and xenophobia. It was indicated that the United Nations framework and regional human rights treaties provided remedies for victims of human rights violations. Reference was made to the current work undertaken by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. Ratification of the Rome Statute of the International Criminal Court was encouraged"¹²⁸⁴.

In its informal consultations conveyed by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October to 4 November 2013, **Argentina** did not like "transitional justice" and proposed to add "promotion of truth, justice, reparation and guarantees of non-recurrence". This is the name given to the mandate of the HRC. It would be very important to mention the prevention of genocide and its connection with peace. The **USA** found the idea of a roadmap commendable and agreed with Ecuador on the inclusion of themes such as "Protection of victims, especially women and children", and on having economic, social and cultural rights, and civil and political rights on the same footing.

3.3.6. Refugees and migrants

Migration and peace are thus closely related in accordance with the outcome of the **International Conference on Population and Development**¹²⁸⁵ and the **Program of Action of the World Summit for Social Development**¹²⁸⁶. In addition, **equality before the law** and **non-discrimination** in the enjoyment of human rights are structural principles of international human rights law¹²⁸⁷. Finally, the **Fourth World Conference on Women** in 1995 examined the situation of migrant women and called upon States to recognize their vulnerability as a consequence of violence and other forms of abuses¹²⁸⁸.

1284Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 73-75

1285 "poverty and environmental degradation, combined with the absence of peace and security, human rights violations and the varying degrees of development of judicial and democratic institutions are all factors affecting international migration". Doc. A/CONF.171/13, Cairo, 5-13 September 1994.

1286Social development is also clearly linked to the development of peace, freedom, stability and security, both nationally and internationally. A/CONF.166/9, Copenhagen, 14 March 1995.

1287Reference to these principles is to be found in the International Covenants on Human Rights, the Convention on the Rights of the Child, 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 Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Conventions No. 143 and 151 on migrant workers, ILO Convention concerning Migration for Employment, the UN Convention against Transnational Organized Crime and the outcome of the Durban Review Conference.

1288Beijing Declaration and Platform of Action, Fourth World Conference on Women, 15 September 1995,

The *World Conference on Human Rights* held in Vienna in 1993 expressed the obligation to develop strategies addressed to the root causes of the movement of refugees as follows: "... 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 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"¹²⁸⁹. 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"¹²⁹⁰.

The *Declaration and Programme of Action on a Culture of Peace* also focused its attention on the actions to promote the rights of refugees, displaced persons and migrants: "actions to advance understanding, tolerance and solidarity: ... 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; support actions that foster tolerance and solidarity with migrants" and "actions to promote international peace and security ... 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"¹²⁹¹.

The Advisory Committee Declaration on the right to peace stressed in its standard on refugees and migrants that States should place migrants at the centre of migration policies and management. In addition, it stressed that all individuals have the right to seek and to enjoy refugee status without discrimination¹²⁹².

A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), para. 46.

1289 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 23

1290 Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, art. 33-34

1291 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 12.f and 14.f, 16.f and g.

1292 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

In the seventh session of the Advisory Committee, held at the Palais des Nations (Geneva) from 8 to 12 August 2011, **Pakistan** stated that the draft Declaration has grouped two distinct categories i.e. refugees and migrants, that have different conceptual and operational dynamics. My delegation proposes to differentiate between these two categories. As far as the list spelling out the grounds for fear of persecution is concerned, the draft Declaration focuses on creating new grounds of fear of prosecution which are not covered under existing international protection instruments i.e. the 1951 Convention relating to the Status of Refugees and its Protocol of 1967. The five grounds of fear of prosecution are a) race, b) sex, c) religion, d) nationality and e) membership in a particular social group or political opinions. The 1951 Convention is the key legal document in defining who is a refugee, their rights and the legal obligations of States. **Uruguay** considered that this provision should be consistent with the Cartagena Declaration, which expands the definition of refugees. However, they disagreed with the relationship between structural violence and discrimination against migrants¹²⁹³.

In its eighth session, held at the Palais des Nations (Geneva) from 20 to 24 February 2012, **Uruguay** stated that forced movement of people and stateless persons should also be protected by the 1951 Geneva Convention relating to the status of refugees¹²⁹⁴.

As indicated by the report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace elaborated by Ambassador **Christian Guillermet** (Chairperson-Rapporteur), "...many delegations recognized that there was a human rights dimension in relation to refugees and migrants, regardless of their migration status. States should undertake to ensure that causes of underlying displacements of refugees and migrants were eliminated. However, numerous delegations expressed that there were more appropriate forums to address the elements of the article in an exhaustive and specific manner. It was felt that it would be preferable to include more general language when addressing this theme. Several delegations nevertheless indicated that it was unclear why the issue of migrants and refugees had to be included, while other categories of vulnerable groups, such as internally displaced persons, were excluded. Ultimately, the need to include an article on this subject in the draft declaration was questioned"¹²⁹⁵.

In its informal consultations convened by the Chairperson-Rapporteur of the open-ended intergovernmental Working Group, held at the Palais des Nations (Geneva) from 31 October to 4 November 2013, **Ecuador** said that migration is a serious matter but it can bring the discussion far away from the final objective of adopting a declaration on the right to peace. They preferred to focus more on internal displaced person and refugees.

The joint NGO written statement A/HRC/11/NGO/29 entitled "Human right to peace and migration" stated that Equality before the law and non discrimination in the enjoyment of human rights are structural principles of international human rights law which reaffirm the principle of dignity of human beings and are indispensable for establishing the international

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.

