

From a Culture of Conflict to a Culture of Peace, Human Rights and Development

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«We the Peoples of the United Nations determined
to save succeeding generations from the scourge of war [...]»
(Preamble of the Charter of the United Nations)

1. Introduction

In 2012, the Human Rights Council adopted Resolution 20/15 on «The Promotion of the Right to Peace». This resolution established an open-ended working group 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.

This paper will have as a purpose that of analysing the importance of consensus in the context of international custom as a prerequisite to creating new norms in international law. Additionally, the role played by general principles (i.e. peace) as a supplement to treaty and custom will also be studied. Furthermore, the relationship between peace and human rights will be analysed in accordance with the Charter of the United Nations and the Universal Bill of Rights. Afterwards, the main principles of international law will be also studied in the light of the different international, regional and domestic instruments. In addition, the leading role played by UNESCO in the promotion of peace, tolerance and friendship among nations will be also studied. In particular, the Declaration and Programme of Action on a Culture of Peace will be analysed in order to recall the importance of human rights in the promotion of peace and stress its close linkage with the Advisory Committee draft Declaration on the right to peace. Afterwards, the different competences between the Security Council and Human Rights Council on the field of human rights and peace and security

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will be also studied. Pursuant to Resolution 60/251 of 2006, the Human Rights Council should address situations of gross and systematic violations of human rights, even in a context of war and conflict, such as its special sessions have clearly shown in recent years. Additionally, the relationship between the right to life and peace will be also studied in the context of international law. Afterwards, the notion of human dignity and its legal subdivision into three main principles (i.e. equality and non-discrimination; justice and rule of law; and freedom from want and fear) will be also elaborated upon. In order to promote peace as a condition for the full enjoyment of human rights, different stakeholders should adopt positive measures and also enforce the principle of international cooperation in the field of human rights. In particular, the special procedures of the Human Rights Council, as early warning mechanisms aimed at helping to tackle the roots of conflicts, will be also analysed. Finally, taking into account that in situations of war and conflicts human rights and fundamental freedoms are massively violated, the Human Rights Council should give more visibility to victims and strongly condemn war and also openly reiterate our inalienable right to live in a context in which the three pillars of the United Nations (i.e. peace and security, human rights and development) are fully respected. In addition, the possibility of progressively creating a world free of wars and conflict will be also studied as a conclusion of the paper¹.

2. International Conventions, Customs and Principles

Article 38.1 of the Statute of the International Court of Justice (ICJ) describes the law to be applied by the ICJ when deciding cases within its jurisdiction. It is generally considered to be the most authoritative enumeration of the sources of international law. The Court recognises three main legal sources: firstly, *international conventions*, whether general or particular, establishing rules expressly recognised by the contesting states; secondly, *international custom*, as evidence of a general practice accepted as law and thirdly, the *general principles of law* recognised by civilised nations. Therefore, as indicated by the International Law Commission in 2002, there is a clear difference between the legal value of a norm and of a source².

¹ See in Annex 1 the main ideas presented in the introduction and further elaborated in the paper.

² 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.

International law is a process, even a system, in 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 treaties³.

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 give their 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 to them in order to be bound by them. In these cases, all that is needed is that the state, group of states or regional groups have not objected to the law.

One normative element of law, which most progressively supports the connotation of international law as a process are *general principles*. These principles are «an authoritative recognition of a dynamic element of international law, and of the creative function of the courts which may administer it»⁴. In law as a continuing process, they provide general principles for a «welcome possibility for growth»⁵, in which capacity they also contribute to the development of international law.

When classifying general principles as a supplement to treaty and custom, they are seen as a category of norms which usually comes after those depending more immediately on the consent of states⁶. 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»⁷. Similarly, Ben Cheng regarded the practice element to be unnecessary in the context of general principles when he stated: «In the definition of the third source of international law, there is also an element of recognition on the part of civilised peoples but the requirement of a general practice is absent»⁸. State practice, which is a requirement for custom, is not necessarily a precondition for general principles to emerge.

³ A.C. Voight, *The Role of General Principles in International Law and Their Relationship to Treaty Law*, in «RETFÆRD ÅRGANG», vol. 31, no. 2/121, 2008, p. 4.

⁴ J.L. Brierly, *The Law of the Nations: An Introduction to the International Law of Peace*, ed. by H. Waldock, Oxford, Clarendon, 1963, p. 63.

⁵ M. Bos, *The Recognized Manifestations of International Law*, in «German Yearbook of International Law», vol. 20, 1977, p. 42.

⁶ I. Brownlie, *Principles of International Law*, Oxford, Oxford University Press, 2003 (6th ed.), p. 15.

⁷ B. Simma, P. Alston, *The Sources of Human Rights Law: Custom, Jus Cogens and General Principles*, in «Australian Yearbook of International Law», vol. 12, 1991, p. 102.

⁸ B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, London, Stevens, 1953, p. 24.

General principles are complementary to treaty law and a supplement to it. It can guide lawmakers and shape the content of treaty law. In addition, «these principles sketch the context of the lawmakers' competence with regard to the policy path and direct the course of the law's passage. Especially in the absence of a central "lawmaker" in the international arena, "guidance" in a legislative context is of significant importance»⁹.

In general international law, the principles of non-interference in the affairs of other states, the prohibition of the threat or use of force, the peaceful settlement of disputes, respect for human rights, and the self-determination of peoples have been seen as playing a major role in forming the *constitutional principles* of the world community¹⁰. 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 General Assembly in 1970¹¹.

