

The right to live in a context of human rights, peace, and development

A debate within the Human Rights
Council

Christian GUILLERMET FERNÁNDEZ
David FERNÁNDEZ PUYANA

N. 11 · June 2014

ISSN: 2014-2765 DL: B 16161-2014

Since the inception of the United Nations in 1945 the international community has been actively engaged in the promotion and strengthening of world peace through the adoption of different peace laws and resolutions. In particular, the Charter of the United Nations and the International Bill of Rights are considered relevant legal instruments whose main purpose is the realization of peace and consequently, the progressive elimination of war and armed conflict across the earth. Following these precedents, some Member States and stakeholders are currently promoting the adoption by the Human Rights Council and General Assembly of a new instrument on the right to peace.

Context

In June 2013, the Human Rights Council (hereinafter: HRC) adopted the resolution 23/16 requesting the Chairperson-Rapporteur of the Working Group to prepare a new text on the basis of the discussions held during the first session of the Working Group and on the basis of the inter-sessional informal consultations.

The Open-Ended Working Group concluded in its first session that there were some governmental delegations and other stakeholders that recognize the existence of the right to peace. They argued that this right was already recognized by soft-law instruments (such as UNGA res. 39/11 of 1984 entitled, “Declaration on the Right of Peoples to Peace”). On the other hand, several other delegations stated that a stand-alone “right to peace” does not exist under international law. In their view, peace is not a human right, but a consequence of the full implementation of all human rights.

On 9 May 2014, the Chairperson-Rapporteur held an informal consultation with governments, regional groups and civil society organizations, in which he disclosed the following main points of concurrence among all delegations on this controversial topic:

1. The declaration should be short and concise and should provide an added value to the field of human rights on the basis of consensus and dialogue;
2. The declaration should be guided by international law, basing itself on the Charter of the United Nations and the promotion of human rights and fundamental freedoms;
3. The legal basis of the human rights legal system is the concept of human dignity;
4. Human rights and fundamental freedoms, in particular the right to life, are massively violated in context of war and armed conflict. In addition, there is no possibility to exercise fundamental rights in a context of armed violence;
5. Cooperation, dialogue and the protection of all human rights are fundamental to the prevention of war and armed conflict;
6. The promotion, protection and prevention of violations of all human rights would make a profound contribution to peace;
7. Human rights, peace and development are interdependent and mutually

reinforcing;

8. Many concepts of human rights included in the draft declaration elaborated by the Advisory Committee are new and unclear, which results in the risk that the current process will become an unproductive, futile and frivolous exercise. Many notions have already been addressed in other, more appropriate forums, some under the Human Rights Council, and some not.

In addition, the Chairperson-Rapporteur stated that a Declaration adopted by consensus will necessarily carry more weight than one supported by a majority of States. A future Declaration will also be a useful tool to generate widespread and consistent State practice and/or provide evidence of *opinio juris* of customary rule. Additionally, soft-law instruments can be vehicles for focusing consensus on rules and principles, and for mobilizing a general response on the part of States.

The second session of the Open-Ended Working Group (hereinafter: OEWG) will take place from 30 June to 4 July 2014 at the Palais des Nations in Geneva. The working group is open-ended. This means that all United Nations Member and Observer States, intergovernmental organizations, non-governmental organizations with ECOSOC consultative status, and other relevant stakeholders may attend public meetings of the working group.

Analysis

Legal background

The United Nations is a response to the two World Wars and the intention of the member States to suppress war. The maintenance of international peace and security is the most important goal of the United Nations. Recent practice has stressed the strong linkage and interdependence of peace and security with broader conditions of social development and human rights. Article 1 (2) of the UN Charter proclaims that the purpose of the United Nations is to "... take other appropriate measures to strengthen universal peace". In this provision peace or universal peace can be found separately from security. The degree of overlapping between peace and security depends very much upon whether the term peace is narrowly or broadly defined. It could safely be concluded that the broader meaning of peace deals with the generic causes of conflict.

