

Carlos Villán: “The emerging human right to peace: Its legal foundations”

In memoriam Nelson Mandela
University of Maastricht, 10 December 2013

The emerging human right to peace: Its legal foundations
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Forward

It is a great honor to be guest of the Theo van Boven Lectures Series in this prestigious Centre for Human Rights, Faculty of Law of the Maastricht University. I would like to pay tribute to its outstanding contribution to the development of IHRL. My gratitude goes particularly to Theo since he is one of the most living leaders of the IHRL in the world. I have learnt from Theo inter alia that peoples matter and that the victims of human rights violations deserve respect, truth, justice and reparation. When Theo was forced to leave the then UN Human Rights Division in May 1982, one of his latest decisions was hiring me as assistant human rights officer for a short-term contract of

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two months. I remained with the UN for 23 years. When I also was forced to leave the UNOHCHR in December 2005, I decided to join civil society and to work for peace and human rights.

Our commemoration today of the 65th anniversary of the UDHR is indeed a welcome opportunity to refresh its wording. While the UDHR was followed by an impressive development of the IHRL including more than 200 international treaties (both at universal and regional levels), the human right to peace was never spelled out. However, the value of peace is at the very foundation of the UN Charter as well as the preamble of the UDHR and the two International Covenants. Time is up to strongly link peace and human rights.

Admittedly, most developed States refuse accepting the concept of human right to peace. On the contrary, developing States support civil society organizations’ contribution to the codification and progressive development of the emerging human right to peace. This lecture focuses on the strong legal foundations of the human right to peace in IHRL. Therefore, developed States should listen to other States and to worldwide civil society organizations and join the ongoing codification process of the human right to peace at the UN Human Rights Council.

I. Introduction

On 5 July 2012, the Human Rights Council welcomed the contribution of CSOs² and established an open-ended intergovernmental working group (OEWG) with the mandate of progressively negotiating a **draft United Nations declaration on the right to peace**, on the basis of the draft submitted by the Advisory Committee³, and without prejudging relevant past, present and future views and proposals⁴.

Following the first session of the OEWG some 1792 CSOs and cities worldwide submitted to the HR Council a joint written statement⁵ inviting it to extend the mandate of the OEWG for an additional year to enable it to achieve consensus among States and CSOs in the language of the future UN declaration of the human right to peace.

² See the *Santiago Declaration on the Human Right to Peace*, adopted on 10 December 2010 by the International Congress on the Human Right to Peace held at the World Social Forum on Education for Peace, Santiago de Compostela (Spain). Available at <http://www.aedidh.org/sites/default/files/Santiago-Declaration-en.pdf>

³ Doc. A/HRC/20/31 of 16 April 2012, Annex, pp. 3-9.

⁴ Resolution 20/15, para. 1. Adopted by 34 votes in favor, one against (United States) and 12 abstentions (India and European States).

⁵ Doc. A/HRC/23/NGO/96 of 24 May 2013, 14 p.

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On 13 June 2013, the HR Council welcomed again the important work being carried out by civil society organizations for the promotion of the right to peace and their contribution to the development of this issue. It decided that the working group shall hold its second session from 17 to 21 February 2014. It also requested the chairperson-rapporteur of the working group to conduct informal consultations and to prepare a **new text** on the basis of the discussions held during the first session of the working group and on the basis of the inter-sessional informal consultations to be held, and to present it prior to the second session of the working group for consideration and further discussion thereat⁶.

The draft resolution had been presented by Cuba on behalf of the Community of the Latin American and Caribbean States (CELAC). It was adopted by 30 votes in favor⁷, 9 against⁸ and 8 abstentions⁹. Therefore, EU Member States divided their votes between abstentions and votes against, while they joined the United States and other developed States voting against to refuse the concept of “right to peace”.

In explanation of vote, the **United States** questioned the “right” to peace, since “it is neither recognized nor defined in any universal, binding instrument, and its parameters are entirely unclear”. Therefore, it does not agree to develop a collective “right to peace” or to position it as an “enabling right” that would in any way “modify or stifle the exercise of existing human rights”. Finally, it “is not prepared to negotiate a draft declaration on the right to peace, while it remained open to the possibility of discussing the *relationship between human rights and peace*”.

Speaking on behalf of the European Union (EU), **Ireland** stated that the EU firmly believes in peace and human rights, and its close linkage. The preamble of both the 1948 Universal Declaration of Human Rights and the 1966 International Covenants on Human Rights proclaimed that

“(R)ecognition 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”.

⁶ Resolution 23/16, paras. 1, 3 and 4.

⁷ Angola, Bangladesh, Benin, Botswana, Burkina Faso, Cameroon, Chile, Congo, Costa Rica, Djibouti, Ecuador, Guatemala, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Peru, Philippines, Qatar, Saudi Arabia, Thailand, Uganda and Uruguay.

⁸ Austria, Czech Republic, Estonia, Germany, Japan, Montenegro, Republic of Korea, Spain and the United States of America.

⁹ India, Ireland, Italy, Kazakhstan, Poland, Republic of Moldova, Romania and Switzerland.

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Peace and human rights can be mutually reinforced. However, “there is no legal basis for the right to peace in international law and it is not possible to find a common definition of this right”. Therefore, it expressed concern about the content of the draft declaration prepared by the Advisory Committee, since “it is focused on a concept that does not enjoy consensus”.

However, the EU is “willing to be engaged in the discussion on the linkage between peace and the enjoyment of human rights”. If the new text to be prepared by the chairperson-rapporteur well reflects its position on the relationship between peace and the enjoyment of human rights, then the EU “will take it into serious consideration taking part in the negotiation process, including the second session of the OEWG”.

On the opposite side, **Costa Rica** reminded on 7 June 2013 that “the United Nations has as ultimate goal to create a peaceful environment in which all human beings can enjoy all human rights and fundamental freedoms”. Significantly, at the end of the first session of the OEWG “there was consensus on the need to identify elements for a possible declaration based on another text”.

There is “a close interaction between peace, cooperation and human rights”. We cannot “remain deaf to valid claims of ordinary citizens. Do not underestimate the power and demands of civil society. This process is a clear example of its strength and commitment”. Hesitant States “should rethink their position and participate in this process”, which is challenging and exciting at the same time.

Finally, the **Holy See** stated that peace “is one of the deepest desires of the human heart and also a right of everyone which permits the integral human development. Peace is the precondition to the realization of all other rights”.

Defining peace only as “the absence of war is to reduce it to a negative value”. Peace “is built each day in the family, school and society”. Without economic, political, cultural and spiritual progress, peace would be a mirage for naive minds. “Those who want to base peace exclusively on the force and balance of power are wrong”. “The other name for peace is development”. It is better served through “the construction of schools and health systems”.

Peace and security cannot be realized “without respecting peace and the safety of others”. Our world does not lack resources but suffers injustice. Divisions seem more profound and therefore, today peace is more elusive. “The opposite of peace is war and fear”. War is a failure of human beings. “War is an illusion based on the idea that we can defend or build a healthy and better society by inflicting untold suffering into others”.

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The **Holy See** concluded that the establishment of an OEWG with the mandate to initiate the formal codification of the human right to peace “was a wise decision, which will end with the adoption of an effective and consensual declaration”. “Non-violence, as a doctrine and method, was and remains to be the most appropriate way of mediation and reconciliation” in order to renew human ties for the common good and lasting peace”.

The present lecture will review the background provided by civil society organizations to the development of human right to peace (Section II). The roots and legal foundations of the emerging human right to peace in international human rights law will be spelled out following the 14 Articles’ declaration proposed by the Advisory Committee in 2012 (Section III). Finally, some conclusions will be drawn to invite developed States to join the on-going international codification process of the human right to peace at the UN Human Rights Council (Section IV).

II. Background: A civil society initiative

Translating the universal value of peace to the legal category of human right has been the purpose of the legislative initiative carried out by the international civil society in all regions of the world, especially in Europe. The pioneering role of the Spanish Society for International Human Rights Law (SSIHRL) crystallized in the *Luarca Declaration on the Human Right to Peace*, adopted on 30 October 2006¹⁰.

Since then the SSIHRL successfully conducted the World Campaign in favour of the human right to peace (2007-2010), through which the *Luarca Declaration* was shared and discussed by independent experts in consultations held in the five regions of the world¹¹.