In addition, as indicated by Article 1(2) and (3) of the UN Charter, both the concept of peace and that of human rights are recognised as main purposes and principles of the United Nations.

3. The Relationship Between Peace and Human Rights

Article 1(2) of the Charter of the United Nations proclaims that the purpose of the United Nations is to «[...] take other appropriate measures to strengthen universal peace». In this provision peace or universal peace can be found separately from security. This notion is understood as encompassing the activity which is necessary for maintaining the conditions of peace. Therefore, this provision is often considered key in including the positive notion of peace, which goes beyond the negative concept of the 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*.

As to the protection of human rights, Article 1(3) of the Charter states that «to achieve international co-operation in solving international problems of an economic, social, cultural,

⁹ A.C. Voight, *The Role of General Principles...*, cit., p. 13, note 4.

¹⁰ A. Cassese, *International Law*, Oxford, Oxford University Press, 2005 (2nd ed.), p. 188.

¹¹ 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.

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».

Articles 55¹² and 56¹³ 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 realisation of human rights and that the organisation and its members should cooperate to this end¹⁴. Furthermore, Article 55 reaffirm the programme of cooperation in the field of human rights as set out in the Preamble and Article 1(3) of the Charter.

Article 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»¹⁵.

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 hand, 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 main international instrument of the «Universal Bill of Rights» is the Universal Declaration of Human Rights of 1948. It was completed with the adoption of the two Covenants of 1966, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Both Covenants textually adopted in their respective Preambles the first recital contained in the Preamble of the Universal Declaration of Human Rights. In addition, this recital expressly recognised the linkage between the UN Charter and the concept of peace and human rights, and understood it 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

¹² Article 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».

¹³ Article 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».

¹⁴ B. Sima, D.E. Khan, G. Nolte, A. Paulus, *The Charter of the United Nations. A Commentary*, Oxford, Oxford Commentaries on International Law, 2012 (3rd ed.), vol. II, p. 1537.

¹⁵ *Ibidem*, p. 1540.

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*¹⁶, the *Convention on the Elimination of All Forms of Discrimination against Women*¹⁷ and the *Convention on the Rights of Persons with Disabilities*¹⁸ reaffirmed the crucial role that human rights in general played in creating fair and equal societies founded upon freedom, justice, equality, development and peace.

4. The Right to Peace under International Law

4.1. Legal Approach

The enabling right to peace could be found in the *UNESCO Colloquium on the New Human Rights: The Rights of Solidarity*¹⁹ (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 others²⁰.

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*²¹. In 1947 Ecuador submitted a draft Declaration to the UN General Assembly, including an article stating that: «The maintenance of peace, based on justice and on law, is a fundamental rule of conduct in the relations between states and these have the right to peaceful and secure development».

4.2. Declaration on the Preparation of Societies for Life in Peace

On 15 December 1978, the General Assembly adopted Resolution 33/73 entitled *Declaration on the Preparation of Societies for Life in Peace* under the leadership of Poland and by 138 votes to none, with two abstentions²².

The Declaration consists of four main parts. Its Preamble reaffirms and makes reference to the existing United Nations accomplishment aimed at fostering the principle of friendly

¹⁶ Adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965, entered into force 4 January 1969.

¹⁷ Adopted and opened for signature, ratification and accession by General Assembly Resolution 34/180 of 18 December 1979, entered into force 3 September 1981.

¹⁸ Resolution UNOG A/RES/61/106 of 24 January 2007.

¹⁹ 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.

²⁰ ST/HR/SER.A/10, New York, 1980.

²¹ P. Alston, *The Legal Basis of a Right to Peace*, in «Peace Review», vol. 3, no. 3, 1991, p. 23.

²² United States of America and Israel.

relations and cooperation 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 (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).

Part II of the Declaration is devoted to calling upon all states to adopt mainly two measures in order to implement the eight principles contained in Part I, 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 programmes with the purpose of preparing societies for life in peace.

The *Declaration on the Preparation of Societies for Life in Peace* and the *Universal Declaration of Human Rights* share the same legal ways aimed at widely promoting the peace values and principles contained in both instruments, by proclaiming teaching and education as key elements to develop more peaceful societies.

Part III proposes concrete follow-up measures to be adopted by governments, UN specialised agencies (i.e. UNESCO), mass media and civil society organisations in order to implement the Declaration.

4.3. Declaration on the Right of Peoples to Peace

In its thirty-ninth session, the General Assembly adopted on 12 November 1984 the *Declaration of the Right of Peoples to Peace*. The result of the vote was 92 to none and 34 abstentions²³. Twenty-nine states were absent from the vote²⁴ and two countries did not participate²⁵. Resolution 39/11 was sponsored by 8 states²⁶.

In general terms, most of the governmental representatives²⁷

²³ Australia, Austria, Belgium, Brunei, Darussalam, Cameroon, Canada, Cape Verde, Denmark, Finland, France, Gabon, Federal Republic of Germany, 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.

²⁴ Those absent included Iran, Israel, Morocco, Saudi Arabia and several developing countries.

²⁵ Albania and Malaysia.

²⁶ Bulgaria, Cuba, Equatorial Guinea, German Democratic Republic, Lao Peoples Democratic Republic, Libyan Arab Jamahiriya, Mongolia and Nicaragua.

²⁷ Mongolia, Union of Soviet Socialist Republics, German Democratic Republic, Bulgaria, Vietnam, Hungary, Poland, Byelorussian Soviet Socialist Republic, Lao People's Democratic Republic, Czechoslovakia, Cuba, India and Malaysia.

who took the floor before the vote 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 Article 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 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 to social progress and justice are vital to promoting the right of peoples to peace.

