

The Human Right to Peace: The Collective and Individual Dimensions*

Wolfgang S. Heinz**

1. The Work of the Advisory Committee on the Human Right to Peace

At its 14th meeting in 2010, the Human Rights Council (HRC) requested its Advisory Committee (HRCAC) in Resolution 14/3, «in consultation with member states, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace and to report on the progress thereon to the Council at its seventeenth session»¹.

At its 5th meeting in August 2010, the HRCAC designated Chinsung Chung (Korea), Miguel d'Escoto Brockmann (Nicaragua), Wolfgang Stefan Heinz (Germany, Rapporteur) and Mona Zulficar (Chairperson) as members of the drafting group. Later Latif Huseynov (Azerbaijan) and Shigeki Sakamoto (Japan) joined the group. The drafting group was requested to submit the draft report on progress to the Advisory Committee at its 6th session in January 2011 with a view to submitting it to the Council at its 17th session (June 2011)².

Discussions and deliberations were difficult. The theme goes back to a 25 year old resolution from 1984 dealing exclusively with rights dimension between states, with little if any human rights content (UN General Assembly Resolution 39/11 of 12 November 1984). Coming from countries with strong positions against Western countries, it met with strong opposition, including voting against HRC resolution on the right to peace, among Western countries which argued in their majority against any proposals in this regard.

On the other hand, there are clearly many conceptual links between and dimensions of both peace and human rights which merit to be brought together meaningfully in a resolution, however this time with a clear human rights content. This is true despite the fact that security issues, while always present in

** This is a revised version of my contribution to the Spanish Society for International Human Rights Law (AEDIDH) Congress Human Right to Peace in Santiago de Compostela, Spain on 10 December 2010. It is partly adapted from the paper of the Drafting Group of the United Nations Human Rights Council Advisory Committee (HRCAC), Appendix 1, for its 6th meeting in January 2011, and expanded by me. This paper represents the personal views of its author.*

*** Political scientist, Senior Policy Adviser, German Institute for Human Rights. Former chair of the Human Rights Council Advisory Committee and former Rapporteur of its Drafting Group on the Right of Peoples to Peace.*

¹ HRC Resolution 14/3, para 15. On the discussion at the HRC, see C. Durán Villán, *The Human Right to Peace in the Work of the Human Rights Council*, in C.D. Villán, C. Faleh Pérez (eds.), *Contribuciones regionales para una declaración universal del derecho humano a la Paz*, Luarca, AEDIDH, 2010, pp. 284-291.

² HRCAC Recommendation 5/2.

human rights crisis discussions, are conspicuously absent from the list of human rights topics of the UN Office of the High Commissioner of Human Rights. No reference to the themes of security, peace or even UN peacekeeping can be found on this menu of the OHCHR website³.

Government positions however varied – and vary – widely between support, partial support, doubts and rejection. Some want a slightly updated General Assembly Resolution 39/11, others are in favour of a much more human rights-related resolution. Many are apparently concerned about inclusions of any new human rights standards – and some widely accepted standards – which have allegedly no sufficient basis in international law. Moreover, some civil society organisations are supportive of a wide ranging right to peace⁴ while others prefer to analyse the linkage between peace and human rights, taking as a departure the progressive elaboration of the Declaration and Programme of Action of Culture of Peace.

In its 7th session in August 2011, the HRCAC had before it the progress report on the right of peoples to peace prepared by its drafting group, which included a first draft declaration on the right of peoples to peace. The group focused on standards relating to international peace and security as core standards including elements of negative peace and absence of violence, including standards in the areas of peace education, development, the environment, victims and vulnerable groups as elements of a positive peace.

At its eighth session in February 2012, the HRCAC discussed the second, revised draft declaration⁵. The drafting group expresses its gratitude for the comments and observations received since August 2011⁶. Finally it submitted its report and draft declaration, the third draft, to the 20th session of the UN Human Rights Council. For the first time, it talked in the Annex with the draft declaration about *a right to peace* and no more of *a right of peoples to peace*⁷.

The Human Rights Council set up an Open-ended Intergovernmental Working Group on the right to peace which started in 2013 to discuss the draft and other proposals for a draft resolution which would then be submitted to the plenary of the Council⁸. At the time of writing, the Chairperson of that group, Costa Rican Ambassador Christian Guillermet Fernández works on a consolidated proposal in a context of a wide spectrum of

³ See <http://www.ohchr.org/EN/Issues/Pages/ListOfIssues.aspx>.

⁴ See website of AEDIDH, <http://www.aedidh.org/>.

⁵ A/HRC/AC/8/2, of 9 December 2011. See generally <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/RightToPeace.aspx>.

⁶ A/HRC/AC/8/2, of 9 December 2011, para. 8.

⁷ Report of the Human Rights Council Advisory Committee on the Right of Peoples to Peace, UN Doc. A/HRC/20/31, 16 April 2012. For a justification see this document, para. 6.

⁸ For reports and documents see <http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace.aspx>.