The regional contributions to the Luarca Declaration can be found in the declarations on the human right to peace adopted by experts of civil society in La Plata, Argentina

¹⁰ *Vid.* C. R. RUEDA CASTAÑÓN and C. VILLÁN DURÁN (eds.): *Luarca Declaration on the Human Right to Peace*, 2nd ed., Granda-Siero: Madú, 2008, 560 pp. See also C. VILLÁN DURÁN: “The human right to peace: A legislative initiative from the Spanish civil society”, *Spanish Yearbook of International Law*, XV (2011), pp. 143-171. And C. VILLÁN DURÁN: “Civil society organizations contribution to the Universal Declaration on the Human Right to Peace”, *International Journal on World Peace*, XXVIII, No. 4 (2011), pp. 59-126.

¹¹ *Vid.* D. FERNÁNDEZ PUYANA: “World Campaign on the human right to peace”, in Carlos VILLÁN DURÁN and Carmelo FALEH PÉREZ (eds.): *Regional Contributions for a Universal Declaration on the Human Right to Peace*, Luarca: SSIHRL, 2010, pp. 61-76.

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(November 2008 and September 2013); Yaoundé, Cameroon (February 2009); Bangkok, Thailand (April 2009); Johannesburg, South Africa (April 2009); Sarajevo, Bosnia and Herzegovina (October 2009); Alexandria, Egypt (December 2009); Havana, Cuba (January 2010); Morphou, Cyprus (October 2010); Caracas, Venezuela (November 2010); Nagoya and Tokyo, Japan (December 2011); Slovenj Gradec, Slovenia (October 2012); San José, Costa Rica (February 2012 and 2013); and Oswiecim, Poland and London, United Kingdom (May 2013).

At its outcome, civil society organizations (hereinafter, CSOs) adopted on 10 December 2010 the *Santiago Declaration on the Human Right to Peace* and the *Statutes of the International Observatory of the Human Right to Peace* (hereinafter, IOHRP)¹².

As stated in a previous study, “this is an example of good practice showing how a joint legislative initiative of both civil society and academia may pave the way to the codification and progressive development of the international human rights law”¹³, even in a particular field –war and peace- traditionally reserved to representatives of sovereign States.

Both documents are complementary. While the *Santiago Declaration* encapsulated in legal terms CSOs aspirations of peace, the Statutes of the IOHRP provided CSOs with the appropriate institutional structure to promote and monitor the implementation of the *Santiago Declaration* among CSOs worldwide.

In addition, both normative and institutional documents defined CSOs’ position vis-à-vis the on-going official codification process of the right to peace carried out since 2010 by both the UN Human Rights Council and its Advisory Committee. Our aim is that no later than 10 December 2014 the UN General Assembly could adopt a *Universal Declaration of the Human Right to Peace* taking duly into account the *Santiago Declaration* and its preparatory work.

Since the adoption of its Statutes, the IOHRP was provisionally integrated within the SSIHRL to take an active part in the on-going codification process of the human right to peace carried out in Geneva since 2010. Upon invitation of the City Council of Donostia-San

¹² See C. VILLÁN DURÁN and C. FALEH PÉREZ (Eds.): *Regional Contributions for a Universal Declaration on the Human Right to Peace*, Lueca: SSIHRL, 2010. See also C. FALEH PÉREZ & D. FERNÁNDEZ PUYANA, “The International Congress on the Human Right to Peace”, in C. VILLÁN DURÁN and C. FALEH PÉREZ: *The International Observatory of the Human Right to Peace*, Lueca: SSIHRL, 2013, pp. 39-103. See full texts of the *Santiago Declaration* and the IOHRP Statutes in different languages, at www.aedidh.org/?q=node/1852 and www.aedidh.org/?q=node/1855

¹³ See C. VILLÁN DURÁN and C. FALEH PÉREZ (Directors): *The International Observatory of the Human Right to Peace*, Lueca: SSIHRL, 2013, 548 pp., at 34

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Sebastian (Spain), the IOHRP established its headquarters at the ‘House for Peace and Human Rights’, located in the Aiete Palace. On 16 November 2012 an agreement was signed with the Mayor of Donostia-San Sebastian to jointly promote human rights and the culture of peace¹⁴.

The strategies developed by both the IOHRP and the SSIHRL together with some 2,000 associate CSOs, cities and institutions worldwide, ensured that the *Santiago Declaration* and its preparatory work were taken duly into account by both 18 experts (Advisory Committee) and 47 Member States (HR Council). The result was highly positive since the third draft declaration on the right to peace that was submitted by the Advisory Committee on 16 April 2012 to the HR Council, included 85% of the standards proposed by the *Santiago Declaration*. Therefore, CSOs asked the Human Rights Council to take into consideration the remaining 15% of standards.

In addition, on 14 September 2011 the Parliament of Spain adopted at the initiative of CSOs a resolution in support of the human right to peace, by which it urged the Government to support the official codification process of the right to peace at the United Nations, in order to include the right of individuals and peoples to peace and to join the Group of Friend States with the codification process on the human right to peace.

Moreover, on 29 October 2011 the XXI Ibero-American Summit adopted a resolution on the right to peace in Asunción (Paraguay) at the initiative of Costa Rica with the support of CSOs, which recalled the foundation of this right in the purposes and principles of the UN Charter, the Universal Declaration of Human Rights and other international human rights instruments ratified by Member States of the Ibero-American Community. It also urged its 22 Member States to support the codification of the right to peace, as initiated at the UN Human Rights Council, paving the way for its progressive development and recognizing the important contribution made by civil society organizations to promote the right to peace.

Like the *Luarca Declaration*, the preamble of the *Santiago Declaration* referred to the **holistic approach** to peace¹⁵. This means that peace is not limited to the strict absence of armed conflicts (*negative* peace). Peace also has a *positive* dimension aiming to achieve three goals, as follows: Firstly, to satisfy the basic needs of all human beings

¹⁴See C. VILLÁN DURÁN: “The International Observatory of the Human Right to Peace”, in C. VILLÁN DURÁN and C. FALEH PÉREZ (Directors): *The International Observatory of the Human Right to Peace*, Luarca: SSIHRL, 2013, pp.133-182.

¹⁵ See C. FALEH PÉREZ: “Civil society proposals for the codification and progressive development of international human rights law”, in C. VILLÁN DURÁN and C. FALEH PÉREZ (Directors): *The International Observatory of the Human Right to Peace*, Luarca: SSIHRL, 2013, pp.105-132.

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with a view to eradicate *structural* violence originated in the world’s economic and social inequalities. Secondly, positive peace aims to eliminate *cultural* violence (i.e., gender-related violence, family violence, bullying, mobbing, etc.). And thirdly, positive peace requires the effective respect for all human rights and fundamental freedoms of all, without discrimination.

Consequently, the preamble of the *Santiago Declaration* emphasized the need to establish a new international economic order that would eliminate inequalities, exclusion and poverty. These are the root causes of the *structural* violence, which is incompatible with peace at both domestic and international levels. In addition, the new international economic order should be sustainable, with due respect for the environment. It should also reassign to economic and social development resources liberated from international disarmament, which should be carried out under strict and efficient international control.

The 29 paragraphs-long preamble of the *Santiago Declaration* also provided legal background to the rights recognized in the operative part as core component of the human right to peace (Part I). Moreover, distinction was made among *rights* (Section A: Articles 1 to 12) and *obligations* (Section B: Article 13). Part II was devoted to the monitoring mechanism of the future UN Declaration (Articles 14-15). The Declaration ended with three final provisions.

Article 1 of *Santiago Declaration* recognized the right-holders (individuals, peoples, groups and humankind) and the duty-holders (States, IIO) of the human right to peace. Articles 2 to 12 defined the scope of the human right to peace and its core elements, as follows: the right to education on and for peace and all other human rights (Article 2); the right to human security and to live in a safe and healthy environment (Article 3); the right to development and to a sustainable environment (Article 4); the right to civil disobedience and to conscientious objection (Article 5); the right to resist and oppose oppression (Article 6); the right to disarmament (Article 7); the freedom of thought, opinion, expression, conscience and religion (Article 8); the right to refugee status (Article 9); the right to emigrate and to participate (Article 10); the rights of all victims of human rights violations (Article 11); and the rights of persons belonging to groups in situation of vulnerability (Article 12).