The Preamble of the Universal Declaration of Human Rights recognizes that the inherent dignity and the equal rights of all persons is the foundation of freedom, peace and justice in the world. The declaration was inspired by a sincere desire for peace. The Declaration is based on the conviction that each man and woman must have freedom in order to develop one's personality to the full, and have one's dignity respected.

The Covenants on Civil, Political, Economic, Social and Cultural Rights textually adopted in their respective Preambles the first recital contained in the Preamble of the Universal Declaration of Human Rights. In addition, they expressly recognized the linkage between the UN Charter and the concept of peace and human rights understood in the line of the contributions received during the drafting process of the Charter and Declaration. In addition, other human rights instruments adopted by the General Assembly of the United Nations (hereinafter: UNGA) stated in their preambles that discrimination, development and human rights play a crucial role in creating fair and equal societies founded upon freedom, justice and peace.

The principles codified in Art. 2 of the Charter constitute the basic foundational principles of the whole body of international law (i.e. prohibition of the threat or use of force against the territorial integrity or political independence of any State; settlement of international disputes by peaceful means; prohibition to intervene in matters within the domestic jurisdiction; cooperation among States; self-determination of peoples and sovereign equality of States). The promotion of human rights and peace are considered as essential purposes, whose realization should be jointly promoted by Member States in conjunction with the full respect of those principles included in the UN Charter. It follows that this perspective has been included in both national constitutions and regional instruments from Africa, Europe, Latin America, Asia and Muslim countries.

In 1978 the General Assembly adopted the Declaration on the Preparation of Societies for Life in Peace by 138 votes to none, with two abstentions. It reaffirms and makes reference to the existing United Nations accomplishment aimed at fostering the principle of friendly relations and co-operation among States. In addition, it spells out the eight main principles, which will guide Member States in the preparation of societies for life in peace. Both this Declaration and the Universal Declaration of Human Rights share the same legal ways aimed at widely promoting the peace values and principles contained

in human rights law, by proclaiming teaching and education as key elements to develop more peaceful societies. The human rights dimension is a key element in the Declaration. This human rights component can be found in its Art. 1, which recognises that: “Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace”.

Afterwards, in 1984 the General Assembly adopted the Declaration of the Right of Peoples to Peace by 92 to none and 34 abstentions. Twenty-nine States were absent from the vote and two countries did not participate, because both of them disagreed with the initiative. The supporters of this Declaration stated that the right of peoples to peace was “implicitly” recognised by the international community in accordance with the UN Charter. In order to protect and promote this right, they proposed that States should effectively implement and respect the set of principles contained in Art. 2 of the Charter of the United Nations. In addition, they stressed that the respect of the latter principles should help to eliminate the scourge of war. Other governmental delegations stated that while peace is an indispensable condition of human survival, it cannot be peace at any price. They added that the human rights component, including individual or collective rights, was not properly reflected in the text. This Declaration is principally devoted to the relationship among countries and the condemnation of war.

Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace

The States’ recent practices have not been of much help in the direction of strengthening the human rights dimension of this concept. The notion of the right to peace has been explicitly included in seven domestic Constitutions (i.e. Bolivia, Burundi, Cameroon, Japan, Republic of Congo, Peru and Guinea Bissau). However, these constitutional texts have elaborated this concept by taking into account a conception based only on the relationships between States and without referring to human rights issues, with the exception of Peru. These legal instruments have continued by using the notion of the right to peace in connection with the principles of friendly relations among nations, the peaceful settlement of disputes, the territorial integrity and the prohibition of the threat or use of force.

In addition, there are some regional instruments that have explicitly recognized the right to peace as a collective right and always in connection to principles contained in Art. 2 of the UN Charter (i.e., African Charter on Human and Peoples’ Rights, the Human Rights Declaration, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa and the Ibero-American Convention on Young People’s Rights). Furthermore, there is an increasing case law on the right to peace developed by some national courts. However, the claimants who brought the case to the court focused their attention only on the use of force by some specific States in a context of war or conflict. The component of human rights was not properly included. The concept of the right to peace included in both constitutions and regional instruments, and used in some domestic courts, is clearly elaborated in light of the “right of peoples to peace”, elaborated by the 1984 Declaration.

