The Human Right to Peace Is Putting the Sincerity of the Peace-loving States to the Test

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1. The Challenge of Recapitulating Values, Rights and Duties

Despite its obviously temporary nature as a draft, and with all the shortcomings that this implies – not least the repetitiveness of some of its points – the text of the Declaration on the Right to Peace currently being examined at the United Nations Human Rights Council, already suffices to show us that the ongoing operation is of the utmost importance from the political-institutional standpoint, as well as from the formal-legal one. This both because it updates and clearly spells out some of the key principles of the United Nations Charter, from the repudiation of war and the prohibition of the use of force in international controversies to the obligation to resolve them by peaceful means, and because it brings systematic cohesiveness to the innovative work thus far produced by the international community in the field of human rights, human security and human development, through the United Nations and other legitimate multilateral organisations, in favour of true international legality. It represents an attempt to recapitulate, within the utmost value of positive peace, the goals thus far attained along the road to a civilisation of a truly universal law: universal because it defines and protects the fundamental rights of the human person. Implicit, but not hard to perceive, is the objective of bringing new principles and visions into the highly prescriptive area of international human rights law, such as the responsibility to protect, the international rule of law, democratic principles, conscientious objection to military service, and particularly the so-called third-generation rights: in addition to the specific right to peace, the right to development and the right to the environment, three rights which are already recognised by the *vox populi*, but not yet by the *ius positum*.

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Another useful aspect of the document lies in its contribution to bringing to a close long-standing theoretical and ideological battles – which were becoming quite tedious – as to the legal status of «collective» rights and whether peace is a dependent variable or an independent one in relation to the realisation of human rights.

It should be noted that traditional Western human rights philosophy affirms that rights can only be personal (*droits de l'homme*), adding reasons of justiciability, that is of the effectiveness of guarantees to protect them, to ontological reasons. The example of current legislation on minorities is significant in this respect.

The draft Declaration on the Right to Peace being examined at the Human Rights Council makes a marked innovation, practically wrong-footing Western dogmatists: the text explicitly assumes that the right to peace is at the same time an individual and a collective right. It is tempting to say that good old common sense *docet*.

2. What Comes Before: A False Question

As to whether peace comes before or after the respect of human rights, it should be pointed out that in 2003 the General Assembly of the United Nations took a clear stand on the issue in Resolution 57/216 entitled *Promotion of Peace as a Vital Requirement for the Full Enjoyment of All Human Rights by All*. After recalling that «everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized» (see Article 28) and the conviction that «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», the General Assembly «stresses that peace is a *vital requirement* for the promotion and protection of all human rights for all»; that «the peoples of our planet have a sacred right to peace» and that «the preservation and promotion of peace constitutes a *fundamental obligation* of each State» (Italics added).

It is interesting to note that this position – which we could define

of peace as an independent variable – was recently supported by Pope Francis in his Message for the 47th World Day of Peace (1 January 2014) entitled «Fraternity, the Foundation and Pathway to Peace». In the section headed «Fraternity Exstinguishes War», the Pope expresses the hope that «the daily commitment of all will continue to bear fruit and that there will be an effective application in international law of the *right to peace, as a fundamental human right and a necessary prerequisite for every other right*» (Italics added). A literal interpretation of the Pope's message would even say that the human right to peace already exists and that it is now a question of realising it in practice.

Needless to emphasise that war is negation of life, hence of the same axiomatic premise of all human rights. It should go without saying that to state that peace is a pre-condition for the enjoyment of fundamental rights is not the same as saying that it is not necessary to demand the respect of these rights even in situations of violent conflict. Current international law is clear-cut on the issue, establishing that in certain cases of so-called «state of necessity» and as an absolute exception, states may suspend some of the fundamental rights of the person, but not the right to life. On the matter, see the provisions of the first two paragraphs of Article 4 of the International Pact on Civil and Political Rights: «1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision». Article 6 is precisely the one which states that every human being has the inherent right to life and that this right shall be protected by law. The quotations above lend weight to the idea of peace precisely as a *vital* prerequisite for the enjoyment of all fundamental rights.