Article 13 of the *Santiago Declaration* spelled out in eight paragraphs the **obligations** of all international actors for the realization of the human right to peace. While the primarily responsibility to preserve peace remains with States and international organizations (paragraphs 2 to 6), all international actors, including corporations, persons, groups in society and the entire international community should recognize their obligations to realize the human right to peace.

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In particular, States are required to have the responsibility to protect humankind from the scourge of war. This, however, shall not imply entitlement for any State to intervene in the territory of other States. Furthermore, any military action outside the framework of the UN Charter is contrary to the human right to peace (paragraph 7).

In order to guarantee the realization of the human right to peace, the collective security system established in the UN Charter should be further strengthened. To this purpose, the Security Council’s composition, the veto right of the P5s and the SC methods of work should be urgently revised. Finally, civil society’s representatives must be allowed to take part in regular meetings of the SC (paragraph 8).

Monitoring the implementation of the future UN declaration on the human right to peace (Part II) was trusted to the working group on the human right to peace (Article 14), composed of 10 independent experts to be elected by the General Assembly for four years. Among its core functions (Article 15), the working group shall promote the human right to peace; adopt urgent actions; carry out *in loco* fact-finding missions to address violations of the human right to peace; submit annual reports to the relevant political bodies of the United Nations; prepare a draft international convention on the human right to peace; and contribute to the elaboration of definitions and standards concerning the crime of aggression and the legal limits of legitimate self-defense.

Lastly, the final provisions placed the *Santiago Declaration* in the context of the purposes and principles of the UN Charter and international human rights law. They also proclaimed the prevalence of the principle *pro persona*. Finally, they stressed that all States must implement in good faith the provisions of this Declaration by “adopting relevant legislative, judicial, administrative, educational or other measures necessary to promote its effective realization”.

It is now to the HR Council’s intergovernmental working group the responsibility to complete in February 2014 the codification and progressive development of the human right to peace, in accordance with the aspirations of civil society expressed at both domestic and international level. The challenge should be taken from the reaffirmation of the three pillars upon which the UN Charter was founded. They are identified in the Preamble and Articles 1 (Purposes) and 2 (Principles) of the UN Charter, namely: the collective security system, which prohibits the threat or use of force and calls States to the peaceful settlement of disputes in accordance with international law; the economic and social development of all peoples; and the respect of universally recognized human rights and fundamental freedoms of all without discrimination.

In the academic field, 31 Nordic experts met in Oslo on 29 January 2013 to review the AC declaration on the right to peace. Their outcome document replaced “right to peace” by

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eleven “recommendations on the components of peace”, including preconditions for peace, individual participation, protection of victims and education¹⁶. On the contrary, expert consultations held in 2013 in San José (Costa Rica), Oswiecim (Poland), London (United Kingdom) and La Plata (Argentina)¹⁷ expressed wide support to the AC declaration as well as to the Santiago Declaration on the Human Right to Peace. They requested the chairperson-rapporteur of the working group on the right to peace to take both contributions duly into account.

CSO reiterated their views in the joint statement delivered at the informal consultations of the chairperson-rapporteur of the working group on the right to peace with NGOs in consultative statute with ECOSOC, held in Geneva on 4 November 2013. However, the chair, which was asked by the HR Council to submit a new text to the second session of the working group on the right to peace, stated that Costa Rica will not support other approach than a consensual text. He also disclosed that important States are against right to peace, such as developed countries and developing countries that are also arms producers. Therefore, his new text will not address issues which are out of the human rights agenda, such as disarmament or the Security Council’s reform¹⁸.

III. Legal foundations of the future UN Declaration on the human right to peace

The 2012 Advisory Committee’s draft declaration on the right to peace shared the same **holistic approach** to peace with the *Santiago Declaration*, having accepted up to **85 % of the standards** proposed by civil society. It developed the contents of the right to peace in 14 Articles, including standards on human security; disarmament; peace education and training; right to conscientious objection to military service; resistance and opposition to oppression; right to development; environment; rights of victims and vulnerable groups; refugees and migrants; obligations and implementation. In addition, it included new standards

¹⁶ Cecilia M. BAILLIET & Kjetil MUJEZINOVIC LARSEN, “Nordic Expert Consultation on the Right to Peace: Summary and Recommendations”. *Nordic Journal of Human Rights*, 31:2 (2013), pp. 262–278, at 276-278.

¹⁷ *Vid supra* p. 5.

¹⁸ See the consultations report and the joint CSO statement delivered on 4 November 2013 at http://aedidh.org/sites/default/files/Report_5.pdf

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in Articles 6 (private military and security companies) and 8 (peacekeeping). Lastly, new Article 14 deals with final provisions, as suggested by the *Santiago Declaration*.

On the contrary, the 2012 AC declaration on the right to peace did not accept the language contained in the preamble of the *Santiago Declaration*. Moreover, the AC refused to address the reform of the Security Council, as proposed by the *Santiago Declaration*. Finally, regarding the monitoring mechanism to be set up by the future UN declaration, unlike CSOs the AC invited the HR Council to establish "a **special procedure** to monitor respect for and the implementation of the right to peace and to report to relevant United Nations bodies" (Article 13.6).

A. Title, preamble and right-holders

CSOs argue that the **title** of the future UN Declaration should add the concept of "human" to the right to peace, following the UN Declaration on the Right to Development¹⁹. In addition, the right to peace has a solid foundation in the UN Charter, whose main purpose is the maintenance of international peace and security. Moreover, the concept of the right to peace has been recognized in both international²⁰ and regional human rights instruments²¹.

The **preamble** should also make a clear reference to the main legal standards of the UN Charter which were the basis of the proclamation of the *International Year of Peace*²², namely: prevention of war, removal of various threats to peace, respect for the principle of non-use of force, peaceful settlement of conflicts, development of confidence-building

¹⁹ Art. 1 (1) of the 1986 UN General Assembly (UNGA) Declaration on the Right to Development states that "the right to development is an **inalienable human right** by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized". Art. 2.2 states that "the **human** right to development also implies..." (Emphasis added).

²⁰ The UNGA Declaration on the Preparation of Societies for Life in Peace (res. 33/73 of 15 December 1978); and the UNGA Declaration on the Right of Peoples to Peace (res. 39/11 of 11 November 1984)

²¹ The 1982 African Charter on Human and Peoples' Rights, the 2005 Ibero-American Convention on Young People's Rights and the Declaration on Human Rights adopted on 18 November 2012 by the Association of Southeast Asian Nations (ASEAN).

²² UNGA res. 40/3 of 24 October 1985.

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measures, promotion of human rights and freedoms and the enhancement of the quality of life²³.

Additionally, the preamble should make an explicit reference to the Constitutions of the UN specialized agencies (i.e. ILO²⁴, FAO²⁵, WHO²⁶ and UNESCO²⁷); legal instruments of regional organizations²⁸; the 2000 UN Millennium Declaration²⁹; the 2005 World Summit Outcome Document; the 2012 Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels³⁰; and the Security Council agenda on women, peace and security, as drawn by resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010) and 2106 (2013), in addition to resolution 1983 (2011), which provides specific guidance on the impact of HIV and AIDS on women in conflict and post-conflict contexts. All these resolutions are crucial political frameworks for advancing advocacy regarding women, peace and security³¹.

²³ See also SCHABAS, William A.: “The Human Right to Peace”, in A. EIDE *et al.* (eds.): *Making Peoples Heard. Essays on Human Rights in Honour of Gudmundur Alfredsson*, Leiden/Boston: Nijhoff, 2011, pp. 43-57.

²⁴ The Constitution of International Labor Organization (ILO) says that “lasting peace can be established only if it is based on social justice”.

²⁵ The Constitution of the Food and Agriculture Organization (FAO) states that it is aimed to the improvement of the levels of life and nutrition of all peoples, as well as to the eradication of hunger.

²⁶ The Constitution of the World Health Organization (WHO) states that “the health of all peoples is fundamental to the attainment of peace and security”.

²⁷ The Preamble to the Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO) states that “since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed”.

²⁸ As quoted *supra*, footnote num.18.

²⁹ Para. 32 states that the United Nations is the common house of the entire human family, where it should realize its universal aspirations for peace, cooperation and development.