In order to elaborate the right to peace in light of human rights, the Director-General of UNESCO introduced in 1997 the Draft Declaration on the Human Right to Peace as the Foundation of the Culture of Peace. Despite this important initiative, the result of the International Conference held at the UNESCO headquarter in Paris was absolutely unsatisfactory for many stakeholders, because there was not sufficient support to recognise the human right to peace. Nevertheless, during the general debate, Member States were unanimous regarding the existence of an indivisible link between all human rights and peace and also recognized that the Draft Declaration to be prepared would primarily be an ethical document designed to proclaim principles. In his opening remarks, the UN Secretary-General 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 of 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”.

During the International Year of Culture of Peace proclaimed for 2000, the Human Rights Commission adopted resolution 2000/66, by which it requested the Office of the High Commission of Human Rights OHCHR (hereinafter: OHCHR) to organize 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. The Expert Seminar on Human Rights and Peace was held in Geneva on 8 and 9 December 2000. The report

prepared by the OHCHR concluded that “human rights should become the fundamental guiding principle for sound economic and social development and for the anticipation and prevention of conflict and for the reconstruction and rehabilitation of post-conflict societies”. In the context of the 2014 International Day of Peace, to be commemorated on 21 September all over the world, the Secretary-General of the United Nations calls upon the international community to enhance all human rights and fundamental freedoms as a preventive measure to avoid wars and conflicts.

The theme for the Day this year acknowledges the 30th anniversary of the General Assembly Declaration on the Right of Peoples to Peace, with its central message that humanity’s sustainable progress and the realization of fundamental rights and freedoms depend on peace and security. It is central to the Rights up Front approach, which calls upon the international community to act earlier and more concertedly in the face of human rights violations, which are often the precursors of worse to come.

Debate within the human rights bodies

The lively debate on the right of peoples to peace started at the Commission on Human Rights in 2001. As a consequence of introducing a more human rights approach to this notion, in 2003 the Commission changed the title of several resolutions (i.e. Res. 2003/61, 2004/65, 2005/56) as follows “Promotion of peace as a vital requirement for the full enjoyment of all human rights by all”.

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

Pursuant to resolution 8/9 of 2008, the HRC requested the OHCHR to convene a workshop on the right of peoples to peace, which was finally held on 15-16 December 2009 in Geneva. In this workshop the current deep division about the existence of the right to peace could be seen even at the academic level. In fact, some well-known legal practitioners who participated at the Workshop on the right of peoples to peace held on 15-16 December 2009 in Geneva stated that the right to peace had never been explicitly formalized into a treaty, including the UN

Charter, and that the UN human rights instruments had not given proper expression to this enabling right.

In the resolution 14/3 of 2010, the HRC recalled the United Nations Declaration and Programme of Action on Culture of Peace of 1999, and the UNGA resolution 53/25 proclaiming 2001-10 as the International Decade for a Culture of Peace and Non-Violence for the children's of the world; called upon States and relevant United Nations bodies to promote effective implementation of the United Nations Declaration and Programme of Action on Culture of Peace and requested the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace.

The Secretary-General of the United Nations will call upon the international community to enhance all human rights and fundamental freedoms as a preventive measure to avoid wars and conflicts

On 29 June 2012 the plenary of the HR Council discussed the (third) Advisory Committee draft declaration on the right to peace. It should be noted that all the main elements proposed by the Human Rights Council Advisory Committee in its draft Declaration on the right to peace were already included in the Declaration and Program of Action of Culture of Peace. In particular, the concepts proposed by the Advisory Committee have been elaborated by different stakeholders in the line of the Programme of Action of Culture of Peace (i.e. human security and poverty, disarmament, education, development, environment, vulnerable groups, refugees and migrants).