3. Unsunstainable A Priori Rejections

The draft Declaration is meeting opposition from a number of states which, for example in the case of the United States, take a position of a priori rejection.
The US Mission to the UN in Geneva, although decidedly against «negotiating» a declaration on the right to peace, participates in the Human Rights Council's Working Group discussions, while specifying that in any case, this does not imply any approval of the ongoing standard-setting operation. Theirs is an approach of one foot in, one foot out, marked by the concern that people should know that «*no country wants to be cast as "voting against peace"*». Their opposition is clear-cut (see statement delivered on 18 February 2013): «our concern isn't solely that the "right" to peace is unrecognised right now. Our concern is also with efforts to create such a right. We are worried that such efforts not only would be unproductive, but could do serious damage». Despite admitting that there is a cause-and-effect-type correlation between the respect of human rights and peace, the US delegation stresses their position that peace as such is not a *right* but an *objective*: hence, «we do not think the right answer is to draft a Declaration attempting to change peace from a fundamental objective of our country and of the United Nations itself into a new right, which is neither recognised nor defined» by current international law. The current efforts «to create such a right» have no reason to exist: not only are they «unproductive, but could do serious damage» to other far more fruitful efforts, for example those on disarmament within the Conference on Disarmament and Talks on the Arms Trade Treaty; in the area of peacekeeping, which is a daily concern of the Security Council; of peace education, handled within UNESCO; development, to which a Working Group of the Human Rights Council is devoted. The US approach is clearly that of the «issue by issue», or *divide et impera*, typical of American diplomacy, and which has been used extensively, for example during the 1970s in the debate over the «New International Economic Order». This approach avoids there being a comprehensive overview of a subject which, in a world which is more globalised and quarrelsome than ever, objectively needs recapitulation, brief lists and clarity, particularly as regards the obligations of states.
A further objection of the US, which is shared by other states,

is that the right to peace makes no sense as a collective right for the simple reason that human rights cannot be anything but individual. The answer is that there has evidently been a failure to grasp the novelty contained in the fact that, as already said, in the draft being discussed, peace is explicitly recognised as a right which is both individual and collective.

The US delegation also makes specific remarks criticising various substantial expressions of the «right» to peace, for example, the way in which the draft Declaration approaches the issue of «refugees»: the criticism is of the attempt to broaden this definition to include vulnerable groups such as persons displaced by war or famine. Refugees, according to the US, are a clearly defined category which is protected by international law and should not be mixed with other less easily identified groups.

The position of the US as presented to date is decidedly against any advances in international human rights law, which is incidentally in line with their obstructionist stance towards the International Criminal Court. The US disquisitions on points of law are a continuation of the stance taken at UNESCO in 1997-1999, when the object was to sink a proposal for a declaration on the right to peace presented by the then Director-General, Federico Mayor Saragoza. The US delegate, Ambassador John R. Bolton, played an open hand, stating that if peace were recognised as a fundamental human right, states would no longer be able to wage war. It is surprising that under President Obama, they do not understand that the ongoing negotiating in Geneva offers a historic opportunity to launch a model of world order which is diametrically opposite to that put forward by the two Bush presidents. Both the latter raised the subject of world order: in 1991, Bush senior spoke of it in relation to the first Gulf War; in 2001 and 2003 Bush junior in connection with the events of 9/11 and the wars in Afghanistan and Iraq. In their vision of world order, their reference for international law is the old law of armed national sovereignties, which have room for *bellum iustum* (including in the shape of *pre-emptive* wars) and the role of the United Nations is merely ancillary compared to that of the more powerful states. It is clear that this represents a desire to perpetuate the grim philosophy of negative peace, with the correlated *ius ad bellum*.