³⁰ GA res. 67/1 of 24 September 2012. The world leaders decided to pursue their work in the General Assembly “to develop further the linkages between the rule of law and the three main pillars of the United Nations: peace and security, human rights and development” (para. 41).

³¹ CEDAW’s general recommendation No. 30 on women in conflict prevention, conflict and post conflict situations. See doc. CEDAW/C/GC/30 of 18 October 2013, paras. 25 and 83.

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Lastly, the preamble should also pay tribute to peace movements and ideas that have marked over the history of humankind³² (i.e. the 1999 Hague Agenda for Peace and Justice for the Twenty-first Century; the 2000 Earth Charter; and the 2010 Universal Declaration of the Rights of Mother Earth).

While both the *Santiago Declaration* and the AC declaration recognized the double dimension of the right to peace, since its right-holders are **individuals and peoples**, CSOs add that **minorities** and **humankind** should be recognized as right-holders of the human right to peace in accordance with the preambles of the UN Charter³³, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁴; the Declaration on the Preparation of Societies for Life in Peace³⁵, the Declaration on the Right of Peoples to Peace³⁶ and the ASEAN Declaration on Human Rights³⁷.

³² See CORTRIGHT, David: *Peace: A History of Movements and Ideas*. Cambridge: Cambridge University Press, 2009, 376 p.

³³ The preamble of the UN Charter states that "...to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind".

³⁴ The preambles of the UDHR and both Covenants state that "whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and **peace** in the world". (Emphasis added).

³⁵ GA res. 33/73 of 15 December 1978. The preamble states that "The General Assembly (...) Reaffirming the right of individuals, States and all mankind to life in **peace**... Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in **peace**". (Emphasis added).

³⁶ GA res. 39/11 of 11 November 1984. The GA "...1. Solemnly proclaims that the peoples of our planet have a sacred right to **peace**; 2. Solemnly declares that the preservation of the right of peoples to **peace** and the promotion of its implementation constitute a fundamental obligation of each State..." (Emphasis added).

³⁷ Adopted on 18 November 2012. Art. 38 states that "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 realized..." (Emphasis added).

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B. Right to human security

Article 2 (1) of the AC declaration on the right to peace states that:

Everyone has the right to human security, which includes freedom from fear and from want, all constituting elements of positive peace (...). Freedom from want implies the enjoyment of the right to sustainable development and of economic, social and cultural rights. The right to peace is related to all human rights, including civil, political, economic, social and cultural rights.

The right to human security was introduced by the 2005 Outcome World Summit Document³⁸. Development, peace, security and human rights are mutually reinforcing and peace and justice encompass an economic dimension in accordance with the 1974 Universal Declaration on the Eradication of Hunger and Malnutrition³⁹. In addition, it should be recalled the UN Secretary-General reports entitled "An agenda for peace. Preventive diplomacy, peacemaking and peacekeeping" of 1992⁴⁰ and "In Larger Freedom: Towards Development, Security and Human Rights for All" of 2005⁴¹.

C. Right to disarmament

³⁸ “We stress the right of people to live in freedom and dignity, free from poverty and despair. We recognize that all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential...” (GA res. 60/1 of 16 September 2005, para. 143).

³⁹ Principle h) states that “... **Peace** and justice encompass an economic dimension helping the solution of the world economic problems, the liquidation of under-development, offering a lasting and definitive solution of the food problem for all peoples...” (Emphasis added).

⁴⁰ Paragraphs 43-44 of "An agenda for peace. Preventive diplomacy, peacemaking and peacekeeping", stressed that an integrated approach to human security would be related to the deepest causes of war, such as economic despair, social injustice and political oppression.

⁴¹ In paragraphs 25-126 of "In Larger Freedom: Towards Development, Security and Human Rights for All", the former Secretary-General stated that this concept is linked to the twin values of freedom from fear and freedom from want. See also ZAYAS, Alfred de: «Peace as a human right. The *jus cogens* prohibition of aggression», in A. EIDE *et al.* (eds.): *Making Peoples Heard. Essays on Human Rights in Honour of Gudmundur Alfredsson*, Leiden/Boston: Nijhoff, 2011, pp. 27-42.

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Art. 3 of the 2012 AC declaration on the right to peace states as follows:

1. States shall engage actively in the strict and transparent control of arms trade and the suppression of illegal arms trade.
2. States should proceed in a joint and coordinated manner and within a reasonable period of time to further disarmament, under comprehensive and effective international supervision. States should consider reducing military spending to the minimum level necessary to guarantee human security.
3. All peoples and individuals have a right to live in a world free of weapons of mass destruction. States shall urgently eliminate all weapons of mass destruction or of indiscriminate effect, including nuclear, chemical and biological weapons. The use of weapons that damage the environment, in particular radioactive weapons and weapons of mass destruction, is contrary to international humanitarian law, the right to a healthy environment and the right to peace. Such weapons are prohibited and must be urgently eliminated, and States that have utilized them have the obligation to restore the environment by repairing all damage caused.
4. States are invited to consider the creation and promotion of peace zones and of nuclear weapon-free zones.
5. All peoples and individuals have the right to have the resources freed by disarmament allocated to the economic, social and cultural development of peoples and to the fair redistribution of natural wealth, responding especially to the needs of the poorest countries and of groups in situations of vulnerability.

Therefore, there is a close relationship between disarmament and IHRL. The Human Rights Committee recognized in 1982 that “war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. Under the Charter of the United Nations the threat or use of force by any State against another State, except in exercise of the inherent right of self-defense, is already prohibited”. Therefore, the HR Committee considered that “States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life”⁴².

In 1984 the HR Committee expressed again its concern at the “development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital

⁴² HR Committee, general comment No. 6: Article 6 (right to life) of 27 July 1982, para. 2. See doc. HRI/GEN/1/Rev.9 (Vol. I) of 27 May 2008, pp. 176-177.

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economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all”. It was evident to the HR Committee that “the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today”. Therefore, the HR Committee concluded that “the production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity”. It also called upon all States “to take urgent steps, unilaterally and by agreement, to rid the world of this menace”⁴³.

This approach also found expression in the UN Charter⁴⁴, the Declaration on the Right to Development⁴⁵ and the Final Document of the 1987 International Conference on the Relationship between Disarmament and Development⁴⁶. In addition, both the Declaration on the Preparation of Societies for Life in Peace⁴⁷ and the Declaration on the Right of Peoples to Peace⁴⁸ focused their attention in the efforts towards general and complete

⁴³ HR Committee, general comment No. 14 on the right to life (Art. 6 ICCPR) of 9 November 1984, paras. 3-7. See doc. HRI/GEN/1/Rev.9 (Vol. I), cit., p. 188.

⁴⁴ Article 26 of the UN Charter envisaged an international system based on the “least diversion for armaments of the world’s human and economic resources”.

⁴⁵ The preamble reaffirmed that “there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries”. In addition, article 7 states that “all States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries”.

⁴⁶ The Conference was the basis to define the relationship between disarmament and development; examine the magnitude and consequences of military expenditure on the world economy and on development; and explore ways to release resources for development through disarmament.

⁴⁷ Art. 6 states that “a basic instrument of the maintenance of peace is the elimination of the threat inherent in the arms race, as well as efforts towards general and complete disarmament, under effective international control...”. See also ROCHE, Douglas: *The Human Right to Peace*, Ottawa: Novalis, Saint Paul University, 2003, 272 p.

⁴⁸ Art. 3 emphasizes that “ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations”.

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disarmament, under effective international control. Furthermore, it should be recognized the establishment of Peace Zones free from nuclear weapons⁴⁹, as well as the Beijing Declaration and Platform for Action⁵⁰ and Security Council resolution 1325 (2000) on women, peace and security.

More recently, the UNGA adopted in April 2013 the Arms Trade Treaty⁵¹. It links human rights to arms trade, since the States Parties are prohibited to sell conventional weapons to other States in which there are serious risk of being used to commit genocide, war crimes and crimes against humanity. The treaty constitutes a first step to achieve disarmament, because it will stop transfers on arms fueling the worst atrocities and abuses in the world. However, the treaty does not address the question of production of weapons of mass destruction and legalize otherwise the arms trade. Besides, monitoring the treaty implementation is left to the discretion of the Conference of States Parties⁵² and not to a committee of independent experts.