It follows that in spite of including in the future Declaration concepts that are being currently dealt with by other competent bodies, the international community should progressively elaborate these notions in light of agreeable Declarations already adopted by the General Assembly, such as the Declaration and Programme of Action of Culture of Peace.

Proposal to advance in this topic

In order to better contextualize this matter, the right

to peace should be carefully analysed in light of resolution 60/251 of the HRC. In accordance to its Preamble, development, peace and security and human rights are interlinked and mutually reinforcing. However, the UNGA clearly decided that the Council should address situations of gross and systematic violations of human rights and also contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies. Additionally, in accordance with the operative section of the resolution, the mandate of the HRC is to promote and protect human rights. It follows that peace should be elaborated in light of some fundamental human right, which has already been recognised by the international community as a whole, such as the right to life.

The added value of the new Declaration elaborated is not only to recall again the linkage between the right to life and peace, but also to elaborate the right to life in connection to human rights and development, which has not still elaborated in international law. The United Nations does not need to re-invent the wheel, but only to strengthen the right to life by linking it to peace, human rights and development. Therefore, the recognition of the right to life and the affirmation of the right to live in peace, human rights and development are intended to ensure that States take measures to guarantee that life may be lived in a natural and dignified manner and that the individual has every possible means for this purpose. The elaboration of the right to life in this direction would help to further develop the right of everyone to live in a context in which the three pillars of the United Nations are fully respected. In fact, the right to live in peace is a holistic concept that goes beyond the strict absence of armed conflicts. It is also positive, since it is linked to the eradication of structural violence as a result of the economic and social inequalities in the world and to the effective respect for all human rights without discrimination.

In order to progressively eliminate armed conflict and war all over the Earth and consequently to live in a context of peace, the protection of human rights, development and dignity should be at the centre of all decision-making processes at both the national and international levels. It follows that different stakeholders should adopt positive measures in the economic, social and cultural fields on peace matters through the promotion of human rights and human dignity. It should be noted that human rights, peace and development are interdependent and mutually reinforcing and that in a context of war and armed conflict all human rights, in particular the right to life, are gravely violated.

The promotion and protection of all human rights is an important legal tool aimed at preventing armed conflicts in the world. Sustainable and long-term prevention of armed conflict must include a focus on strengthening respect for human rights and addressing core issues of human rights violations, wherever these occur. Efforts to prevent armed conflict should promote a broad range of human rights, including not only civil and political rights but also economic, social and cultural rights, including the right to development.

Since the creation of the United Nations, the UNGA has adopted several key Declarations and resolutions, by which it solemnly appeals to all States to resolve conflicts and disputes by peaceful means and it also reminds them of their obligations under the Charter. Outstanding endeavours have been undertaken by the international community to create an international order free of wars through the strengthening of mechanisms aimed at promoting the peaceful settlement of disputes. During the negotiation process of the Universal Declaration of Human Rights all governmental delegates recognized that the violation of human rights is one of the main causes of war.

The protection of human rights, development and dignity should be at the centre of all decision-making processes at both the national and international levels in order to live in a context to peace

In recent years, civil society movements have promoted the adoption of important legal instruments aimed at protecting the population in a context of warfare and also limiting the trade and use of certain arms. Nowadays the international community has the legal resources to 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 the legal perspective, as well as totally incompatible with peace and a clear violation of human rights, and in particular the right to life.

Now that we are well into the twenty-first century, many human rights organisations, peace activists, citizens and governments strongly demand the adoption of policies aimed at preventing wars and

conflicts and the United Nations should provide an effective response.

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

The elaboration of the right to live in a context of peace, human rights and development will surely contribute to the strengthening of international cooperation and multilateralism and will also influence the current objectives of the United Nations as a fundamental step towards the promotion of peace, tolerance, friendship and brotherhood among all peoples.