1293 *Ibidem* n. 769

1294 *Ibidem* n. 769

1295 Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace, *op. cit.*, note 807, par. 77-78

human rights law system¹²⁹⁶. The Inter American Court of Human Rights stated that the latter principles are norms of “*ius cogens* on which are based the whole legal national and international order and that permeate the entire law”¹²⁹⁷. The International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families of 1990 reiterates the principle of non discrimination and respect of all rights to migrant workers and their families (Art. 7). Part III of the Convention recognizes the rights to be granted to all migrants regardless of their regular or irregular status in the host country. The Convention grants them a broad range of civil, political, economic, social and cultural rights¹²⁹⁸. The principle of non-discrimination against immigrants should be enforced by those State Parties that have ratified the ICCPR of 1966¹²⁹⁹. Although arts. 2.1 and 26 of this latter international treaty do not expressly prohibit discriminatory measures against a person who may be a migrant worker (with or without papers), the clause contained in article 26 (the prohibition of discrimination on "other status") is so broad that it certainly includes the status of "migrant workers"¹³⁰⁰. Moreover, although article 1.2 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965¹³⁰¹ does not prohibit distinctions between “citizens and non citizens”, its committee has clarified that the difference in treatment based on citizenship or immigration status will constitute discrimination if the “criteria for such differentiation, judged in light of the objectives and purposes of the Convention, does not achieve a legitimate objective and is not proportional”¹³⁰². The Inter American Court of Human Rights had clarified that “the migratory status of a person can not constitute a justification for depriving him/her of the enjoyment and exercise of his/her human rights, including those of labour”¹³⁰³. Women and children constitute two groups particularly vulnerable to human rights violations when they become migrants. The Fourth World Conference on Women in 1995 examined the situation of migrant women and called upon States to recognize their vulnerability as a consequence of violence and other forms of abuses¹³⁰⁴. The indicated that both origin and destination countries should take appropriate legal measures against intermediaries that deliberately promote the clandestine movement of workers. According to this human rights body, intermediaries not only exploit women migrant workers but also violate

¹²⁹⁶ VILLÁN DURÁN, C., *Curso de Derecho internacional de los derechos humanos*, Madrid, Trotta, 2002 (reimpresión: 2006), 1028 p., at 96

¹²⁹⁷ Corte IDH: “Condición jurídica y derechos de los migrantes indocumentados”. Opinión Consultiva OC-18/03 de 17 de septiembre de 2003. Serie A No. 18, párr. 101

¹²⁹⁸ Arts. 8-35 of the Convention. The Convention has been ratified by 39 States

¹²⁹⁹ Ratified by 162 States

¹³⁰⁰ VILLÁN DURÁN, C., “Los derechos humanos y la inmigración en el marco de las Naciones Unidas”, in HIDALGO TUÑÓN (A.) y GARCÍA FERNÁNDEZ (R.) (coordinadores), *Ética, pluralismo y flujos migratorios en la Europa de los 25*. Oviedo, Eikasía Ediciones, 2005, 329 p. at 267-329.

¹³⁰¹ Ratified by 173 States

¹³⁰² CERD General Recommendation XXX (2005) relating to discrimination against non-citizens. Vid. doc. HI/GEN/1/Rev.9 (Vol. II), of 27 May 2008.

¹³⁰³ Consultative Opinion OC-18/03, of 17 de September 2003, on the legal status and the rights of undocumented migrants, cit., paras. 134 y 173, item 8 (opinion)

¹³⁰⁴ Beijing Declaración and Platform of Action, Forth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), para. 46

their human dignity¹³⁰⁵. The UNGA recalled that States should promote and safeguard human rights and fundamental freedoms of all migrants in accordance with international human rights law, whatever their immigration status, especially those of women and children¹³⁰⁶. The former Special Rapporteur on the human rights of migrants stressed the problem of violence against women migrant workers due to their double marginalization as women and as migrants¹³⁰⁷. There exists a high number of women who are obliged to cross borders and make long distances to engage in poorly paid work at home. It follows that they have a high risk of suffering situations of isolation and subordination, including physical or psychological violence. The kinds of abuse and violence suffered by women migrant workers include the withholding of their wages, acts of physical and sexual violence, undernourishment, the seizure of their passports, and the lack of medical and health care, among other abuses¹³⁰⁸. The Statistical Office of the International Labour Organisation noted in 2004 that there were 218 million children in situations of child labour, of whom 126 million performed hazardous work¹³⁰⁹. Many of them had left school as a result of emigration. The main factor behind the migration of child labour is poverty and family destitution. Because of their inexperience and age, children are taken on for badly paid and menial jobs, where they are particularly vulnerable to exploitation in the workplace, manual jobs and work in factories, and even sexual exploitation¹³¹⁰. To combat trafficking in persons, especially women and children, the current Special Rapporteur on the human rights of migrants¹³¹¹ appealed for States to ratify and implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children¹³¹². According to the Convention on the Rights of the Child, States are obliged not only to suppress and punish any act that violates the dignity of children, but also to prepare the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples¹³¹³. The outcome document of the Durban Review Conference, adopted on 24 April 2009, urged States to adopt a comprehensive and balanced approach to migration, “through the international dialogue on

¹³⁰⁵ Human Rights Commission Resolution 2002/58, on violence against women migrant workers, E/2002/23-E/CN.4/2002/200, 25 April 2002, para. 4

¹³⁰⁶ “Protection of migrant workers”, A/Res/60/169, 7 March 2006, para. 5

¹³⁰⁷ Report submitted by the Special Rapporteur, Mrs. Gabriela Rodríguez Pizarro, according to Human Rights Commission resolution 1999/44, on human rights of migrants E/CN.4/2000/82, 6 January 2000, paras. 55-56

¹³⁰⁸ Report submitted by the Special Rapporteur, Mrs. Gabriela Rodríguez Pizarro, *supra*, para. 63