⁴⁹ The current treaties establishing peace zones free of nuclear weapons are the following: Antarctic (1961); Outer Space (1967); Tlatelolco (Latin America and Caribbean, 1969); Seabed (1972); Rarotonga (South Pacific, 1986); Bangkok (ASEAN, 1997); MNWFS Mongolia (2000); Semei (Central Asia, 2009) and Pelindaba (Africa, 2009).

⁵⁰ "The full participation of women in decision-making, conflict prevention and resolution and any other peace initiative are essential to the realization of lasting peace". The United Nations Fourth World Conference on Women: *Action for equality, development and peace*, Beijing, China, September 1995, para. 22. See also CEDAW's general recommendation No. 30 on *women in conflict prevention, conflict and post-conflict situations*, aiming at protecting women's human rights at all times, advancing substantive gender equality before, during and after conflict and ensuring that women's diverse experiences are fully integrated into all peacebuilding, peacemaking, and reconstruction processes. Cf. CEDAW/C/GC/30 of 18 October 2013, 24 p. States parties are to provide information on the implementation of the Security Council agenda on women, peace and security, in particular resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010) and 2106 (2013), including by specifically reporting on compliance with any agreed United Nations benchmarks or indicators developed as part of that agenda (para. 83).

⁵¹ Resolution 67/234 B of 2 April 2013. It was adopted by 154 States in favor (among them Spain and the United States), three against (North Korea, Iran and Syria) and 23 abstentions (among them Belarus, Bolivia, China, Cuba, Ecuador, Egypt, India, Indonesia, Nicaragua, Russian Federation and Venezuela). It was opened to signature on 3 June 2013 and will enter into force once it receives 50 ratifications.

⁵² See: <http://www.aedidh.org/sites/default/files/TCAEnglish.pdf>

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Finally, in line with the new Arms Trade Treaty, the HR Council addressed the impact of arms transfers on human rights in armed conflicts⁵³, expressing “its deep concern at the fact that arms transfers to those involved in armed conflicts may seriously undermine the human rights of civilians, specially (...) vulnerable groups”. It further noted with alarm that “such arms transfers can have a seriously negative impact on the human rights of women and girls”. Therefore the HR Council urged “all States to refrain from transferring arms to those involved in armed conflicts when they assess that such arms could be used to commit or facilitate serious violations or abuses of international human rights law or international humanitarian law”⁵⁴.

D. Right to peace education and training

Art. 4 (1) of the AC declaration stated that:

All peoples and individuals have a right to a comprehensive peace and human rights education. Such education should be the basis of every educational system, generate social processes based on trust, solidarity and mutual respect, incorporate a gender perspective, facilitate the peaceful settlement of conflicts and lead to a new way of approaching human relationships within the framework of the Declaration and the Program of Action on a Culture of Peace and dialogue among cultures.

The right to education on peace and human rights is deeply rooted in international human rights instruments (i.e. the Universal Declaration of Human Rights⁵⁵, the UN Convention on the Rights of the Child⁵⁶, the International Covenant on Economic, Social and Cultural

⁵³ Resolution 24/35 of 27 September 2013. It was adopted by 42 votes in favor, 4 abstentions and one vote against (USA).

⁵⁴ *Ibidem*, paras. 1, 2 and 3.

⁵⁵ Article 26 (2) UDHR states that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of **peace**". (Emphasis added).

⁵⁶ Article 29 CRC states that children’s education should develop each child’s personality, talents and abilities to their fullest potential. It should encourage children to respect others, human rights and their own and other cultures. In addition, it should be directed to “The preparation of child for responsible life in a free society, in the spirit of understanding, **peace**, tolerance, equality of sexes, and friendship among all peoples...” (Art. 29.1.d). (Emphasis added).

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Rights⁵⁷), the 1975 Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind⁵⁸ and the 1978 Declaration on the Preparation of Societies for Life in Peace⁵⁹. At regional level, reference should be made to the 2000 Dakar Framework for Action, Education for All⁶⁰ and the Protocol of San Salvador on Economic, Social and Cultural Rights⁶¹).

As stated by the former Special Rapporteur on the Right to Education, gender inequality and other forms of social, religious, ethnic and racial discrimination impede social mobility and impact negatively on the full realization of all human rights, including development, **peace** and security⁶².

E. Right to conscientious objection to military service

⁵⁷ In accordance with Article 13 (1) ICESCR States "...recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of **peace**". (Emphasis added).

⁵⁸ Proclaimed by General Assembly resolution 3384 (XXX) of 10 November 1975. Art. 1 proclaimed that "All States shall promote international co-operation to ensure that the results of scientific and technological developments are used in the interests of strengthening international **peace** and security, freedom and independence, and also for the purpose of the economic and social development of peoples and the realization of human rights and freedoms in accordance with the Charter of the United Nations". (Emphasis added).

⁵⁹ Article 1 states that "...to ensure that their policies relevant to the implementation of the present Declaration, including educational processes and teaching methods as well as media information activities, incorporate contents compatible with the task of the preparation for **life in peace** of entire societies and, in particular, the young generations". (Emphasis added).

⁶⁰ Goal 6 states that "Education, both formal and non-formal, is therefore a key element to achieving sustainable development, **peace** and stability within and among countries, by fostering social cohesion and empowering people to become active participants in social transformation". (Emphasis added).

⁶¹ Article 13 states that "...education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and **peace**. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of **peace**". (Emphasis added).

⁶² Report submitted by the former Special Rapporteur on the Right to Education, Mr. Vernor MUÑOZ VILLALOBOS, E/CN.4/2006/45 of 8 February 2006, para. 18.

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Art. 5 (1) of the AC declaration on the right to peace stated:

Individuals have the right to conscientious objection and to be protected in the effective exercise of this right.

The former Commission on Human Rights resolutions 1998/77 of 22 April 1998⁶³ and 2004/35 of 19 April 2004⁶⁴ recognized the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in the Universal Declaration of Human Rights⁶⁵, the International Covenant on Civil and Political Rights⁶⁶ and general comment No. 22 (1993) of the Human Rights Committee⁶⁷.

⁶³ The preamble of the resolution recognized that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives and that persons performing military service may develop conscientious objections. Paragraph 4 reminded "States with a system of compulsory military service, where such provision has not already been made, of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a noncombatant or civilian character, in the public interest and not of a punitive nature".

⁶⁴ Paragraph 3 "called upon States that have not yet done so to review their current laws and practice in relation to conscientious objection to military service..."; and paragraph 4 "encourages States, as part of post-conflict-peace building, to consider granting and effectively implementing amnesties and restitutions of rights, in law and practices, for those who have refused to undertake military services on grounds of conscientious objection".

⁶⁵ Article 18 UDHR states that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".

⁶⁶ Art. 18 ICCPR states that "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice". In addition, Article 19 (1) ICCPR states that "Everyone shall have the right to hold opinions without interference".

⁶⁷ In accordance with the HR Committee's general comment No. 22, adopted on 20 July 1993, "Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously

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A consistent case-law practice was further developed by the HR Committee. In particular, in three communications against the Republic of Korea several citizens alleged violation of their right to conscientious objection for being sentenced because of their refusal to undertake military service. The HR Committee concluded on violation of article 18 ICCPR considering that “the authors refusal to be drafted for compulsory service was a direct expression of their religious beliefs”; and so their conviction and sentence amounts to a restriction on their ability to manifest their religion or belief⁶⁸, since the State was not able to demonstrate the existence of the circumstances allowing restrictions to the enjoyment of this right, in accordance with paragraph 3 of article 18 ICCPR.

Consequently, the HR Council addressed again the conscientious objection to military service in 2013, recognizing that it “can be derived from the right to freedom of thought, conscience and religion or belief”. It also encouraged “States to allow applications for conscientious objection prior to, during and after military service”. Moreover, it urged States to provide for conscientious objectors various forms of alternative service and to release individuals imprisoned or detained only on the basis of their conscientious objection to military service. Finally, it encouraged States to consider granting asylum to those conscientious objectors to military service who have well-founded fear of prosecution on their country⁶⁹.

F. Private military and security companies

Art. 6 (1) of the AC declaration on the right to peace stated that:

States shall refrain from outsourcing inherently State military and security functions to private contractors. For those activities that may be outsourced, States shall establish a national and an

conflict with the freedom of conscience and the right to manifest one's religion or belief..." See doc. CCPR/C/21/Rev.1/Add.4, of 27 September 1993, para. 11.