One cannot fail to be amazed, or rather indignant, at the fact

that the representative for the European Union (the 2012 Nobel Peace Prize winner) expressed a bias against the draft Declaration, and echoed the position of radical opposition taken up by the United States. In its note dated 15 February 2013, pretextuous reasons are proffered, such as: «it is evident that there is no legal basis for "the right to peace" in international law, either as an individual or collective right [...]. We deem it impossible to find a common definition, grounded in human rights, of the right to peace [...]. Questions related to peace and security should essentially be dealt with in other fora having the mandate to do so [...]», and so on and so forth.

My candid comment is that the draft Declaration being discussed in Geneva cuts to the roots of this tangle of objections, and look backwards in history to the Westphalian a-moral and a-human law of national-armed-border-watching sovereignties, which place peace and war on the same, undifferentiated plane of cynical evaluation of self-advantage. The document is not getting ahead of itself; rather, it incorporates the lessons from the «new» international law grounded in the United Nations Charter and the Universal Declaration of Human Rights, and which founds world order on the principle 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».

Given the central importance of the human person – endowed with original sovereignty inasmuch as bearer of fundamental rights which are now also recognised by international law – it is statehood which is being encouraged to change its structural «shape». In this inescapable process of genetic mutation, states must renounce attributes of position (*rectius*: absolute power) such as the right over life and death (*ius necis ac vitae*) of its own citizens and the right to wage war – *ius ad bellum* – which is, in practice, the right over life and death of another state's citizens. The death penalty and war are antinomical to the rights concerning the dignity of the person.

If there is a human right to peace, the cleansing of states from their centuries-old practise of wielding their *ius ad bellum* (and the death penalty) is not an *option* but an obligation founded in law, and the clinical area within which this process should take place is that of the collective security system established by the United Nations Charter but not yet fully implemented.

4. UN Charter Articles 42, 43, 51, 106: A Crucial Quadrangle for Positive Peace

The position of the NGOs sector is quite different, as it shows great interest and desire to work together to achieve a successful outcome for the ongoing operation.

As already ointed out, it appears that the main objection of some governments concerns the very *raison d'être* of a specific legal instrument concerning this issue. They maintain – with Lapalissian nonchalance – that since current international law does not include a specific right to peace, there is no point referring to peace as a fundamental right. The answer to this objection is that, precisely because the right to peace is not *literally* included in the list of fundamental rights specified in the two 1966 International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights respectively, it is a question of extracting it from the DNA which marks international law on human rights. It is pointed out that current *ius positum* provides an appropriate starting point, as it specifically includes, in addition to the first part of the United Nations Charter and the provisions recognising the inherent right to life (together with the right to physical and mental integrity and the right to health), the provisions of the aforementioned Article 28 of the Universal Declaration of Human Rights and Article 20 of the International Pact on Civil and Political Rights, which reads: «1. Any propaganda for war shall be prohibited by law». Of course, reference should be made to two UN Declarations, respectively on the Preparation of Societies for Life in Peace (1978) and on the Rights of Peoples to Peace (1984).

In order to better comprehend the meaning and the reach of the standard-setting operation underway in Geneva, we could borrow the metaphor of a midwife: it is a question of assisting the birth, alongside the fundamental right to peace of individuals and peoples, of the correlated obligations for their principal counterpart, consisting of states.

Another objection maintains that any recognition of peace as a human right would undermine the credibility and effectiveness of the United Nations Charter, specifically as concerns the use of force by states in the exercise of their right to self defence – *following* an armed attack – provided for in Article 51. This too is a spurious objection which, in this case, is used to mask states'

fear of no longer being allowed to use the aforementioned article to justify the use of force as *preventive* or even *pre-emptive* self-defence. The answer to this objection is simple. The existence of a formally-recognised human right to peace, in addition to strengthening two fundamental principles of the United Nations Charter (prohibition of the use of force and obligation to peaceful resolution of controversies), prohibits any extensive interpretation of the aforementioned Article 51: self-defence, as an exceptional measure, can only be deployed «if an armed attack occurs», no question.