Other governmental delegations²⁸ 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 countries²⁹ 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 on which the Charter of the United Nations is based. The Charter indeed is based on a substantive notion of peace, not merely a formal concept.

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

²⁸ Malaysia and Philippines.

²⁹ European Community.

³⁰ Palestine and the Holy See.

³¹ Agency for Cultural and Technical Co-operation, Commonwealth Secretariat, Council of Europe, Inter-American Development Bank, Latin Union, League of Arab States, Organisation of African Unity and Organisation of American States.

³² 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 Article 1: the first purpose of the United Nations is the maintenance of international peace and security; Article 1 of the UNESCO Charter: the purpose of the Organisation 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.

³³ 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.

³⁴ Article 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, pp. 11-13.

³⁵ Article 4, in *ibidem*, Annex II, pp. 11-13.

³⁶ *Report by the Director-General...*, cit., para. 4, p. 5.

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 organisations to do their utmost in implementing the right of peoples to peace. 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 particular, it does not make a clear reference to the *Universal Declaration of Human Rights* in its Preamble.

4.4. Contribution of UNESCO to the Human Right to Peace

From 5 to 9 March 1998, 117 member states of UNESCO governmental met at UNESCO headquarters in Paris. Moreover, observers³⁰, intergovernmental organisations³¹ and civil society organisations sent representatives to the meeting.

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 peace³² and its linkage with the Culture of Peace³³. 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»³⁴ 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 [...]»³⁵.

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»³⁶.

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 for 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 expressed his pride in witnessing the emergence of the «right to live in peace» as a fundamental human right³⁷.

During the general debate, member states were unanimous regarding the existence of an indivisible link between all human rights and peace³⁸ and also recognised that the draft Declaration to be prepared would primarily be an ethical document designed to proclaim principles³⁹. 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 development⁴⁰.

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 subject⁴¹. In particular, Luxembourg on behalf of the European Union, 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.

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 recognised 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»⁴².

4.5. Elaboration of the Right to Peace in National Constitutions and Regional Human Rights Instruments

The concept of the right to peace has been explicitly included in seven Constitutions⁴³. However, these constitutional texts have elaborated this concept by taking into account a conception based only on the relationships between states and without

³⁷ *Ibidem*, Annex IV, pp. 18-19.

³⁸ *Ibidem*, para. 12, pp. 8-9.

³⁹ *Ibidem*, para. 16, pp. 9-10.

⁴⁰ *Ibidem*, para. 13, p. 9.

⁴¹ *Ibidem*, para. 14, p. 9.

⁴² *Ibidem*, para. 21, p. 10.

⁴³ Bolivia – «Bolivia is a pacifist State that promotes the culture of peace and the right to peace [...]» (Article 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» (Article 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 Organization of African Unity shall govern relations between States» (Article 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» (Article 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» (Article 5).

referring to human rights issues, with the exception of Peru⁴⁴. In particular, these Constitutions took into account some of the principles contained in Article 2 of the UN Charter, namely: the prohibition of the threat or use of force against the territorial integrity or political independence of any state, the settlement of international disputes by peaceful means, the prohibition to intervene in matters within the domestic jurisdiction of any state, the cooperation among states, the self-determination of peoples and the sovereign equality of states.

In addition, regional instruments, such as the *African Charter on Human and Peoples' Rights*⁴⁵ and most recently the *Human Rights Declaration*⁴⁶ adopted by the Association of Southeast Asian Nations (ASEAN), have explicitly recognised the right to peace as a collective right and always in connection to principles contained in Article 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* and the 2005 *Ibero-American Convention on Young People's Rights*).

Furthermore, there is an increasing case-law on the right to peace developed by some national courts⁴⁷. 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 conclusion, 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.

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

On 28 April 1999 the Commission encouraged the General Assembly 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,

⁴⁴ 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» (Article 2.22).

⁴⁵ Article 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).

⁴⁶ Article 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».

⁴⁷ Colombia, Costa Rica, Japan and South Korea.

taking into consideration the comments and views of all governments, intergovernmental organisations and NGOs, on the contribution of the promotion and protection of human rights to the further development of a culture of peace⁴⁸. Finally, on 13 September 1999, the General Assembly adopted the *Declaration and Programme of Action on a Culture of Peace*.

During the International Year of Culture of Peace proclaimed for 2000⁴⁹, the Commission on Human Rights 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-organised 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 [...] ⁵⁰.

The *Declaration on a Culture of Peace* clearly defines the culture of peace as a set of values, attitudes, traditions and modes of behaviour and ways of life based on certain elements, and also indicates that its full development is integrally linked to several important fields. Moreover, it identifies the main actor responsible for implementing the Declaration and the role played by education in the development of the culture of peace⁵¹.

⁴⁸ 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.

⁴⁹ Doc. A/RES/52/15, *Proclamation of the Year 2000 as the International Year for the Culture of Peace*, 15 January 1998.

⁵⁰ 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.

⁵¹ 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».

⁵² *Report of the Human Rights Council Advisory Committee on the Right of Peoples to Peace, A/HRC/20/31, 16 April 2012.*

⁵³ Article 3: «The fuller development of a culture of peace is integrally linked to: [...] (f)

Eradicating poverty and illiteracy and reducing inequalities within and among nations»; Article 10:

«(a) Undertak[ing] comprehensive actions on the basis of appropriate strategies and agreed targets to eradicate poverty through national and international efforts, including through international cooperation».