⁹ HRC Resolution 23/16, 24 June 2013.

¹⁰ On the collective dimension, see A. Belden Fields, *Collective/Group Rights*, in D.P. Forsythe (ed. in chief), *Encyclopedia of Human Rights*, New York, Oxford University Press, 2009, vol. 1, pp. 345-353. OHCHR responded to the following question: «Are there differences between individual rights and collective rights?»

Yes. Sometimes the equal worth and dignity of all can be assured only through the recognition and protection of individuals' rights as members of a group. The term collective rights or group rights refers to the rights of such peoples and groups, including ethnic and religious minorities and indigenous peoples, where the individual is defined by his or her ethnic, cultural or religious community.

Human rights claims are generally made most effectively by people acting together as a group. For instance, while we are all entitled as individuals to the right to freedom of association, it is only when that right is asserted collectively that it can meaningfully be realized. But in certain specific cases the right in question protects a common interest which the group – rather than any specific individual – is entitled to claim. For instance, the rights of indigenous peoples to traditional lands are recognized in ILO Convention no. 169, minority rights are recognized in article 27 of the International Covenant on Civil and Political Rights, and the right to self-determination is granted to all peoples in Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Collective rights are reflected strongly in some regional human rights regimes. The African Charter on Human and Peoples' Rights, for example, defines "peoples' rights" to embrace the right to existence and self-determination, the right to economic, social and cultural development, and the right to a general satisfactory environment favourable to their development.

views with the main purpose of accommodating all different positions from a clear human rights perspective.

A number of Western countries, and other countries have voted against the procedural resolution to set up the Working Group or have abstained (i.e. India). However many participate in the meetings of the Working Group in order to give their inputs to the process. In 2013, the voting of the procedural resolution was 30 in favour, 9 against and 8 abstentions⁹.

2. The Collective and Individual Dimension of the Right to Peace

There has been a long discussion on collective dimensions vs individual dimensions of human rights in international law into which I cannot enter in this short contribution. The major issue seems to be that it was argued that certain rights are not sufficient to only address the individual dimension, rather the collective dimension should also be taken up in the relevant human rights standard¹⁰.

A major discussion revolved around the right of peoples to self-determination, a legally binding standard reflected in the two UN Covenants of 1966. Other discussions focused on the issue whether or not human rights of minorities and indigenous peoples should be formulated (also) in a collective manner. Addressing rights as a group or even collective rights raises of course issues as to who are the legitimate speakers or representatives of that group or people in a real-life situation when there might be different or even opposed opinions among them. One solution could be to refer to the government, but governments or states are anyway the central actor in international law, so it may be not particularly clear what are the differences between the rights and obligations of states as opposed to the rights of peoples.

If we look at the wording of the title of HRC Resolution 14/3 we see that the language used is *right of peoples to peace* rather than, as in the case of the Spanish Society for the International Human Rights Law, the *human right to peace*. Language is important. Given that Resolution 14/3 was supported by a majority of states against a minority of states, it is important to understand and interpret the substance of the resolution.

This reasoning leads necessarily to the question whether the

reference to a collective right to peace, i.e. right of peoples to peace, would exclude the individual dimension, which, in any event, is the dominant feature of almost all human rights instruments. I would argue, and the drafting group of the advisory committee shares this position, that such a thesis is not supported in international law. But we need to get a clearer picture and look at other collective rights standards to verify how the question of collective vs individual rights is being taken up.

A key standard in the history of human rights is the right to self-determination. However, the formulation in the two UN Covenants does not tell us much as regards to the specifics of that right¹¹.

The picture is more diverse when it comes to other important human rights standards which have been passed by the UN Commission on Human Rights, the Right to Development of 1986, and the Human Rights Council Declaration on the Rights of Indigenous Peoples. We will look in some detail at these two standards.

But before doing this we need to briefly recall the discussion of the important workshop on the rights to peace organised by the Office of the UN High Commissioner on Human Rights in December 2009.

At that workshop, experts took varying views on the collective dimension of a human right of peoples to peace.

For example, an expert noted that there was a tendency to perceive the right to peace primarily from the perspective of collective rights. Yet peace was also a personal right, prior to and indispensable to other rights. He indicated that peace must be seen as an enabling right empowering individuals to enjoy civil, political, economic, social and cultural rights. One should not be limited to considering peace as the absence of war. Humanity needed to ensure positive peace in the form of social justice. The right to peace must be understood and implemented in a holistic manner, among other things, through respect for civil and political rights and must include a focus on the obligations that peace imposes both on states and on individuals¹².

Another expert noted that the «right to peace had a definite individual dimension, which was assessed through the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and

However, there may often be obstacles to people claiming collective rights. The challenges are partly of a legal kind, the problem of identifying who is entitled to claim what, and also of a political kind, with collective rights in many situations being perceived as a threat to the interests of the majority or of individuals within the group. The right to self-determination, for example, can raise difficult questions about the control and use of resources, and hence is often a matter of heated debate. Strategies to claim collective rights must take account of these kinds of limitations and sensitivities» (OHCHR, *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation*, Geneva, OHCHR, 2006, pp. 11-12).