Recommendations

The text prepared by the Chairperson-Rapporteur is based on the following: firstly, the Charter of the United Nations and the Universal Declaration of Human Rights; secondly, the content of the resolutions on the right of peoples to peace adopted by the Human Rights Council since 2008; thirdly, international law and human rights law; fourthly, the points of concurrences among all delegations; fifthly, outcome of the consultations held in the context of the on-going process and sixthly, the principles elaborated by the Advisory Committee in the line of the Declaration and Programme of Action on Culture of Peace and Vienna Declaration on Human Rights. In particular, the Chairperson-Rapporteur recommends working the following elements in the context of the Intergovernmental Working Group on the right to peace of the HRC, which is open to all States, civil society organizations and other stakeholders:

First: Friendly relations among nations are based on respect for the principle of equal rights and self-determination of peoples, and international cooperation to solve international problems of an economic, social, cultural or humanitarian character and to promote and encourage respect for human rights and fundamental freedoms for all.

Second: The inherent dignity and the equal and inalienable rights of all members of the human family

as the foundation of freedom, justice and peace in the world.

Third: The universality, indivisibility, interrelation and interdependence of all human rights for all.

Fourth: The disregard and contempt for human rights as a result of barbarous acts that have outraged the conscience of humankind.

Fifth: The right of everyone 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.

Sixth: The importance of peace and security, development and human rights as pillars of the United Nations system and the foundation for collective security and well-being.

Seventh: The world's commitment to eradicating poverty and promoting sustained economic growth, sustainable development and global prosperity for all.

Eighth: The participation of women on equal terms with men in all fields as a condition for the full and complete development of a country, the welfare of the world and the cause of peace.

Ninth: The importance of the prevention of armed conflict in accordance with the purposes and principles of the Charter and the commitment to promoting a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world.

Tenth: The contribution of the Human Rights Council, through dialogue and cooperation, towards the prevention of human rights violations and the response to human rights emergencies.

Eleventh: The wide diffusion of culture and the education of humanity for justice, liberty and peace.

Twelfth: The Declaration and Programme of Action on a Culture of Peace as a set of values, attitudes, traditions and modes of behaviour and ways of life based on, among others, the full respect for and promotion of all human rights and fundamental freedoms.

Thirteenth: The supreme importance of practicing tolerance, dialogue, cooperation and solidarity among all stakeholders as a means to promoting world peace through human rights and to end, reduce and prevent progressively war and armed violence.

Fourteenth: The right of everyone to the promotion, protection and respect for all human rights and

fundamental freedoms, in particular the right to life, in a context in which all human rights, peace and development are fully implemented.

Fifteenth: The principles of freedom from fear and want, equality and non-discrimination and justice and rule of law as a means to build peace within societies. In this regard, States should undertake measures to bring about, maintain and enhance conditions of peace, particularly to benefit people in need in situations of humanitarian crisis.

Sixteenth: The adoption of all possible actions, including the establishment and enhancement of national institutions and related infrastructures, by every State, the United Nations and the specialized agencies, as well as other interested international, regional and national organizations, and civil society.

ABOUT THE AUTHORS:

Ambassador Christian Guillermet Fernández is the Deputy Permanent Representative of Costa Rica to the United Nations in Geneva and Chairperson-Rapporteur of the Intergovernmental Open-Ended Working Group on the Right to Peace.

Dr. David Fernandez Puyana is legal assistant to the Chairperson-Rapporteur at the Permanent Mission of Costa Rica in Geneva.

DISCLAIMER:

The views expressed in this publication do not necessarily reflect those of the ICIP.

INTERNATIONAL CATALAN INSTITUTE FOR PEACE

The International Catalan Institute for Peace (ICIP) is a public, but independent institution, whose primary aim is to promote the culture of peace and to facilitate the peaceful resolution and transformation of conflicts. ICIP's activities are related to research, the transfer of knowledge, the dissemination of ideas and awareness, as well as intervention on the ground. With research as one of its priorities, ICIP has a special interest in promoting original research that contributes new results, not only in the theoretical field but also in terms of practical solutions. The publication of this series of ICIP *Policy papers* forms part of this mission.

www.icip.cat / icip@gencat.cat