¹³⁰⁹ International Labour Organization, *Child Labour Elimination: a goal that can be reached*, global report submitted according to the follow up of ILO Declaration on Fundamental Principles and Rights at Work 2006, Geneva, 2006, p. 11

¹³¹⁰ Report submitted by the Special Rapporteur, Mrs. Gabriela Rodríguez Pizarro, *supra*, para. 69

¹³¹¹ Report of Mr. Jorge Bustamante, Special Rapporteur on the human rights of migrants, A/HRC/7/12, 25 February 2008, para. 55

¹³¹² The Protocol to Prevent, Suppress and Punish Trafficking of Persons Especially Women and Children that supplements the United Nations Convention against Transnational Crime, **made in New York on 15 November 2000. Ratified by 43 States**

¹³¹³ 1989 Convention on the Rights of the Child, ratified by 193 States

migration, by developing real partnerships between countries of origin, transit and destination, and by exploring all possible synergies between the management of migration and the promotion of development, while fully taking into account the human rights of migrants” (paragraph 77).

3.4. Conclusions

As indicated previously, resolutions or declarations adopted by the United Nations can be understood as authoritative interpretation by the Assembly of the various principles contained in the United Nations Charter. The Preamble of the Charter stressed the linkage between the right to life and peace in the following terms: “...to practice tolerance and live together in peace with one another as good neighbours...”. The Human Rights Committee stated that to strengthen international peace would constitute 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.

Since Article 1 (2) of the UN Charter proclaims that the purpose of the United Nations is to “... take other appropriate measures to strengthen universal peace”, Member States should create the necessary mechanism aimed at maintaining the conditions of peace in the world. These actions would be a means to strengthen the positive notion of peace, which goes beyond the negative absence of the use of force by unifying the linkage between peace, human rights and development with the right to life.

In addition, 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”. 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...”. The Charter provides the United Nations with a strong mandate for preventing armed conflict.

Therefore, now is the time for the United Nations to adopt effective measures to eliminate and prevent conflicts across the earth. Among the possible preventive measures in the field of human rights, the HRC should coordinate the system of special procedures in order to monitor the human rights situation in countries and take all action to prevent war and armed conflict. Human rights violations are often a root cause of conflict and human rights are always an indispensable element in achieving peace and reconciliation. The priority of the special procedures is that the interests of justice, freedom and equality are served and to assist in ensuring that all human rights and dignity are protected.

All human beings will be able to live in full conditions of peace only when all human rights are respected and promoted and also when wars are gradually eliminated across the earth. The legal standards included in the Declaration on the right to peace elaborated by the AC would be a useful means to guide Governments, international organizations and civil society in their respective spheres of activities to ensure the enjoyment of life in peace and friendly relationships among all individuals, peoples and nations.

The human rights elements of the AC Declaration find their origin in the concept of human dignity and in particular in each component of this notion, namely: the principles of equality and non-discrimination, freedom from fear and want and justice and rule of law. These latter principles have inspired the drafting process of the Declaration. In particular, the standards

elaborated in the Declaration would be the following: prohibition of racism, human security, disarmament, peace education and training, the right to conscientious objection to military services, private military and security companies, resistance and opposition to oppression, peacekeeping, right to development, environment, rights of victims and vulnerable groups, refugees and migrants.

All the latter principles and legal standards were already included in the *Declaration and Programme of Action on a Culture of Peace* adopted by the GA in 1999 thanks to the efforts made by UNESCO. In accordance with Art. 1.1. of the Charter of UNESCO, “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...”.

Finally, it would be important to recall that in accordance with the UNGA resolution 59/26 on the commemoration of the Second World War of 22 May 2004, big progresses have been made since the end of the War in overcoming its legacy and towards reconciliation, international and regional cooperation and the promotion of democratic values, human rights and fundamental freedoms. Nevertheless, war and armed conflict continue killing thousands of people in the world. It follows that the United Nations should now mobilize all the human rights machinery, among other measures, to gain finally world peace.

Final conclusions of the thesis

After analysing the relationship between peace and human rights and the right to peace under international law and its legal debate before the main human rights bodies of the United Nations, this research work arrives at the following conclusions:

First conclusion: The United Nations is a response to the two world wars and the intention of the member States to suppress war. The maintenance of international peace and security is the most important goal of the United Nations. Recent practice has stressed the strong linkage and interdependence of peace and security with broader conditions of social development and human rights. Article 1 (2) of the UN Charter 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. It could safely be concluded that the broader meaning of peace deals with the generic causes of conflict. In addition, the Charter affirms 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.

Second conclusion: Since the creation of the United Nations, the UNGA has adopted several key Declarations and resolutions, by which it solemnly appeals to all States so that they resolve conflicts and disputes by peaceful means and it also reminds them of their obligations under the Charter. Outstanding endeavours have been undertaken by the international community to create an international order free of wars through the strengthening of mechanisms aimed to promoting the pacific settlement of disputes. 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.

Third conclusion: During the negotiation process of the *Universal Declaration of Human Rights* all governmental delegates recognized that the violation of human rights is one of the main causes of war. In addition, they stressed that the promotion of respect for human rights was closely linked to the maintenance of peace and security. The establishment and observance of human rights is placed first in the Charter among the objectives of the United Nations. Regarding the legal form, the Declaration should help to command the respect of people throughout the world and should be framed with a view to speedy adoption by the UNGA. Delegates agreed that the Declaration should immediately strike public opinion and serve as a guide to the future policies of States.

Fourth conclusion: The Preamble of the *Universal Declaration of Human Rights* recognizes that the inherent dignity and the equal rights of all persons is the foundation of freedom, peace and justice in the world. The declaration was inspired by a sincere desire for peace. The Declaration is based on the conviction that each man and woman must have freedom in order to develop one's personality to the full, and have one's dignity respected.