⁵⁴ Article 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».

⁵⁵ 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».

⁵⁶ Article 1: «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».

⁵⁷ Article 1(e): «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»; Article 10 (f): «incorporate capacity-building in development strategies and projects to ensure environmental sustainability, including preservation and regeneration of the natural resource base».

⁵⁸ Articles 12(f) and 14(d): «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».

Pursuant to General Assembly 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 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.

There is a close linkage between the standards included in the *Human Rights Council Advisory Committee Draft Declaration on the Right to Peace*⁵² and the *Declaration and Programme of Action on a Culture of Peace*. In particular, all the main concepts (i.e. human security and poverty⁵³, disarmament⁵⁴, education⁵⁵, development⁵⁶, environment⁵⁷, vulnerable groups⁵⁸, refugees and migrants⁵⁹) proposed by the Advisory Committee were already included and later elaborated in the *Declaration and Programme of Action on a Culture of Peace*, with the exception of conscientious objection, peacekeeping and private military companies.

Recently, the Heads of State and Government of the Community of Latin American and Caribbean States (CELAC) met in 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 peace zone would be based on the 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.

6. Competences of the Security Council and Human Rights Council in the Field of Human Rights and Peace and Security

In accordance with the latest practices of the Security Council (SC), the classical security threats have been principally focused on the proliferation and arms control, terrorism, internal armed

⁵⁹ Articles 12(f) and 14(f), 16(f) and (g): «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».

⁶⁰ UNSC Resolution 1325 (31 October 2000); UNSC Resolution 1820 (19 June 2008); UNSC Resolution 1888 (30 September 2009); UNSC Resolution 1960 (16 December 2010); UNSC Resolution 1612 (26 July 2005) and UNSC Resolution 1882 (4 August 2009).

⁶¹ B. Sima, D.E. Khan, G. Nolte, A. Paulus, *The Charter of the United Nations...*, cit., p. 1286.

⁶² Para. 6: «peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing», Doc. A/RES/60/251 on the Human Rights Council, 3 April 2006.

⁶³ Doc. A/RES/60/251 on the Human Rights Council, 3 April 2006, Article 3.

⁶⁴ *Ibidem*, Article 5(f).

⁶⁵ *Ibidem*, Article 10.

⁶⁶ Doc. A/HRC/S-4/101, *Situation of Human Rights in Darfur*, 13 December 2006.

⁶⁷ Doc. A/HRC/S-5/1, *Situation of Human Rights in Myanmar*, 2 October 2007.

⁶⁸ Doc. A/HRC/S-8/1, *Situation of Human Rights in the East of the*

conflict and piracy. However, the protection of individuals has increasingly emerged as an 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 conflict⁶⁰.

In regards to human rights violations, most of the commentators and states in the early years objected that such violations were considered as potential threats to 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»⁶¹.

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 reinforcing⁶². However, the General Assembly clearly decided that the Council should address situations of gross and systematic violations of human rights⁶³ and also contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies⁶⁴.

Because of human rights violations in conflict situation, the HRC has convoked several special sessions at the request of one third of the membership of the Council⁶⁵. Most of these sessions have finished with the adoption upon consensus of a resolution, by which the Council decided to dispatch a High-Level 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 of one or several highly qualified persons, who are appointed by the President of the HRC after consulting with the members of the Council.

In particular, the HRC has created through consensus in its special sessions some human rights mechanisms to monitor the implementation of the respective resolutions in Darfur⁶⁶, Myanmar⁶⁷, the Democratic Republic of the Congo⁶⁸, Cote d'Ivoire⁶⁹, Libyan Arab Jamahiriya⁷⁰ and Central African Republic⁷¹.

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. Its primary objective is to safeguard the human rights of all persons and to address the desperate human rights crisis. It follows that

the obligation of the Council is to respond, examine, denounce, intervene and react to egregious human rights violations in concert with other UN bodies, putting an immediate end to ongoing violence and finding a peaceful and durable solution to the specific conflict. Furthermore, it is imperative for the HRC to have a greater understanding of the causes and consequences of conflict in order to decrease and alleviate the suffering of victims through the adoption of particular recommendations.

On the other hand, the SC is the only competent body to determine the existence of any threat to peace, breach of the peace, or act of aggression and to make recommendations, or decide what measures are to be taken⁷². Although the SC has recognised the increasing linkage between human rights and peace and security, the operative section of resolutions on Darfur⁷³, the Democratic Republic of the Congo⁷⁴, Cote d'Ivoire⁷⁵, Libyan Arab Jamahiriya⁷⁶ and Central African Republic⁷⁷ 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 to all parties to the conflict to end violence, strengthen dialogue, sign a peace agreement, foster a transition process or create humanitarian corridors to assist the population.

As indicated by the HRC, in a context of war and armed conflict there is always a gross and systematic violation of all human rights and fundamental freedoms, including extrajudicial killings, summary executions, sexual violence, looting, forced displacement, large-scale of arrest, abductions, forced recruitment of children, beatings, disappearance, torture, arbitrary detention, forced labour practices or lack of fundamental economic rights (i.e. food, water, medicines). In particular, the right to life and security of people and their fundamental dignity is always under threat, even violated, in this type of dreadful situation. To achieve a genuine peace and stability, the country in conflict should firstly immediately cease all type of violence (i.e. cease-fire). Secondly, states should re-establish again the full respect and implementation of fundamental rights and freedoms and thirdly, to identify the most appropriate solutions for a peaceful settlement of the crisis and to promote a national dialogue and reconciliation.