⁶⁸ *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea*, communications Nos. 1321/2004 and 1322/2004; docs. CCPR/C/88/D/1321-1322/2004 of 3 November 2006; para. 8.3; *Eu-min Jung et al. v. The Republic of Korea*, communications Nos. 1593 to 1603/2007, docs. CCPR/C/98/D/1593-1603/2007 of 23 March 2010, paras. 7.2 and 7.4; *Min-Kyu Jeong et al v. Republic of Korea*, communications No. 1642-1741/2007, docs. CCPR/C/101/D/1642-1741/2007 of 24 March 2011, para. 7.4. See OHCHR, *Conscientious objection to military service*. UN, New York and Geneva, 2012, 84 p, *passim*.

⁶⁹ HR Council resolution 24/17 of 27 September 2013, paras. 1, 5, 9, 11 and 13 (adopted without a vote).

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international regime with clear rules regarding the functions, oversight and monitoring of existing private military and security companies. The use of mercenaries violates international law.

The private military and security companies (PMSCs) should be accountable for human rights violations in accordance with the international human rights law⁷⁰. Moreover, related national legislation will never be successful without a coordinated response by the international community to the increasing role of the private sector in war and peace.

Therefore, the HR Council decided in 2010 to establish an open-ended intergovernmental working group “with the mandate to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies”, taking into consideration the draft text proposed by the Working Group on the use of mercenaries as a means of violating exercise of the right of peoples to self-determination⁷¹.

In its last session the working group recommended that, since there is no agreement among States on the need of a convention, it shall continue the discussions, with the participation of experts and relevant stakeholders, for a further two year period⁷². The HR Council endorsed this recommendation and extended the mandate of the working group for two more years⁷³, requesting it to submit a final report in 2014.

⁷⁰ The UN Code of Conduct for Law Enforcement Officials of 1979; the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana from 27 August to 7 September 1990; the AU Convention for the elimination of mercenarism in Africa of 1997; the UN non-binding Guidelines on the Use of Military and Armed Escorts for Humanitarian Convoys of 2001; and the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Breaches of International Humanitarian Law.

See also FRANCONI, Francesco: “Security and Human Rights in the Regulation of Private Military Companies: The Role of the Home States”, in A. EIDE *et al.* (eds.): *Making Peoples Heard. Essays on Human Rights in Honour of Gudmundur Alfredsson*, Leiden/Boston: Nijhoff, 2011, pp. 59-77. And GÓMEZ DEL PRADO, J.L., “The Privatization of War: ‘Private Security Companies’ on Contract with UN ‘Humanitarian’ and ‘Peace Keeping’ Operations”, *Global Research*, 9 July 2013, 7 p.

⁷¹ Resolution 15/16 of 1 October 2010.

⁷² A/HRC/22/41 of 24 December 2012, para. 77.

⁷³ Resolution 22/33 of 22 March 2013.

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G. Resistance and opposition to oppression

Art. 7 of AC declaration on the right to peace stated:

1. All peoples and individuals have the right to resist and oppose oppressive colonial, foreign occupation or dictatorial domination (domestic oppression).
2. Everyone has the right to oppose aggression, genocide, war crimes and crimes against humanity, violations of other universally recognized human rights, and any propaganda in favor of war or incitement to violence and violations of the right to peace.

Resistance to oppression is founded in the preamble of the UDHR⁷⁴ and was developed by the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (General Assembly res. 2625 (XXV) of 24 October 1970) and other human rights instruments, which recognized inter alia the duty of every State to promote the realization of the right of peoples to self-determination⁷⁵.

Furthermore, other international human rights instruments recognized the right of peoples to self-determination, in particular Article 1 common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights⁷⁶, and the Declaration on the Right to Development⁷⁷.

⁷⁴ The preamble states that "...Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to **rebellion against tyranny and oppression**, that human rights should be protected by the rule of law..." (Emphasis added).

⁷⁵ In accordance with the 1970 Declaration of Principles of International Law Concerning Friendly Relations, "...Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and **self-determination of peoples**, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle" (emphasis added).

⁷⁶ Common article 1 of ICCPR and ICESCR states that "All peoples have the **right of self-determination**. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (emphasis added).

⁷⁷ According to art. 1 (2) of the Declaration on 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" (emphasis added).

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H. *Peacekeeping*

Art. 8 of the AC declaration stated:

1. Peacekeeping missions and peacekeepers shall comply fully with United Nations rules and procedures regarding professional conduct, including the lifting of immunity in cases of criminal misconduct or the violation of international law, to allow the victims recourse to legal proceedings and redress.
2. Troop-contributing States shall take appropriate measures to investigate effectively and comprehensively complaints against members of their national contingents. Complainants should be informed about the outcome of such investigations.

United Nations peacekeeping missions are not the only protection actor on the ground. Moreover, they are not always deployed in contexts where civilians face serious risks. The United Nations and other humanitarian organizations, including ICRC and various non-governmental organizations, play a long-established and critical role in seeking to enhance the protection of civilians in armed conflicts, including in places that do not have a peacekeeping presence.

In addition, CSOs argue that States, the UN, its entities as well as the international community should recognize, scale up and support **unarmed civilian peacekeeping**. Civilians under threat of violent conflict have the right to physical protection and shall be offered unarmed civilian peacekeepers for their protection and in support of violence deterrence.

I. *Right to development*

Art. 9 (1) of AC declaration on the right to peace restated the 1986 GA Declaration on the Right to Development. Accordingly,

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.

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Further declarations and instruments reiterated the relationship between development and peace, namely: the UN Millennium Declaration⁷⁸, the Declaration on the Right to Development⁷⁹ and the 2005 World Summit Outcome Document⁸⁰. Therefore, the right to development includes peace, security and disarmament; self-determination and sovereignty over natural resources; and a social and international order conducive to development⁸¹.

⁷⁸ “We are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter...” (para. I.4). “We will spare no effort to free our peoples from the scourge of war, whether within or between States, which has claimed more than 5 million lives in the past decade. We will also seek to eliminate the dangers posed by weapons of mass destruction” (para. II.8). “We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want” (para. III.11). “We resolve therefore to create an environment ...which is conducive to development and to the elimination of poverty” (para. III.12). “We will spare no effort to make the United Nations a more effective instrument for pursuing all of these priorities: the fight for development for all the peoples of the world, the fight against poverty, ignorance and disease; the fight against injustice; the fight against violence, terror and crime; and the fight against the degradation and destruction of our common” (para. VIII.29). “The United Nations is the indispensable common house of the entire human family, through which we will seek to realize our universal aspirations for peace, cooperation and development” (para. VIII. 32). (Emphasis added). See GA res. 55/2 of 8 September 2000.

⁷⁹ The preamble stated that “**international peace and security** are essential elements for the realization of the right to development” and that “there is a close relationship between **disarmament** and development”. Furthermore, Article 1 (1). stated that “the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”; and Article 7 stated that “all States should promote the establishment, maintenance and strengthening of **international peace and security** and, to that end, should do their utmost to achieve **general and complete disarmament** under effective international control” (emphasis added).

⁸⁰ “We acknowledge that **peace** and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being. We recognize that development, **peace** and security and human rights are interlinked and mutually reinforcing “. Therefore, « We reaffirm that gender equality and the promotion and protection of the full enjoyment of all human rights and fundamental freedoms for all are essential to advance development and **peace** and security...”. “We therefore reaffirm our commitment to work towards a security consensus based on the recognition that many threats are interlinked, that development, **peace**, security and human rights are mutually reinforcing...”. Finally, “We reaffirm that the purposes and principles guiding the United Nations are, inter alia, to maintain international **peace** and security, to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal **peace**...” (GA res. 60/1 of 16 September 2005, paras. 9, 12, 72 and 77). (Emphasis added).

⁸¹ Shyami PUVIMANASINGHE, “International solidarity in an interdependent world”, in OHCHR, *Realizing the right to development*. New York and Geneva, 2013, p. 181.