Fifth conclusion: The Covenants on Civil, Political, Economic, Social and Cultural Rights textually adopted in their respective Preambles the first recital contained in the Preamble of the *Universal Declaration of Human Rights*. In addition, they expressly recognized the linkage between the UN Charter and the concept of peace and human rights understood in the line of

the contributions received during the drafting process of the Charter and Declaration. In addition, other human rights instruments adopted by the UNGA stated in their preambles that discrimination, development and human rights play a crucial role in creating fair and equal societies founded upon freedom, justice and peace.

Sixth conclusion: The principles codified in Art. 2 of the Charter constitute the basic foundational principles of the whole body of international law (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). The promotion of human rights and peace are considered as essential purposes, whose realization should be jointly promoted by Member States in conjunction with the full respect of those principles included in the UN Charter. It follows that this perspective has been included in both national constitutions and regional instruments from Africa, Europe, Latin America, Asia and Muslim countries.

Seventh conclusion: The *Declaration on the Preparation of Societies for Life in Peace* of 1978 reaffirms and makes reference to the existing United Nations accomplishment aimed at fostering the principle of friendly relations and co-operation among States. In addition, it spells out the eight main principles, which will guide Member States in the preparation of societies for life in peace (i.e. recognition of the right to live in peace; qualification of wars of aggression as a crime against peace; prohibition of the propaganda of war; strengthening of cooperation on peace; respect of the right of self-determination of peoples, independence, sovereignty, territorial integrity and independence; elimination of the threat inherent in the arms race; discouragement of all manifestation and practices of intolerance, racism, racial discrimination, colonialism, apartheid and other violations of human rights and fundamental freedoms and discouragement of advocacy of hatred and prejudice). Both this *Declaration* and the *Universal Declaration of Human Rights* share the same legal ways aimed at widely promoting the peace values and principles contained in human rights law, by proclaiming teaching and education as key elements to develop more peaceful societies. The human rights dimension is a key element in the *Declaration*. The close linkage between the right to life and peace in its individual dimension can be found in its Art. 1, which indicates that “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”.

Eighth conclusion: In the *Declaration of the Right of Peoples to Peace* of 1984, most of the governmental representatives 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 set of principles contained in Art. 2 of the UN Charter. In addition, they also stressed that the respect of the latter principles should help to eliminate the scourge of war. Other governmental delegations stated that while peace is an indispensable condition of human survival, it cannot be peace at any price. Finally, another group of countries stressed that the right of peoples to peace has no legal basis. The reference to the population as “the peoples of our planet” shows the human masses as being more than individual citizens of various countries of the world. The human rights component, including individual or collective rights, was not properly reflected in the text. This Declaration is principally devoted to the relationship among countries and the condemnation of war, including nuclear war. As indicated by the Western European countries

on several occasions in the resolutions on the right of peoples to peace adopted by the GA, the CHR and the HRC, the text deals almost exclusively with the relations between states whereas it should focus on the relationships between states and their citizens and the obligation of states to respect human rights.

Ninth conclusion: In 1997 the Director-General of UNESCO 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 and its linkage with the Culture of Peace. During the general debate, Member States were unanimous regarding the existence of an indivisible link between all human rights and peace and also recognized that the Draft Declaration to be prepared would primarily be an ethical document designed to proclaim principles. There was not sufficient support to recognise the human right to peace.

Tenth conclusion: There is a close linkage between the standards included in the *Human Rights Council Advisory Committee draft Declaration on the right to peace* and the *Declaration and Program of Action of Culture of Peace*. In particular, all the main concepts (i.e. human security and poverty, disarmament, education, development, environment, vulnerable groups, refugees and migrants) proposed by the Advisory Committee were already included and later elaborated in the *Program of Action of Culture of Peace*, with the exception of conscientious objection, peacekeeping and private military companies. Thanks to the effort made by the AC in accordance with the mandate received from the HRC, the notion of the right to peace was positively enriched with the human rights perspective. In particular, the AC recognised in its draft Declaration on the Right to Peace the double dimension of this right, individual and collective. Nevertheless, this outstanding legal advancement has not created the sufficient maturity at the political level to declare the existence of the right of individuals to peace and finally also accept its collective dimension. The positions of some countries continue being the same since the beginning of the process.

Eleventh conclusion: The recent States' practices have not been of much help in the direction of strengthening the human rights dimension of this right. The concept of the right to peace has been explicitly included in several domestic Constitutions. However, these constitutional 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. These legal instruments have continued by using the notion of the right to peace in connection with the principles of friendly relations among nations, the peaceful settlement of disputes, the territorial integrity and the prohibition of the threat or use of force. Therefore, these regional instruments have explicitly recognized the right to peace as a collective right and always in connection to principles contained in Art. 2 of the UN Charter. Furthermore, there is an increasing case-law on the right to peace developed by some national Courts. However, the claimants who brought the case to the court, focused their attention only on the illegal use of force by some specific States in a context of war or conflict. The component of human rights was not properly included. In addition, recent oral and written positions of some countries delivered at the HRC have again stressed this collective dimension of the right to peace in the context of the prohibition of external intervention in domestic affairs. The concept of the right to peace included in both Constitutions and regional instruments, and used in some domestic Courts, is clearly elaborated in light of the "right of peoples to peace", elaborated by the 1984 Declaration.

Twelfth conclusion: Within the lively debate on the right to peace, which principally occurred at the HRC and its AC since 2008, those countries and other stakeholders in favour of the right

to peace could never convince those others, who did not recognize it. This deep division has existed and currently exists 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 Charter, and that the UN human rights instruments had not given proper expression to this enabling right. The Open Ended Working-Group on the right to peace concluded in its first session that there were some governmental delegations and other stakeholders, which recognize the existence of the right to peace as a soft law instrument. On the other hand, several other delegations stated that a stand-alone “right to peace” does not exist under international law. In their view, peace was not a human right, but above all a goal that could be best realized through the enforcement of existing human rights. These positions were always repeated in other human rights bodies and workshops.