Democratic Republic of the Congo, 1 December 2008.

⁶⁹ Doc. A/HRC/S-14/1, *Situation of Human Rights in Cote d'Ivoire in Relation to the Conclusion of the 2010 Presidential Election*, 23 December 2010.

⁷⁰ Doc. A/HRC/S-15/1, *Situation of Human Rights in the Libyan Arab Jamahiriya*, 25 February 2011.

⁷¹ Doc. A/HRC/S-20/1, *Situation of Human Rights in the Central African Republic and Technical Assistance in the Field of Human Rights*, 20 January 2014.

⁷² Article 39 of the UN Charter.

⁷³ Doc. S/RES/1714 (2006), 6 October 2006.

⁷⁴ Doc. S/RES/1857 (2008), 22 December 2008.

⁷⁵ Doc. S/RES/1962 (2010), 20 December 2010.

⁷⁶ Doc. S/RES/2016 (2011), 27 October 2011.

⁷⁷ Doc. S/RES/2134 (2014), 28 January 2014.

At the 7015th meeting of the SC, 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 recognised the need for the development of effective long-term strategies aimed at eradicating poverty, strengthening development cooperation and assistance and promoting respect for human rights and fundamental freedoms⁷⁸.

Additionally, the HRC has stressed that the roots of conflicts that have recently shaken some specific countries, where the population lives below poverty, are not new. In accordance with the statements delivered by the different stakeholders during the Special Sessions, states should apply long-term strategies for development, reduce poverty, stop impunity, enforce the rule of law and strengthen the international cooperation with the human rights mechanism and among nations in order to reduce the cycle of violence and consolidate universal peace.

Since we have not yet developed a society that is prepared to acknowledge and entirely reject war or conflict as an option, the international community has always elaborated international rules which limit the effects of war. In recent years, civil society movements have promoted the adoption of important legal instruments aimed at protecting population in a context of warfare and also limiting the trade and use of certain arms⁷⁹. Although the pacifist movements were not capable of avoiding the World Wars in the 20th century or other wars during the Cold War times and afterwards, they have been very successful in their efforts to limit certain effects derived from war.

Nowadays the international community has the legal resources to progressively eliminate war and armed conflicts all over the earth through the respect of international law, the promotion of the culture of peace and friendship among all peoples and nations. The United Nations should again proclaim that war is unlawful from a legal perspective, as well as totally incompatible with peace and a clear abuse of human rights, and in particular the right to life.

⁷⁸ Doc. S/PRST/2013/12, 6 August 2013.

⁷⁹ *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).

7. The Linkage Between the Right to Life and Peace

⁸⁰ Article 3: «Everyone has the right to life, liberty and security of person».

⁸¹ Article 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.

⁸² Article 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 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

⁸³ Article 2(1): «Everyone's right to life shall be protected by law [...]». Signed on 4 November 1950 in Rome.

⁸⁴ Article 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 Specialised Conference on Human Rights, San Jose, Costa Rica, 22 November 1969.

⁸⁵ M. Nowak, *U.N. Covenant on Civil and Political Rights: CCRP Commentary*, Strasbourg, Engel Publisher, 2005, p. 104.

⁸⁶ Article 4 (2): «No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision».

⁸⁷ B. Ramcharan, *The Right to Life*, in «Netherlands International Law Review», vol. 30, no. 3, 1983, pp. 297-329.

⁸⁸ «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;

The right to life as a fundamental and universal human right of everyone has been spelled out in the Universal Declaration of Human Rights (UDHR)⁸⁰, the International Covenant on Civil and Political Rights (ICCPR)⁸¹, the African Charter on Human and Peoples' Rights (ACHPR)⁸², the European Convention on Human Right (ECHR)⁸³ and the American Convention on Human Rights (ACHR)⁸⁴. 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 characterised as the supreme human right, since without effective guarantee of this right, all other rights of the human being would be devoid of meaning⁸⁵. Since the right to life is a non-derogable right in accordance with Article 4(2) of the ICCPR⁸⁶, 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 law⁸⁷.

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 Washington⁸⁸. This elaboration was later inserted in both the Preamble of the UN Charter⁸⁹ without being discussed in substance in the San Francisco Conference and the North Atlantic Treaty⁹⁰. The General Assembly has quite often referred to this commitment⁹¹. However, some resolutions use the term «neighbours» in a narrow geographical sense⁹², while others have a more far-reaching meaning⁹³.

In addition, some legal international instruments (i.e. Declaration on the Strengthening of International Security⁹⁴ and the Declaration on the Deepening and Consolidation of International Détente⁹⁵) and GA resolutions (i.e. Measures to be Taken against Propaganda and the Inciters of a New War⁹⁶) again recognised 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 recognised that peoples of the world are endowed with the right to live in peace and freedom and to equal participation without discrimination

see at http://en.wikisource.org/wiki/Franklin_Roosevelt%27s_First_Inaugural_Address.

⁸⁹ Preamble, para. 5: «[...] to practice tolerance and live together in peace with one another as good neighbours [...]».

⁹⁰ Preamble, para. 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 at http://www.nato.int/cps/en/natolive/official_texts_17120.htm.