If the human right to peace were formally recognised, the alibi for not implementing Article 43 of the Charter, which provides that states must finally make part of their armed forces available to the United Nations, would no longer stand. The implementation of this article is necessary to enabling the Security Council to act according to Article 42, that is, to exercise all the duties and powers that the Charter confers on it for the final setting-up and effective management of the collective security system. This crucial aspect is clarified by the provisions of Article 106 (Chapter XVII - Transitional Security Arrangements) of the Charter: «Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow 30 October 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organisation as may be necessary for the purpose of maintaining international peace and security».

The scandal of this transitional arrangement still into force, which places the United Kingdom, Russia, the USA, China and France above the United Nations Organisation (actually not because they are permanent members of the Security Council, but as the winners of World War II), is plain to see. It is equally evident that the definitive allocation of national armed forces to the UN, to be converted into a supra-national military police corps, would mark the beginning of real disarmament.

5. Big Strategies Combining Peace and Human Rights

Another objection: the human right to peace would be a jumbled mess of rights with no own defining characteristics, and as such, would be difficult to protect.

Answer: the right to peace, like the right to development and the right to the environment, is a right which certainly recapitulates and reinforces other rights, starting from the right to life, without taking anything away from its immanent olistic specificity by fulfilling its inescapable strategic role. It is a question of carefully examining the correlative obligations, as we shall do further on: it will show how the violation of one or another substantive articulation of the specific right to peace can become the subject of recourse to the courts by an individual, without excluding the innovative option of adding class actions to the current judiciary practice in the United Nations system.

Yet another objection: the draft being discussed touches on subjects which would be vague and controversial both in legal theory and in the political arena; for example, the responsibility to protect, human security, human development, conscientious objection, the status of private contractors, disarmament, etc.

The reply: first of all, it is not true that the concepts are not clear, at least from the theoretical point of view; indeed explicit reference, for example, to the responsibility to protect, to human security and to human development is found more and more frequently in official United Nations documents: see among others, the weighty Secretary-General's 2005 Report *In a Larger Freedom*. Not to mention *human development strategy*, which has been everyday language at the UNDP since the 1980s. As concerns conscientious objection to military service, the former United Nations Human Rights Commission had already adopted resolutions which included it under human rights as an expression of the fundamental right to freedom of conscience in accordance with Article 18 of the Universal Declaration of Human Rights.

Admittedly, some states are resisting the advance of these new frontiers of liberation and human promotion. Human security is certainly a new frontier, which brings us a multi-dimensional concept of security, as no longer purely military but also economic and ecological, in which the main subject is *people* (that is, all human beings) and the state becomes a necessary

instrument but no longer the fundamental and monopoly-holding instrument of an armed security.
By recognising the right to peace, clarity is given and an organised «system» is given to a series of elements which would otherwise be lost in the quagmire of wishful thinking. So the right to peace has the merit of attracting such elements into its orbit.
Yet another objection made by those who oppose the ongoing activities in Geneva: the subjects listed above are already being considered in separate operational areas of the United Nations and other international organisations and no interference with these actions should be allowed, for fear of weakening them.
The answer is similar to the previous one: there is a need to recap and bring together the numerous «rivulets», the several families or generations of human rights, within a comprehensive and organised view of world order, wherein the obligations of states are clearly defined in an area which is crucial precisely to the protection of human rights. The expression «interconnected, interdependent, and reciprocally reinforcing» is frequently found in official documents, with specific reference to human rights, development, democracy, the rule of law and to peace itself. A declaration on the right to peace is the key instrument for unlocking the way to actual on-the-ground implementation of this language.

6. Peace-loving States: Let the Civilisation of Law Meet the Civilisation of Love

Moving on to the obligations listed in Article 13 of the draft Declaration, grouped under six paragraphs, the first of which establishes that «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 harmonising the concerned efforts of the nations to realise the purposes and principles proclaimed in the Charter of the United Nations».
Hence, according to the literal wording, the primary duty bearers are, at the same level states and the United Nations Organisation itself, of which the former, moreover, are members. With this further characteristic: that the United Nations are also holders and guarantors of the right, since its member states

must fully implement the Charter. In this respect, the fifth paragraph reads: «States should strengthen the effectiveness of the United Nations in its dual function of preventing violations and protecting human rights and human dignity, including the right to peace».