Thirteenth conclusion: In accordance to the Preamble of resolution 60/251 of the Human Rights Council (HRC), 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. Because of human rights violations in conflict situations, the HRC has convoked several special sessions (i.e. Darfur, Myanmar, the Democratic Republic of the Congo, Cote d’Ivoire, Libyan Arab Jamahiriya and Central African Republic). 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 peoples. It is a forum for dialogue, not confrontation, which always works by and for the victims. Additionally, in accordance with the operative section of the resolution, the mandate of the HRC is to promote and protect human rights, but not 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 (i.e. right to life).

Fourteenth conclusion: A declaration adopted by the UNGA can be useful because they can help generate widespread and consistent state practice and/or provide evidence of *opinio juris* of a 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. Furthermore, in many cases, it may be advantageous for states to reach agreements with each other or through international organisations, which reflect a political intention to act in a certain way. As indicated previously, it should be noted that the right of peoples to peace in its collective dimension has been recognised in soft law instruments and also it has been elaborated by the GA, CHR and the HRC after 1984. Nevertheless, due to the lack of support of more than one-third of Member States of the United Nations, the implementation of the right of peoples to peace on the field of international law, and in particular on human rights, have been unfortunately very limited as we have studied. As indicated by the doctrine, the level of implementation of a declaration always depends on the degree of consensus around a declaration. The degree of support is always significant. A resolution adopted by consensus or by unanimous vote will necessarily carry more weight than one supported by only a two-thirds majority of States. As stated, the *Declaration on the Right of Peoples to Peace* and its subsequent resolutions have had a clear lack of support of important regional groups at the United Nations.

Fifteenth conclusion: In order to progressively eliminate armed conflict and war across the earth and consequently to live in a context of peace, the protection of human rights, development and dignity should be at the centre of all decision-making processes at both the

national and international levels. 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. It should be noted that human rights, peace and development are interdependent and mutually reinforcing and that in a context of war and armed conflict all human rights, in particular the right to life, are gravely violated

Sixteenth conclusion: Since we have not yet developed a society that is prepared to acknowledge and entirely reject war as an option, the international community has always elaborated international rules which limit the effects of war. In the latest years, civil society movements have promoted the adoption of important legal instruments aimed at protecting the population in a context of warfare and also limiting the trade and use of certain arms. Nowadays the international community has the legal resources to eliminate progressively war and armed conflicts across the earth through the respect of international law, the promotion of the culture of peace and the friendship among all peoples and nations. The United Nations should again proclaim that war is unlawful from the legal perspective, as well as, totally incompatible with peace and a clear abuse of human rights, and in particular the right to life.

Seventeenth conclusion: The promotion and protection of all human rights is an important legal tool aimed toward 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. 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 erupt.

Eighteenth conclusion: 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. Since the right to life should not be narrowly interpreted, it has traditionally been linked to peace and security matters. Therefore, the enabling right to peace would seem to be a derivative of the right to life rather than vice versa. As for the positional relationship between the two rights, it appears to have been correctly stated in the Preamble to the UDHR. The linkage between the right to life and peace can be found in its individual dimension in Art. 1 of the *Declaration on the Preparation of Societies for Life in Peace*, which states that “Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace”. 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 guaranteeing a better life for all human beings.

Nineteenth conclusion: Human dignity has become a ubiquitous idea and a central concern of international law. Human dignity can be divided into three components: “*intrinsic values*, which identify the special status of human beings in the world (i.e. right to life, equality and non-discrimination); *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 (i.e. freedom from want and fear); and *community value*, conventionally defined as the legitimate state and social interference in the determination of the boundaries of personal autonomy” (i.e. justice, rule of law and protection of victims).

Twentieth conclusion: The legal standards of the draft Declaration on the Right to Peace proposed by the Advisory Committee would be included in each of the main components of human dignity, namely: equality and non-discrimination, freedom from fear and want and justice and rule of law. These latter principles have inspired the drafting process of the

Declaration elaborated by the Advisory Committee. The whole range of human rights proposed as legal standards by the Advisory Committee Declaration finds its origin in the concept of human dignity. In particular, the standards elaborated in the Declaration would be the following: prohibition of racism, human security, disarmament, peace education and training, the right to conscientious objection to military services, the private military and security companies, resistance and opposition to oppression, peacekeeping, right to development, environment, rights of victims and vulnerable groups, refugees and migrants. All these elements and rights could become a useful guideline for governments, international organizations and NGO to promote the right to live in a context in which human rights, peace and development is fully respected and protected. In war and armed conflict all human rights, and in particular the right to life, are massively violated.

Twenty-third conclusion: The recognition of individuals as mandate-holders of the right to peace requires a legislative action by the United Nations. Before recognizing a right of individuals or collectivities, it is desirable that a widespread international custom has been previously elaborated by the international community. A marker of *international custom* is consensus among states exhibited both by widespread conduct and a discernible sense of obligation. International customary laws are norms that have become pervasive enough internationally that countries need not consent in order to be bound. In these cases, all that is needed is that the State, group of States or regional groups have not objected to the law. As we have seen previously, it has not been the case of the right to peace, because a large number of countries have constantly showed a clear disagreement about its existence in both the GA, the CHR and the HRC.