⁹¹ Doc. UNGA Resolution entitled *Peaceful and Neighbourly Relations among States*, A/RES/1236(XII) (14 December 1957); UNGA Resolution entitled *Measures Aimed at the Implementation and Promotion of Peaceful and Neighbourly Relations among States*, A/RES/1301 (XIII) (10 December 1958) and UNGA Resolution entitled *Development and Strengthening of Good Neighbourliness Between States*, A/RES/34/99 (14 December 1979).

⁹² Doc. UNGA Resolution 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).

⁹³ Doc. UNGA Resolution 2625 (XXV) of 24 October 1970.

⁹⁴ Preamble, para. 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.

⁹⁵ Preamble, para. 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.

in economic, social, cultural, civil and political life⁹⁷.

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 peoples⁹⁸.

The *Declaration and Programme of Action on a Culture of Peace* adopted by the General Assembly 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) Respect for life, ending of violence and promotion and practice of non-violence through education, dialogue and cooperation»⁹⁹.

The Human Rights Committee has issued two General Comments interpreting the content of Article 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 emphasise the duty of states to adopt positive measures to protect the right to life¹⁰⁰.

In its Resolution 1982/7 adopted on 19 February 1982, the Commission on Human Rights 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»¹⁰¹.

As to the inter-relationship between the right to life and other human rights, including the enabling right to peace, energy is

⁹⁶ Preamble, para. 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.

⁹⁷ Preamble, para. 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.

⁹⁸ Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, para. 2.

⁹⁹ *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, Article 1.

¹⁰⁰ J. Moller, A. Zayas, *United Nations Human Rights Committee Case Law 1977-2008: A Handbook*, Kehl, Engel Publisher, 2009, p. 144.

¹⁰¹ Resolution 1983/43 of the Commission on Human Rights, adopted on 9 March 1983, para. 1.

¹⁰² B. Ramcharan, *The Right to Life*, cit., pp. 307-308.

¹⁰³ «International Review of Red Cross», vol. 9, no. 104, 1969, paras. 1 and 2, p. 620; see at http://www.loc.gov/r/r/frd/Military_Law/pdf/RC_Nov-1969.pdf.

¹⁰⁴ Preamble, para. 1: «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 Declaration of Human Rights».

¹⁰⁵ J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, Philadelphia, University of

sometimes unnecessarily spent on the question of which should come first – whether the right to life or the right to peace. As for the positional relationship between the two rights, it appears to have been correctly stated in the Preamble to the UDHR, which states, «Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world». Therefore, the enabling right to peace would seem to be a derivative of the right to life rather than vice versa. It follows that the right to life is not only the legal foundation for other rights, but also an integral part of all the rights which are essential to guaranteeing 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 terms¹⁰²: «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»¹⁰³.

8. The Elaboration of Human Dignity and Its Legal Subdivision

In accordance with the first recital of the Preamble of the UDHR¹⁰⁴, those who want a world with freedom, peace and justice must recognise 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 these rights are inherent and inalienable and therefore, our recognition thereof will help humankind bring about the desired freedom, justice and peace in the world¹⁰⁵.

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.

Pennsylvania, 1999, p. 313.

¹⁰⁶ *Furundzija*, ICTY, Trial Chamber II, Judgment of 10 December 1998, para. 185.

¹⁰⁷ J. Rabkin, *What We Can Learn about Human Dignity from International Law*, in «Harvard Journal of Law and Public Policy», no. 27, Fall 2003, pp. 145-147.

¹⁰⁸ S. Riley, *Human Dignity: Comparative and Conceptual Debates*, in «International Journal of Law in Context», no. 6, 2010, p. 119.

¹⁰⁹ E. Wicks, *The Meaning of Life: Dignity and the Right to Life in International Human Rights Treaties*, in «Human Rights Law Review», vol. 12, no. 2, 2012, p. 206.

¹¹⁰ International humanitarian law.

¹¹¹ Human rights law.

¹¹² S. Riley, *Human Dignity...*, cit., pp. 123-124.

¹¹³ Doc. A/CONF.157/23, *Vienna Declaration and Programme of Action*, 12 July 1993, para. 2.

¹¹⁴ C. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, in «The European Journal of International Law», vol. 19, no. 4, 2008, p. 662.

¹¹⁵ Japan, Article 24: «[...] laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes»; Italy, Article 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 [...]»; Article 27: «[...] Punishment cannot consist in treatments contrary to human dignity and must aim at rehabilitating the convicted [...]» and Article 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, Article 1(1): «Human dignity shall be inviolable. To respect and protect it shall be the duty of all State authority».

¹¹⁶ Greece, Article 7(2): «Torture, any bodily maltreatment, impairment of health or the use of psychological violence, as well as

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 humanity¹⁰⁶.

Human dignity has become a ubiquitous idea and a central concern of international law¹⁰⁷. As a foundational norm within the United Nations, «human dignity served to signify that moral consensus, indeed universality, was a necessary response to war's atrocities»¹⁰⁸. The inclusion of human dignity in contemporary international law is a response to the widespread repulsion at the horrors of the Second World War¹⁰⁹. Therefore, it prohibits the worst excesses possible in war¹¹⁰ and claims the observance of minimal standards of civil, political and social recognition¹¹¹. 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»¹¹².

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 dignity¹¹³.

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 ideology¹¹⁴. Therefore, it was not surprising that three of the main states responsible for the World War II incorporated this concept in their national Constitutions¹¹⁵, or that it came to the fore with the fall of several dictatorships in Europe¹¹⁶. Germany played a major role in the drafting of the new South African post-apartheid Constitution¹¹⁷.