And so, the United Nations Organisation is the supreme guarantor of the right to peace but, as mentioned above, it is made up of states, which determine its will: the controllers and the controlled would be one and the same, in substance if not in form.

The authors of the draft, proving their awareness of this ambiguous overlapping, call on other subjects to, as one might say, act as guarantors and promoters of the right to peace. In short, the creation of a sort of *cordon sanitaire* is advocated, which could be identified in the area of civil society. Paragraphs 3 and 4 of Article 13 are explicit on the issue: «The effective and practical realisation of the right to peace demands activities and engagement beyond States and international organisations, requiring comprehensive, active contributions from civil society, in particular academia, the media and corporations, and the entire international community in general».

Paragraph 4 of the aforementioned Article 13 of the draft Declaration provides that «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».

This provision calls into play all human rights defenders, making implicit reference to the United Nations Declaration of 8 March 1999 on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (A/RES/53/144) Article 1 of which reads: «Everyone has the right, individually and in association with others, to promote and *to strive* for the protection and realisation of human rights and fundamental freedoms *at the national and international levels*» (Italics added).

The consonance between the two texts is plain to see.

The «progressive measures, national and international» quoted above, are clearly those aiming to translate the content of the obligations into facts. Which obligations, specifically?

As previously mentioned, the obligation of obligations is that

to fully implement the United Nations Charter, a general obligation which is like a matryoshka, with a series of specific interconnected obligations inside it.

Let's try to list some of the most urgent ones. First of all, the obligation deriving from paragraph 6 of the aforementioned Article 13: «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». This is an indication of follow-ups typical of the legal instruments of *soft law*. One can imagine the establishing of a *Special Rapporteur*, which could be supplemented by a permanent Forum on the Right to Peace in which all the actors mentioned above would participate. One could also suggest the setting up of a special structure linking the Human Rights Council and the Security Council (and the International Criminal Court) in the shape of a platform of like-minded states which, in further support of the human right to peace, decide to implement Article 43 of the Charter, thus fully implementing the Charter itself. These states would prove that they truly incarnate the provisions of the first paragraph of Article 4 of the Charter («Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organisation, are able and willing to carry out these obligations») and could justifiably aspire to being numbered among the (re)founding fathers of the Charter.

In the non-governmental area, and still at the international level, one can realistically think of setting up a «Civil society platform for the implementation of the right to peace», which would also run campaigns; for example, one for the immediate moratorium on the production of any type of weapons.

Naturally, disarmament is a primary obligation, to be fulfilled under the supra-national authority and control of the United Nations, closely linked to the full implementation of the collective security system which, as highlighted above, would materially bring about the implementation of Article 43 of the Charter.

To conclude, by virtue of the human right to peace, states lose their attribute of sovereignty over the *ius ad bellum*, but they gain the far nobler *officium pacis*, the duty to make peace. This represents a revolution of Titanic proportions, but the most powerful states in particular, have no intention of enacting it.

In practice, the path undertaken within the Human Rights Council touches some very sensitive nerves in high politics.

One could dare to forecast two possible outcomes for the on-going operation: either that the debate is brought swiftly to an end by an explicit vote, therefore not by consensus, but with the real risk of an inexorable rejection, so it is an option we should discount; or that the discussion is continued, in the search for some sort of compromise along the pathway of a culture of peace based on human rights starting from the right to life. The more the compromise managed to keep the overall vision of «world order» intact, that is, if it linked the development of a culture of peace to the enactment of behaviours and strategies which lead to the building of the order of positive peace envisaged in Article 28 of the Universal Declaration, the more useful and productive it would be.

In any case, to the last, a challenge remains for «peace-loving states», a challenge which is also an encouragement and a plea: do not miss the opportunity to further humanise international law, so to have the civilisation of law meet the civilisation of love.