Twenty-fourth conclusion: 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. In addition, it should be noted that the *Declaration on the Preparation of Societies for Life in Peace*, was adopted by 138 votes to none, with two abstentions. This was not the case of the *Declaration on the Right of Peoples to Peace*. Therefore, instead of re-creating new rights without the necessary consensus or unanimity, the international community should progressively elaborate existing and already consolidated rights in international law. The United Nations does not need to re-invent the wheel, but only to elaborate the right to life in connection to peace, human rights and development. The right to live is the active exercise of the inalienable right to life, which has as its main purpose the full and free development of human dignity and personality. 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 at his disposal for this purpose. The elaboration of the right to life in this direction would help to further develop the right of everyone to live in a context in which the three pillars of the United Nations is fully respected. In fact, the right to live in peace is a holistic concept which goes beyond the strict absence of armed conflicts. It 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 effective respect for all human rights without discrimination. Finally, it should be recalled that in accordance with the provision III.2 of the *Declaration on the Preparation of Societies for Life in Peace*, Governments, the United Nations and the specialized agencies, in particular the UNESCO, as well as other interested international and national organizations, both governmental and non-governmental should adopt concerted action aimed at fully implementing the principles enshrined in the present Declaration.

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- Draft Resolution Concerning the Calling of An International Press Conference, submitted by the Delegation of the Philippine Commonwealth to the 1st Part of the 1st Session of the General Assembly, Doc. E/HR/4, 25 April 1946

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- Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, Doc. E/CN.4/82/ADD.12, 3 June 1948
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- 181st Plenary Meeting held on Friday, Doc. A/PV.181, 10 December 1948
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- UNGA Resolution 95 (I) on planning, preparation, initiation or waging of a war of aggression, 11 December 1946
- UNGA Resolution 110 (II) on Measures to be taken against propaganda and the inciters of a new war, 3 November 1947
- UNGA Resolution 375 (IV) on Draft Declaration on Rights and Duties of States, 6 December 1949
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- UNGA Resolution 1514 (XV) on Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960
- UNGA Resolution 2037 (XX) on Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, 7 December 1965
- UNGA Resolution 2106 (XX) on International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965
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- UNGA Resolution 155 (XXXII) on the Deepening and Consolidation of International Détente, 19 December 1977
- UNGA Resolution 486 (XXXIII) on Declaration on the Preparation of Societies for Life in Peace, 15 December 1978
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Annex I

United Nations
A/RES/33/73

15 December 1978

Original:

English

Resolution adopted by the General Assembly

33/73. Declaration on the Preparation of Societies for Life in Peace

The General Assembly,

Recalling that in the Charter the peoples of the United Nations proclaimed their determination to save succeeding generations from the scourge of war and that one of the fundamental purposes of the United Nations is to maintain international peace and security,

Reaffirming that, in accordance with General Assembly resolution 95 (I) of 11 December 1946, planning, preparation, initiation or waging of a war of aggression are crimes against peace and that, pursuant to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, of 24 October 1970,¹ and the Definition of Aggression of 14 December 1974,² a war of aggression constitutes a crime against the peace,

Reaffirming the right of individuals, States and all mankind to life in peace,

Aware that, since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed,

Recognizing that peace among nations is mankind's paramount value, held in the highest esteem by all principal political, social and religious movements,

Guided by the lofty goal of preparing societies for and creating conditions of their common existence and co-operation in peace, equality, mutual confidence and understanding,

Recognizing the essential role of Governments, as well as governmental and non-governmental organizations, both national and international, the mass media, educational processes and teaching methods, in promoting the ideals of peace and understanding among nations,

Convinced that, in the era of modern scientific and technological progress, mankind's resources, energy and creative talents should be directed to the peaceful economic, social and cultural development of all countries, should promote the implementation of the new international economic order and should serve the raising of the living standards of all nations,

Stressing with utmost concern that the arms race, in particular in the nuclear field, and the development of new types and systems of weapons, based on modern scientific principles and achievements, threaten world peace,

Recalling that, in the Final Document of the Tenth Special Session of the General Assembly,^{/3} the States Members of the United Nations solemnly reaffirmed their determination to make further collective efforts aimed at strengthening peace and international security and eliminating the threat of war, and agreed that, in order to facilitate the process of disarmament, it was necessary to take measures and pursue policies to strengthen international peace and security and to build confidence among States,

Reaffirming the principles contained in the Declaration on the Granting of Independence to Colonial Countries and Peoples, of 14 December 1960,^{/4} the Declaration on the Strengthening of International Security, of 16 December 1970 ^{/5} and the Declaration on the Deepening and Consolidation of International Detente, of 19 December 1977,^{/6}

Recalling the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, of 7 December 1965,⁷⁷

Further recalling the Universal Declaration of Human Rights, of 10 December 1948,^{/8} as well as the International Covenant on Civil and Political Rights, of 16 December 1966,^{/9} and bearing in mind that the latter states, inter alia, that any propaganda for war shall be prohibited by law,

I

Solemnly invites all States to guide themselves in their activities by the recognition of the supreme importance and necessity of establishing, maintaining and strengthening a just and durable peace for present and future generations and, in particular, to observe the following principles:

1. 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.
2. A war of aggression, its planning, preparation or initiation are crimes against peace and are prohibited by international law.
3. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.
4. Every State, acting in the spirit of friendship and good-neighbourly relations, has the duty to promote all-round, mutually advantageous and equitable political, economic, social and cultural co-operation with other States, notwithstanding their socio-economic systems, with a view to securing their common existence and co-operation in peace, in conditions of mutual understanding of and respect for the identity and diversity of all peoples, and the duty to take up actions conducive to the furtherance of the ideals of peace, humanism and freedom.