In addition, the term is featured in a wide range of declarations and treaties¹¹⁸. Human dignity has become a central and recurrent concept in the reasoning of supreme courts and constitutional courts throughout the world¹¹⁹ and many domestic constitutions. All of them stated that «human dignity is not as an autonomous right, but instead a legal principle with constitutional status»¹²⁰. The *Declaration and Programme of Action on a Culture of Peace* recognised the importance of human dignity in the educational

any other offence against human dignity are prohibited and punished as provided by law»; Spain, Article 10(1): «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, Article 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», Article 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».

¹¹⁷ The Republic of South Africa is one, sovereign, democratic state founded on the following values: «Human dignity, the achievement of equality and the advancement of human rights and freedoms».

¹¹⁸ 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.

¹¹⁹ Germany, India, USA, South Africa, France, Colombia, Israel, and Canada.

¹²⁰ L.R. Barroso, *Here, There and Everywhere: Human Dignity in Contemporary and in the Transitional Discourse*, in «International and Comparative Law Review», no. 331, 2012, p. 354.

¹²¹ *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, Article 9(b).

¹²² Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Freedom for All*, UN Doc. A/59/2005, 21 March 2005, paras. 127-128.

¹²³ L.R. Barroso, *Here, There and*

process¹²¹. 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»¹²².

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»¹²³.

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, colour, ethnic or national origin, sex or age. The last fundamental right is the right to integrity, both physical and mental¹²⁴.

The idea of *autonomy* in human dignity is the concept of an 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 shelter¹²⁵. 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.

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)¹²⁶.

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 Culture of Peace of 1999). It was principally focused on the following topics: the elimination of the threat of war, the arms races, general and complete disarmament – in particular nuclear disarmament, the mass media, the environment, education, the right to development, gender equality, freedom of expression and opinion, the fight against poverty and the elimination of violence and conflicts. The third and final element of human dignity is *community values*, which is related to the social dimension of dignity. It emphasises «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»¹²⁷. The pursuit of peace through justice is one of the most important objectives to be progressively realised by states as spelled out in their national constitutions.

In accordance with Article 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 organisational group in its widest sense.

9. Adoption of Positive Measures by All Stakeholders

Positive action is a concept of great importance in the context of anti-discrimination law, which has been adopted by several international human rights instruments¹²⁸ and openly applied by courts¹²⁹. It includes all measures aimed at taking positive steps to alter existing social practices so as to eliminate patterns of group exclusion and disadvantage¹³⁰. These actions were

Everywhere..., cit., p. 392.

¹²⁴ *Ibidem*, pp. 363-364.

¹²⁵ *Ibidem*, p. 371.

¹²⁶ G. Kang, *The Three Freedoms of the United Nations in Northeast Asia*, in «Korea Observer», vol. 36, no. 4, 2005, pp. 719-720.

¹²⁷ L.R. Barroso, *Here, There and Everywhere...*, cit., p. 374.

¹²⁸ International Covenant on Civil and Political Rights (Article 26), Convention on the Elimination of All Forms of Discrimination against Women (Articles 2.e, 4.1 and 4.2); International Convention on the Elimination of All Forms of Racial Discrimination (Article 2.1.c).

¹²⁹ European Court of Human Rights and Constitutional Courts: USA, Germany, South-Africa.

¹³⁰ C. Bell, A. Hegarty, S. Livingstone, *The Enduring Controversy: Developments on Affirmative Action Law in North America*, in «International Journal of Discrimination and the Law», vol. 233, 1996, p. 234.

introduced for the first time in Europe and North America in the aftermath of World War I and II to reserve particular posts for disabled persons because of the very large number of seriously wounded survivors of both wars¹³¹. 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 action¹³².

As part of social development, it has become apparent that achieving progress requires that special measures be taken to ensure socially excluded groups be 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 the recognition of, and respect for, the right to life¹³³. In other words, 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 personality¹³⁴. 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»¹³⁵.

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 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.

¹³¹ L. Waddington, *Reassessing the Employment of People with Disabilities in Europe from Quotas to Anti-Discrimination Laws*, in «Comparative Labour Law Review», vol. 18, 1996, p. 62.

¹³² C. O'Conneide, *Positive Action*, London, University College, 2012, p. 23.

¹³³ H. Gros Espiell, *Right to Life and Right to Live*, in D. Premont, *Essays on the Right to Life*, Brussels, Association of International Consultants on Human Rights, 1988, p. 43 and H. Okechukwu, *The Right to Life and the Right to Live: Ethics of International Solidarity*, Frankfurt, Peter Lang, 1990.

¹³⁴ L. Balanda, *Le droit de vivre*; M. Veuthey, *Le droit à la survie, fondement du droit humanitaire* and P. Richard, *Droits de l'homme, paix et désarmement. Éléments essentiels de la garantie du droit de vivre*, in D. Premont, *Essays on the Right to Life*, cit., p. 31 et seq.

¹³⁵ H. Gros Espiell, *Right to Life and Right to Live*, cit.

10. The Role Played by the Principle of International Cooperation in the Human Rights Field

The enhancement of international co-operation at the international level should be carried out through the understanding, tolerance and friendship among all individuals, nations and peoples.

In accordance with the statements delivered by the different stakeholders during the Special Sessions of the HRC, states should strengthen international cooperation with the human rights mechanism and among nations in order to reduce the cycle of violence and consolidate universal peace.

The special procedures of the HRC 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»¹³⁶. 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 violence¹³⁷. The priority of the special procedures is that the interests of justice be served and to assist in ensuring that all human rights be protected¹³⁸.

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 Pillay¹³⁹. 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.