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Furthermore, at the intergovernmental Working Group on the Right to Development States reminded that human rights and development were closely interlinked and the right to development constitutes a bridge between them⁸². They also referred to the principles of universality, interdependence, indivisibility and interrelatedness of all human rights⁸³, stressing that the right to development should be considered as a fundamental right, without the realization of which the full enjoyment of all other human rights could not be ensured⁸⁴. They also underlined the link between international solidarity and the right to development and their mutually reinforcing nature⁸⁵.

It was also reminded that the right to development constitutes a both national and international responsibility, to be realized through international cooperation⁸⁶, and the need to adopt a human rights-based approach to development⁸⁷.

In addition, the Working Group recalled that structural imbalances constitute an impediment to equitable development on a global scale. This is due to the malfunctioning of international economic, financial and political systems; and to the lack of democracy in global governance, where prevails a lack of equitable participation of developing countries in international decision-making and policymaking⁸⁸. Some of the elements pointed out to ensure the right to development were as follows: to fulfill the official development assistance commitments, to relieve countries from the debt burden, to transfer technology, and to ensure market access⁸⁹.

Cuba referred expressly to the relationship between peace and development, stating that wars are the most immediate and present threat to the right to development, since without peace there could be no development and vice versa; and that disarmament was needed to

⁸² A/HRC/21/19 of 26 June 2012, paras. 11, 12, 18; A/HRC/24/37 of 5 July 2013, paras. 20, 22.

⁸³ A/HRC/21/19, paras. 14, 22; A/HRC/24/37, paras. 17, 36.

⁸⁴ A/HRC/WG.2/12/2 of 1st September 2011, para. 8; A/HRC/21/19, para. 23; A/HRC/24/37, para. 27.

⁸⁵ A/HRC/24/37, para. 33.

⁸⁶ A/HRC/WG.2/12/2, para. 25; A/HRC/21/19, para. 21.

⁸⁷ A/HRC/WG.2/12/2, para. 23; A/HRC/21/19, para. 18.

⁸⁸ A/HRC/WG.2/12/2, paras. 25 and 50.

⁸⁹ A/HRC/WG.2/12/2, paras. 25, 51, 52; A/HRC/21/19, paras. 19, 23.

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free up resources for development⁹⁰. Other States also made reference to the need of recognizing the right of persons and peoples to peace⁹¹.

Moreover, a transformed partnership based on **equality between women and men** is needed as a condition for people-centred sustainable development and **world peace**⁹². Finally, the role played by men and boys in advancing gender equality is vital⁹³.

In 2010 the high-level task force on the implementation of the right to development reported on criteria designed to assess the extent to which States are taking steps to create an enabling environment for the realization of the right to development⁹⁴. To this purpose the right to development was divided into attributes such as comprehensive and human-centred development policy, including the contribution to an environment of peace and security through reducing conflict risks; protecting the vulnerable during conflict, post-conflict peacebuilding; and protecting refugees and asylum seekers, as well as personal security not in times and zones of armed conflict.

J. *Right to environment*

Art. 10 (1) of the AC declaration on the right to peace stated:

Everyone has the right to a safe, clean and peaceful environment, including an atmosphere that is free from dangerous man-made interference, to sustainable development and to international action to mitigate and adapt to environmental destruction, especially climate change (...).

The relationship between right to peace, development and right to environment, as well as the obligation to ensure to present and future generations a life in peace and in harmony with nature, was recognized in the following documents and instruments: the 1972

⁹⁰ A/HRC/21/19, para. 13.

⁹¹ A/HRC/24/37, para. 33.

⁹² Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), paras. 1 and 132.

⁹³ Report of the Expert Group Meeting that took place in Brasilia from 21 to 24 October 2003: The role of men and boys in achieving gender equality. United Nations Division of Advancement of Women, EGM/MEN-BOYS-GE/2003/REPORT of 12 January 2004; Report of the Secretary General, Commission on the Status of Women, doc. E/CN.6/2004/9 of 22 December 2003.

⁹⁴ Doc. A/HRC/15/WG.2/TF/2/Add.2 of 8 March 2010.

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Stockholm Declaration⁹⁵; the 1982 World Charter for Nature⁹⁶; the 1992 Convention on Biodiversity; the 1992 Rio Declaration on the Environment and Development⁹⁷; the 2002 Johannesburg Declaration on Sustainable Development⁹⁸ and the outcome document of the 2012 Conference on Sustainable Development ("The future we want")⁹⁹.

K. *Rights of victims and vulnerable groups*

Art. 11 (1) of AC declaration on the right to peace stated:

Every victim of a human rights violation has the right, in accordance with international human rights law and not subject to statutory limitations, to know the truth, and to the restoration of the violated rights; to obtain the investigation of facts, as well as identification and punishment of those responsible; to obtain effective and full redress, including the right to rehabilitation and compensation; to measures of symbolic redress or reparation; and to guarantees that the violation will not be repeated.

The right of victims to an effective remedy is widely recognized in IHRL¹⁰⁰.

⁹⁵ Goal 6 states that "...for the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of **peace** and of worldwide economic and social development" (emphasis added).

⁹⁶ The preamble states that "competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of **peace** and cannot be achieved until mankind learns to live in **peace** and to forsake war and armaments (emphasis added).

⁹⁷ Principle 25 states that "**Peace**, development and environmental protection are interdependent and indivisible" (emphasis added).

⁹⁸ Principle 35 states that "we commit ourselves to act together, united by a common determination to save our planet, promote human development and achieve universal prosperity and **peace**" (emphasis added).

⁹⁹ Principle 8 reaffirmed "the importance of freedom, **peace** and security, respect for all human rights, including the right to development and the right to an adequate standard of living, including the right to food, the rule of law, gender equality, women's empowerment and the overall commitment to just and democratic societies for development" (emphasis added).

¹⁰⁰ The right to an effective remedy has been spelled out inter alia in art. 8 UDHR; art. 2 (3) ICCPR; art. 6 of ICERD (right to effective protection and remedies against any acts of racial discrimination, as well as the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such

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As requested by CSOs, reference of Art. 11(3) to the rights of persons belonging to groups in situation of vulnerability should also be extended to victims of enforced or involuntary disappearances which may amount to a crime against humanity¹⁰¹; the right of all persons deprived of their liberty to be treated humanely and to save conditions of living, under judicial supervision¹⁰²; the protection of indigenous peoples¹⁰³; and reference to the popular courts or tribunals of conscience and to institutions, methods, traditions or local customs of peaceful settlement of disputes¹⁰⁴.

L. *Right to seek refugee status and right to migrate*

Art. 12 of the AC declaration on the right to peace stated:

1. All individuals have the right to seek and to enjoy refugee status without discrimination, if there is a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion (...)

discrimination); art.14 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (right of the victim of an act of torture to obtain redress and to fair and adequate compensation, including the means for rehabilitation); and art. 83 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Breaches of International Humanitarian Law (GA res. 60/147 of 16 December 2005).

¹⁰¹ International Convention for the Protection of All Persons from Enforced Disappearance, Articles 20 (2) and 24.

¹⁰² Contribution of the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Advisory Committee, 23 February 2013.

¹⁰³ Article 40 of the UN Declaration on the Rights of Indigenous Peoples states that “indigenous peoples have the right...to effective remedies for all infringements of their individual and collective rights”.

¹⁰⁴ Article 164 (f) of the Program of Action on a Culture of Peace states that the "access to legal remedies should be facilitated for victims of discrimination and, in this regard, the innovation of conferring a capacity on national and other institutions, as well as relevant non-governmental organizations, to assist such victims should be seriously considered, and programs should be developed to enable the most vulnerable groups to have access to legal system". In addition, article 164 (g) states that "new and innovative methods and procedures of conflict resolution, mediation and conciliation between parties involved in conflicts or disputes based on racism, racial discrimination, xenophobia and related intolerance should be explored and, where possible, established".

Article 40 of the UN Declaration on the Rights of Indigenous Peoples states that “Indigenous peoples have the right... to effective remedies... Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”

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3. States should place migrants at the centre of migration policies and management, and pay particular attention to the situation of marginalized and disadvantage groups of migrants (...) Although countries have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect, protect and fulfill the human rights of all individuals under their jurisdiction, regardless of their nationality or origin and regardless of their immigration status.

Migration and peace are closely related in accordance with the outcome of the International Conference on Population and Development¹⁰⁵ and the Program of Action of the World Summit for Social Development¹⁰⁶. In addition, equality before the law and non-discrimination in the enjoyment of human rights are structural principles of international human rights law¹⁰⁷. Finally, in 1995 the Fourth World Conference on Women examined the situation of migrant women and called upon States to recognize their vulnerability as a consequence of violence and other forms of abuses¹⁰⁸.