5. Every State has the duty to respect the right of all peoples to self-determination, independence, equality, sovereignty, the territorial integrity of States and the inviolability of their frontiers, including the right to determine the road of their development, without interference or intervention in their internal affairs.
6. A basic instrument of the maintenance of peace is the elimination of the threat inherent in the arms race, as well as efforts towards general and complete disarmament, under effective international control, including partial measures with that end in view, in accordance with the principles agreed upon within the United Nations and relevant international agreements.
7. Every State has the duty to discourage all manifestations and practices of colonialism, as well as racism, racial discrimination and apartheid, as contrary to the right of peoples to self-determination and to other human rights and fundamental freedoms.
8. Every State has the duty to discourage advocacy of hatred and prejudice against other peoples as contrary to the principles of peaceful coexistence and friendly co-operation.

II

Calls upon all States, in order to implement the above principles:

- a. 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;
- b. 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;

III

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;

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.

85th plenary meeting

15 December 1978

Annex II

United Nations
A/RES/39/11

12 November 1984

Original: English

Resolution adopted by the General Assembly

39/11. Declaration on the Right of Peoples to Peace

The General Assembly,

Reaffirming that the principal aim of the United Nations is the maintenance of international peace and security,

Bearing in mind the fundamental principles of international law set forth in the Charter of the United Nations,

Expressing 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,

Convinced 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,

Aware 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,

Recognizing that the maintenance of a peaceful life for peoples is the sacred duty of each State,

1. Solemnly proclaims that the peoples of our planet have a sacred right to peace;
2. Solemnly declares that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State;
3. Emphasizes 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 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. Appeals to all States and international organizations to do their utmost to assist in implementing the right of peoples to peace through the adoption of appropriate measures at both the national and the international

Annex III

United Nations
A/RES/53/243

13 September 1999

Original: English

Resolution adopted by the General Assembly

53/243. Declaration on a Culture of Peace

The General Assembly,

Recalling the Charter of the United Nations, including the purposes and principles embodied therein,

Recalling also the Constitution of the United Nations Educational, Scientific and Cultural Organization, which states that "since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed",

Recalling further the Universal Declaration of Human Rights /1 and other relevant international instruments of the United Nations system,

Recognizing that peace not only is 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,

Recognizing also that the end of the cold war has widened possibilities for strengthening a culture of peace,

Expressing deep concern about the persistence and proliferation of violence and conflict in various parts of the world,

Recognizing the need to eliminate all forms of discrimination and intolerance, including those based on race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status,

Recalling its resolution 52/15 of 20 November 1997, by which it proclaimed the year 2000 as the "International Year for the Culture of Peace", and its resolution 53/25 of 10 November 1998, by which it proclaimed the period 2001-2010 as the "International Decade for a Culture of Peace and Non-Violence for the Children of the World",

Recognizing the important role that the United Nations Educational, Scientific and Cultural Organization continues to play in the promotion of a culture of peace,

Solemnly proclaims the present Declaration on a Culture of Peace to the end that Governments, international organizations and civil society may be guided in their activity by its provisions to promote and strengthen a culture of peace in the new millennium:

Article 1

A culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on:

- 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; and fostered by an enabling national and international environment conducive to peace.

Article 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.

Article 3

The fuller development of a culture of peace is integrally linked to:

- 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,² 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.

Article 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.

Article 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.

Article 7

The educative and informative role of the media contributes to the promotion of a culture of peace.

Article 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.

Article 9

The United Nations should continue to play a critical role in the promotion and strengthening of a culture of peace worldwide.

13 September 1999

Annex IV

UNITED NATIONS/GENERAL ASSEMBLY: *Report of the Human Rights Council Advisory Committee on the right of peoples to peace*, doc. A/HRC/20/31, 16 April 2012

Third draft Declaration on the right to peace adopted by the Advisory Committee

Preamble

The Human Rights Council,

Reaffirming the common will of all people to live in peace with each other,

Reaffirming also that the principal aim of the United Nations is the maintenance of international peace and security,

Bearing in mind the fundamental principles of international law set forth in the Charter of the United Nations,

Recalling General Assembly resolution 39/11 of 12 November 1984, in which the Assembly proclaimed that the peoples of our planet have a sacred right to peace,

Recalling also the African Charter on Human and Peoples' Rights, which states that all peoples have the right to national and international peace and security,

Recalling further that 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,

Convinced that the prohibition of the use of force is the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the human rights and fundamental freedoms proclaimed by the United Nations,

Expressing the will of all peoples that the use of force must be eradicated from the world, including through full nuclear disarmament, without delay,

Adopts the following:

Article 1. Right to peace: principles

1. Individuals and peoples have a right to peace. This right shall be implemented without any distinction or discrimination for reasons of race, descent, national, ethnic or social origin, colour, gender, sexual orientation, age, language, religion or belief, political or other opinion, economic situation or heritage, diverse physical or mental functionality, civil status, birth or any other condition.

2. States, severally and jointly, or as part of multilateral organizations, are the principal duty-holders of the right to peace.

3. The right to peace is universal, indivisible, interdependent and interrelated.
4. States shall abide by the legal obligation to renounce the use or threat of use of force in international relations.
5. All States, in accordance with the principles of the Charter of the United Nations, shall use peaceful means to settle any dispute to which they are parties.
6. All States shall promote the establishment, maintenance and strengthening of international peace in 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.