11. Conclusion: A World Free of Wars and Conflicts

As stated by Mr. Christian Guillermet Fernández in both Sweden¹⁴⁰ and Italy¹⁴¹, the aspiration to create a society in which war plays little or no part in the life of our fellows has fired the human imagination throughout the history of humankind. It

¹³⁶ Statement by Chaloka Beyani, Chairperson of the Coordination Committee of Special Procedures, Twentieth Special Session of the Human Rights Council on the Situation of Human Rights in the Central African Republic, 20 January 2014.

¹³⁷ Statement by Manuela Carmena Castrillo, Chairperson of the Coordination Committee of Special Procedures, Eight Special Session of the Human Rights Council on the Situation of Human Rights in the East of the Democratic Republic of Congo, 28 November 2008.

¹³⁸ Statement by Jose Luis Gomez del Prado, Chairperson of the Coordination Committee of Special Procedures, Eight Special Session of the Human Rights Council on the Situation of Human Rights in the Libyan Arab Jamahiriya, 25 February 2011.

¹³⁹ In <http://www.ohchr.org/EN/NewsEvents/Pages/KeyRoleEarlyWarning.aspx>.

¹⁴⁰ Conference Henri Lafontaine: Challenges for a Peaceful World, An Agenda for the XXIst Century, Uppsala University (Sweden) on 11 December 2013.

¹⁴¹ Congress *La miglior difesa è la pace. Promuovere la pace è difendere la patria?*, Associazione Comunità Papa Giovanni XXIII, Sala Manzoni, Rimini (Italy), 14 February 2014.

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 realised in brotherhood by everyone all over the earth.

Over three thousand years, from 1500 BCE to 1860 CE, eight thousand peace treaties have been signed¹⁴². The existence of a peace treaty is a clear evidence that the total triumph of peace over conflict has not occurred yet and that peace is always in a state of project and prospect. Therefore, the champions of peace have only obtained half-triumphs in their attempts at reaching a more peaceful world, because «peace has always conduced to a war»¹⁴³.

During the last centuries, outstanding endeavours were undertaken by the international community to create an international order free from wars through the strengthening of mechanisms aimed at promoting the peaceful settlement of disputes. Peace activists and thinkers had proposed the creation of a congress of nations as an indispensable means of preventing war and strengthening multilateral cooperation. In accordance with the Covenant of the League of Nations of 1919, high contracting parties undertook not to resort to war and to settle their disputes peacefully.

The renunciation of war as an instrument of national policy was successfully achieved for the first time in the history in 1928 thanks to the efforts made by the Foreign Ministers of France and the 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 termination or denunciation¹⁴⁴. It follows that the condemnation of war is currently in force as a legal provision and it should therefore be taken into consideration by the international community.

In order to create a more peaceful world, the Charter of the United Nations established in its Articles 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,

¹⁴² G. Valbert, *La Guerre et la Paix Perpétuelle, à propos d'une publication récente*, in «Revue des Deux Mondes», vol. 4, no. 122, 1894, p. 692.

¹⁴³ G. Bouthoul, *Huit mille traités de paix*, Paris, René Julliard, 1948, pp. 12-13.

¹⁴⁴ D. Hunter Miller, *The Peace Pact of Paris: A Study of the Briand-Kellogg Treaty*, New York/London, G.P. Putnam's sons, 1928, p. 148 and A. Mandelstam, *L'Interprétation du pacte Briand-Kellogg par les gouvernements et les parlements des États signataires*, Paris, Éditions A. Pedone, 1934, pp. 1-24.

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.

However, the United Nations has been always guided by a conception of peace understood in a wider and more positive way, in which the well-being of individuals and societies, including economic welfare, social security and human rights, has a clear prevalence over a conception of peace related exclusively to use of violence or force.

On 1 December 1949 the General Assembly 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».

In addition, as stated by General Assembly Resolutions 2817 (XXVI)¹⁴⁵ and 3065 (XXVIII)¹⁴⁶, 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.

Since everyone should have the right to live in a world without wars and conflicts, the international community should use all necessary mechanisms to enforce all human rights for all with the aim of promoting a more just and lasting peace over the earth. In a context of war and armed conflict, human rights and freedoms are massively violated. Therefore, today the HRC should raise the voice of victims to strongly condemn war and to openly reiterate our inalienable right to live in a context in which war and conflict is progressively eliminated over the earth through the promotion of mutual understanding, tolerance, respect of human rights and peaceful relationships.

Furthermore, in order to promote the right of everyone to live in a context in which peace and security, human rights and development are fully implemented, member states of the United Nations, in cooperation with all stakeholders and civil society organisations, should progressively elaborate a concept of peace

¹⁴⁵ Doc. UNGA Resolution 2817 (XXVI), *Scientific Work on Peace Research*, 14 December 1971.

¹⁴⁶ Doc. UNGA Resolution 3065 (XXVIII), *Scientific Work on Peace Research*, 9 November 1973.

based on the principles of equality and non-discrimination; justice and rule of law and freedom from want and fear. It should have as purpose the empowerment of universal peace and dealing with the real causes of war and conflict.

In the early years of the 21st 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 localised 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 violence¹⁴⁷.

The future Declaration to be elaborated by the Chairperson-Rapporteur 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!

«Peace cannot be kept by force; it can only be achieved by understanding»
(Albert Einstein)

¹⁴⁷ J. Goldstein, *Winning the War on War*, New York, Penguin Group, 2011 (1st print.), p. 385.

Annex 1