M. Obligations and implementation

Art. 13 of the AC declaration on the right to peace stated:

1. The preservation, promotion and implementation of the right to peace constitute a fundamental obligation of all States and of the United Nations (...) to realize the purposes and principles proclaimed in the Charter of the United Nations. (...)
3. The effective and practical realization of the right to peace demands activities and engagement beyond States and international organizations, requiring comprehensive, active

¹⁰⁵ “Poverty and environmental degradation, combined with the absence of peace and security, human rights violations and the varying degrees of development of judicial and democratic institutions are all factors affecting international migration”. Doc. A/CONF.171/13, Cairo, 5-13 September 1994.

¹⁰⁶ Social development is also clearly linked to the development of peace, freedom, stability and security, both nationally and internationally. A/CONF.166/9, Copenhagen, 14 March 1995.

¹⁰⁷ Reference to these principles is to be found in the International Covenants on Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Conventions No. 143 and 151 on migrant workers, ILO Convention concerning Migration for Employment, the UN Convention against Transnational Organized Crime and the outcome of the Durban Review Conference.

¹⁰⁸ Beijing Declaration and Platform of Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), para. 46.

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contributions from civil society, in particular academia, the media and corporations, and the entire international community in general. (...)

6. The Human Rights Council is invited to set up a special procedure to monitor respect for and the implementation of the right to peace and to report to relevant United Nations bodies.

In addition, CSOs requested progressive development of the human right to peace in order to include the following issues: reform of UN Security Council¹⁰⁹; recognition that preventive war is a crime against peace; strengthening the UN Peace-building Commission; effective implementation of the Program of Action for a Culture of Peace, as agreed by the 2005 World Summit Outcome Document¹¹⁰; further ratification of the Rome Statute of the International Criminal Court; and establishment by the GA of a working group on the human right to peace to monitor the implementation of the future Declaration¹¹¹.

N. Final provisions

Art. 14 of the AC declaration on the right to peace stated:

1. No provision of the present Declaration may be interpreted as conferring on any State, group or individual any right to undertake or develop any activity or carry out any act contrary to the purposes and principles of the Declaration or of those in international human rights law, international labor law, international humanitarian law, international criminal law and international refugee law.
2. The provisions of the present Declaration shall apply without prejudice to any other provision more propitious to the effective realization of the human right to peace formulated in accordance with the domestic legislation of States or stemming from applicable international law.
3. All States must implement in good faith the provisions of the present Declaration by adopting relevant legislative, judicial, administrative, educational or other measures necessary to promote its effective realization.

¹⁰⁹ As agreed by the 2005 World Summit Outcome Document: “We support early reform of the Security Council - an essential element of our overall effort to reform the United Nations - in order to make it more broadly representative, efficient and transparent and thus to further enhance its effectiveness and the legitimacy and implementation of its decisions...” (GA res. 60/1 of 16 September 2005, para. 153).

¹¹⁰ *Ibidem*, para. 144.

¹¹¹ To be composed of ten independent experts elected by the General Assembly, with functions inspired in the best practices developed by the Human Rights Council’s special procedures, as proposed by Arts. 14-15 of *Santiago Declaration*.

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The final provisions are designed to ensure that nothing within the Declaration goes against the principles of the United Nations or international human rights standards and the implementation of the principle *pro persona*. The purpose of the Declaration is to strengthen the enjoyment of all human rights and fundamental freedoms universally accepted.

IV. Conclusions

It is urgent that the States finalize as soon as possible the codification of the human right to peace, as it is the target of continued and systematic violations. These violations originate from three types of violence, namely:

Firstly, *direct* (armed) violence. There are more than 40 armed conflicts taking place in the world, many of them have been forgotten by the mass media. They are fueled by the world military expenditure that in 2012 reached the shocking figure of \$1,756 billion¹¹². In addition, the war industries and the enormous trade in weapons generate corruption, since there is profit to be made. “The existence of an immensely powerful military-industrial complex constitutes a danger to democracy, both internationally and domestically, because it follows its own logic and operates independently of popular participation”¹¹³.

Secondly, the *structural* violence caused by extreme poverty and hunger, which, far from being reduced, today affects 870 million human beings¹¹⁴, most of them women and children from developing countries.

And thirdly, manifestations of *cultural* violence, such as gender violence, mobbing, bullying and family-related violence. They round off the bleak panorama of a massive violation of the human right to peace in our societies where, paradoxically, a culture of violence (a corollary of the Latin dictum *si vis pacem para bellum*) prevails to the detriment of the culture of peace.

From a legal perspective, as showed by the Santiago and the Advisory Committee Declarations, the human right to peace is strongly rooted in universally accepted instruments (i.e. the Charter of the United Nations, the Universal Declaration of Human

¹¹² SIPRI Yearbook 2013. See <http://www.sipri.org/yearbook/2013/03>

¹¹³ Report by the independent expert on the promotion of a democratic and equitable international order, Alfred-Maurice de ZAYAS, doc. A/HRC/24/38 of 1 July 2013, para. 26.

¹¹⁴ According to FAO 2012 figures. See at http://www.worldhunger.org/articles/Learn/world%20hunger%20facts%202002.htm#Number_of_hungry_people_in_the_world

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Rights and other international instruments quoted in the preamble of the *Santiago Declaration*). Both Declarations proposed a concrete content, that is holistic and legally founded, to define peace as a human right¹¹⁵.

The difficulties are rather political, as some States find it challenging to go beyond the international peace and security paradigm originated in the Cold War, which happily ended 24 years ago. As discussed in the negotiation process of the HR Council resolutions 14/3, 17/16, 20/15 and 23/16, the arguments spelled out by developed States to refuse the concept of human right to peace are rather cosmetic and formal excuses to discuss substance, so that these obstacles should be removed as well. To this purpose, States should respond positively to the permanent demand of their civil society for *fair, sustainable and lasting world peace*, to the achievement of which we must all contribute.

To this end, the EU and its Member States should commit themselves to a genuine negotiation when the OEWG will receive on 17 February 2014 the new declaration as drafted by its chairperson-rapporteur. Some European States already moved from against to abstention in their votes of 2012 and 2013 resolutions. Therefore, they paved the way to a genuine negotiation at the OEWG. However, the United States should accept to negotiate *bona fide* the declaration with other States, which are widely supported by the international civil society.

Since peace is a universal value that must prevail over international relations, the *human right to peace* is a legal imperative claimed by civil society worldwide. It is a demand of civilization prevailing over any regional, historic and cultural particularities. Developed States cannot continue to lag behind the evidence: the international civil society demands now that peace be recognized as a human right and the international community must respond positively¹¹⁶.

¹¹⁵ See VAN BOVEN, Theo: “The Right to Peace as an Emerging Solidarity Right”, in Eva RIETER and Henri DE WAELE (eds.): *Evolving Principles of International Law. Studies in Honour of Karel C. Wellens*. Leiden/Boston, M. Nijhoff, 2012, pp. 137-147. See also C. VILLÁN DURÁN, “The human right to peace in the work of the Human Rights Council”, in Carlos VILLÁN DURÁN and Carmelo FALEH PÉREZ (eds.): *Regional Contributions for a Universal Declaration on the Human Right to Peace*, Lueca: SSIHRL, 2010, pp. 267-292.

¹¹⁶ Cf. C. VILLÁN DURÁN, “The International Observatory of the Human Right to Peace”, in C. VILLÁN DURÁN and C. FALEH PÉREZ (Directors), *The International Observatory of the Human Right to Peace*, op. cit., p. 174 in fine.



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Time is up to clarify the legal content of the emerging human right to peace and its relationship with other relevant rights, in particular the rights to life, development and environment. CSOs trust that States will be respectful of the solid international human rights standards which are the foundation of the human right to peace. No set back would be acceptable.

Therefore, the future UN Declaration on the human right to peace, hopefully to be adopted by the General Assembly no later than 10 December 2014, must proclaim that all human beings, peoples and minorities without discrimination should enjoy their fundamental right to peace, as well as all human rights universally accepted.

Maastricht, 10 December 2013
International Human Rights Day