¹¹ For a discussion see, among many contributions, M. Nowak, *U.N. Covenant on Civil and Political Rights. CCPR Commentary*, Kehl, Engel, 2005 (2nd rev. ed.), paras. 8-40; relevant general comments and complaints are discussed in S. Joseph, J. Schultz, M. Castan, *The International Covenant on Civil and Political Rights. Cases, Materials, and Commentary*, Oxford, Oxford University Press, 2005, pp. 141-153 and H. Hannum, *The Right of Self-determination in the Twenty-first Century*, in Id. (ed.), *Human Rights in the World Community*, Philadelphia (Pa.), University of Pennsylvania Press, 2006, pp. 242-246.

¹² United Nations, *Report of the Office of the High Commissioner on the Outcome of the Expert Workshop on the Right of Peoples to Peace*, UN Doc. A/HRC/14/38, 2009 (OHCHR Workshop 2009), para. 15.

Cultural Rights and the International Covenant on Civil and Political Rights»¹³. There is a generally accepted principle of dual ownership of the human right to peace. He noted that peace was indivisible, and thus manifested itself as a collective right of the human community of peoples and states while, at the same time, directly affecting each human being as an individual right¹⁴.

Finally, one expert pondered that the «meaning given to the term “peoples” for the purposes of peoples’ right to peace still remained unclear, leading to an uncertainty as to the rights holders. The term “peoples” might have different meanings for the purposes of different rights of peoples. [...] The question was whether the duty bearers were individual States, States acting collectively through the United Nations, or the international community as a whole»¹⁵.

No expert argued for an exclusively collective dimension ruling out an individual rights approach or at last, or that an overwhelming weight should be given to the collective dimension.

Other Collective Rights

If one looks at other collective rights, such as the right to development and the Declaration on the Rights of Indigenous Peoples, those clearly include individual rights.

The UN Declaration on the Right to Development (1986)¹⁶, for example, states in Article 1(a) that

[t]he right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

In Article 2, it specifies that the human person is the central subject of development and should be the active participant and beneficiary of the right to development.

The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

¹³ OHCHR Workshop 2009, para. 27.

¹⁴ *Ibidem*, para. 29.

¹⁵ *Ibidem*, para. 10.

¹⁶ UN General Assembly Resolution 41/128, *United Nations Declaration on the Right to Development*, 1986.

The United Nations Declaration on the Rights of Indigenous Peoples (2007)¹⁷ combines collective and individual rights:

Article 7

Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. [...]

Article 17

Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

3. Conclusion

The HRCAC draft Declaration on the Right to Peace covers human security, disarmament, peace training and education, right to conscientious objection to military service, private military and security companies, peacekeeping, right to development, environment, rights of victims and vulnerable groups, refugees and migrants and implementation. As a declaration of the Human Rights Council these standards would be an expression of political will but not legally binding.

Some of those issues are seen by some states as controversial or contested. But the idea of the HRCAC was to propose a relatively short, focused list of 14 standards which represent

¹⁷ UN General Assembly Resolution 61/295, *United Nations Declaration on the Rights of Indigenous Peoples*, 2007.

accepted international law standards. Sources on these standards are given and explained in the Progress Report of the HRCAC¹⁸. In subsequent discussions the Committee was criticised for both suggesting allegedly new standards not compatible with international law or, especially by some civil society organisations, of not going far enough in its proposed standards¹⁹. This is understandable but perhaps unavoidable regarding such a contested topic.

One main criticism from Western countries was the notion of collective rights so overwhelming in General Assembly Resolution 39/11 of 1984. From the brief discussion in this contribution, it should have become clear that existing standards of collective human rights do not at all rule out an individual dimension of human right. Rather, different combinations of collective and individual rights can be found in existing and widely accepted standards.

In some cases, standards are formulated exclusively in a collective way, i.e. right of peoples. In other cases, collective and individual dimensions are mentioned. Thirdly, there are cases where standards are exclusively formulated as an individual right. All three types are possible and indeed have been used in important human rights standards.

Hence, in the HRCAC we felt fully justified to follow the same reasoning when we worked on the draft Declaration on the Human Right of Peoples to Peace. Following the tradition of other established human rights standards we attempted to refer clearly to individual and collective rights and identify governments as duty-holders thereby stressing the obligations of states vis-à-vis the individual. While this does not appear to present an insolvable problem, it is certainly more complex than the traditional individual rights approach.

¹⁸ See Progress Report of the Human Rights Council Advisory Committee on the Right of Peoples to Peace, A/HRC/17/39 of 1 April 2011 which discusses more than 40 standards, and includes international law sources and a bibliography.

¹⁹ See statements by states, NGOs and other actors during the first session of the Intergovernmental Working Group on the Draft United Nations Declaration on the Right to Peace (18-21 February 2013) in 2013: <http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace1stsession.aspx>.