Article 2. Human security

1. 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, 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 right to peace is related to all human rights, including civil, political, economical, social and cultural rights.
2. All individuals have the right to live in peace so that they can develop fully all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence.
3. Everyone has the right to be protected from genocide, war crimes, the use of force in violation of international law, and crimes against humanity. If States are unable to prevent these crimes from occurring within their jurisdiction, they should call on Member States and the United Nations to fulfil that responsibility, in keeping with the Charter of the United Nations and international law.
4. States and the United Nations shall include in mandates of peacekeeping operations the comprehensive and effective protection of civilians as a priority objective.
5. States, international organizations, in particular the United Nations, and civil society shall encourage an active and sustained role for women in the prevention, management and peaceful settlement of disputes, and promote their contribution to building, consolidating and maintaining peace after conflicts. The increased representation of women shall be promoted at all levels of decision-making in national, regional and international institutions and mechanisms in these areas. A gender perspective should be incorporated into peacekeeping operations.
6. Everyone has the right to demand from his or her Government the effective observance of the norms of international law, including international human rights law and international humanitarian law.
7. Mechanisms should be developed and strengthened to eliminate inequality, exclusion and poverty, as they generate structural violence, which is incompatible with peace. Both State and civil society actors should play an active role in the mediation of conflicts, especially in conflicts relating to religion and/or ethnicity.
8. States should ensure democratic governance of military and related budgets, an open debate about national and human security needs and policies, defence and security budgeting, as well as accountability of decision makers to democratic oversight institutions. They should pursue people-oriented concepts of security, such as citizens' security.
9. To strengthen international rule of law, all States shall strive to support international justice applicable to all States equally and to prosecute the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Article 3. Disarmament

1. States shall engage actively in the strict and transparent control of arms trade and the suppression of illegal arms trade.
2. States should proceed in a joint and coordinated manner and within a reasonable period of time to further disarmament, under comprehensive and effective international supervision. States should consider reducing military spending to the minimum level necessary to guarantee human security.
3. All peoples and individuals have a right to live in a world free of weapons of mass destruction. States shall urgently eliminate all weapons of mass destruction or of indiscriminate effect, including nuclear, chemical and biological weapons. The use of weapons that damage the environment, in particular radioactive weapons and weapons of mass destruction, is contrary to international humanitarian law, the right to a healthy environment and the right to peace. Such weapons are prohibited and must be urgently eliminated, and States that have utilized them have the obligation to restore the environment by repairing all damage caused.
4. States are invited to consider the creation and promotion of peace zones and of nuclear weapon-free zones.
5. All peoples and individuals have the right to have the resources freed by disarmament allocated to the economic, social and cultural development of peoples and to the fair redistribution of natural wealth, responding especially to the needs of the poorest countries and of groups in situations of vulnerability.

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:
 - (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.

Article 5. Right to conscientious objection to military service

1. Individuals have the right to conscientious objection and to be protected in the effective exercise of this right.
2. States have the obligation to prevent members of any military or other security institution from taking part in wars of aggression or other armed operations, whether international or internal, which violate the Charter of the United Nations, the principles and norms of international human rights law or international humanitarian law. Members of any military or other security institutions have the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms. The duty to obey military superior orders does not exempt from the observance of these obligations, and disobedience of such orders shall in no case constitute a military offence.

Article 6. Private military and security companies

1. States shall refrain from outsourcing inherently State military and security functions to private contractors. For those activities that may be outsourced, States shall establish a national and an international regime with clear rules regarding the functions, oversight and monitoring of existing private military and security companies. The use of mercenaries violates international law.
2. States shall ensure that private military and security companies, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international humanitarian law and international human rights law. They shall take such legislative, administrative and other measures as may be necessary to ensure that such companies and their personnel are held accountable for violations of applicable national or international law. Any responsibility attributable to a private military or security company is independent and does not eliminate the responsibility that a State or States may incur.
3. The United Nations shall establish, together with other international and regional organizations, clear standards and procedures for monitoring the activities of private military and security companies employed by these organizations. States and the United Nations shall strengthen and clarify the relationship and accountability of States and international organizations for human rights violations perpetrated by private military and security companies employed by States, intergovernmental and international non-governmental organizations. This shall include the establishment of adequate mechanisms to ensure redress for individuals injured by the action of private military and security companies.

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.

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.

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.

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.

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.

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.

Article 13. Obligations and implementation

1. The preservation, promotion and implementation of the right to peace constitute a fundamental obligation of all States and of the United Nations as the most universal body harmonizing the concerted efforts of the nations to realize the purposes and principles proclaimed in the Charter of the United Nations.
2. States should cooperate in all necessary fields in order to achieve the realization of the right to peace, in particular by implementing their existing commitments to promote and provide increased resources to international cooperation for development.
3. The effective and practical realization of the right to peace demands activities and engagement beyond States and international organizations, requiring comprehensive, active contributions from civil society, in particular academia, the media and corporations, and the entire international community in general.
4. Every individual and every organ of society, keeping the present Declaration constantly in mind, shall strive to promote respect for the right to peace by progressive measures, national and international, to secure its universal and effective recognition and observance everywhere.
5. States should strengthen the effectiveness of the United Nations in its dual functions of preventing violations and protecting human rights and human dignity, including the right to peace. In particular, it is for the General Assembly, the Security Council, the Human Rights Council and other competent bodies to take effective measures to protect human rights from violations that may constitute a danger or threat to international peace and security.
6. The Human Rights Council is invited to set up a special procedure to monitor respect for and the implementation of the right to peace and to report to relevant United Nations bodies.

Article 14. Final provisions

1. No provision of the present Declaration may be interpreted as conferring on any State, group or individual any right to undertake or develop any activity or carry out any act contrary to the purposes and principles of the United Nations, or likely to negate or violate any of the provisions of the Declaration or of those in international human rights law, international labour law, international humanitarian law, international criminal law and international refugee law.
2. The provisions of the present Declaration shall apply without prejudice to any other provision more propitious to the effective realization of the human right to peace formulated in accordance with the domestic legislation of States or stemming from applicable international law.
3. All States must implement in good faith the provisions of the present Declaration by adopting relevant legislative, judicial, administrative, educational or other measures necessary to promote its effective realization.

16 April 2012