

PANEL ON THE HUMAN RIGHT TO PEACE

Geneva, Palais des Nations, 23 September 2016.

LEGAL FOUNDATIONS OF THE HUMAN RIGHTS TO PEACE.

Oral statement by Mr. Miguel de la Lama.

Thank you, Madame Chair-person, for giving to me the floor.

As stated by the Secretary-General in his March 2016's statement of An Agenda for Humanity, brutal and seemingly intractable conflicts; violent extremism; transnational crime and growing inequality are currently devastating the lives of millions of men, women and children and are destabilising entire regions. Today's complex challenges cross borders. Armed conflicts have occasioned that more people have been forced to flee their homes than at any time since the World War Second.

The enormous human and economic cost makes conflict the biggest obstacles to human development. The recognizance of the human right to peace is today more urgent than ever. Countries must uphold the principles and norms of the international human rights and humanitarian law. This also means committing to ending impunity and to international and national justice.

On 15 December 1978, the General Assembly adopted its Declaration on the Preparation of Societies for Life in Peace. The Declaration was adopted by resolution 33/73, by a recorded vote of 102 States in favour; no vote against and two abstentions. It states that "*every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace*". On 12 November 1984, it adopted, by resolution 39/11, the Declaration of the Rights of Peoples to Peace, by which it "*solemnly proclaims that the peoples of our planet have a sacred right to peace*".

Over the past ten years, international, civil and local civil society organizations have worked to determine the content and scope of the human right to peace. Under the auspices of the Spanish Society for International Human Rights Law, the Luarca Declaration on the Human Right to Peace was adopted in October 2006. In December 2010, the Spanish Society for International Human Rights Law and associate civil society organizations organized in Santiago de Compostela, Spain, an International Congress on the Human Right to Peace. As an outcome of the Congress, the Santiago Declaration on the Human Right to Peace was adopted. It received soon the support from more than 2,000 civil society organizations and public institutions worldwide.

Two years later, in 2012, with the support of non-governmental organizations, the United Nations Advisory Committee adopted its Declaration on the Right to Peace. The Human Rights Council then decided the establishment of an open-ended Intergovernmental Working Group with the mandate of progressively negotiating a draft UN declaration on the right to peace. The Working Group regularly met in annual basis. In June 2016, the Spanish Society for International Human Rights Law presented, on behalf of 677 worldwide civil society organizations, a revised draft declaration updated in light of the comments made during the Working Group's sessions.

On 1 July 2016, by its resolution 32/28 adopted by a recorded vote of 34 to nine with four abstentions, the Human Rights Council adopted the Declaration on the Right to Peace and recommended that the General Assembly adopt the Declaration. Some of those countries which voted against explained their votes stating that the concept of peace has not yet been defined and that the human right to peace has not been recognized by international law.

The human right to peace is a fundamental human right essential to the enjoyment of all other human rights, but necessitates universal recognition and measures of implementation. Without peace it is not possible the fully enjoyment of the civil, political, social, economic and cultural rights. To promote the human right to peace implies creating the conditions necessary to the development of all human rights for all.

The very legal bases of the human right to peace are the recognition of the inherent dignity and the equal and inalienable rights of all human beings. Peace is not only the absence of war. It means the absence of economic, social and culture violence. Peace requires a positive, dynamic, participatory process where root causes of conflicts are addressed in a timely fashion as well as the adoption and application of conflict-preventive measures.

The human right to peace has a solid foundation in the Charter of the United Nations (1945), whose main purpose is the maintenance of peace and international security. The legal bases of the human right to peace are formulated in the United Nations Charter; the Constitutions of specialized agencies (FAO; ILO; UNESCO and WHO); in universal treaties including the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights, as well as in UN Security Council, General Assembly, ECOSOC and former Human Rights Commission and Human Rights Council resolutions.

All United Nations Member States have expressed the commitment to promote peace, human rights and development. According to the Preamble of the UN Charter, the United Nations was founded “*to save succeeding generations from the scourge of war*”. According to Article 2 (3) of the UN Charter, all Member States have the obligation to negotiate and settle all disputes through peaceful means. They have further the obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, according to its Article 2 (4). In accordance with this principle, all States have an obligation to negotiate in good faith and settle disputes by non-violent means.

Any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law, according to Article 20 of the International Covenant on Civil and Political Rights.

It should be mentioned that Article 28 of the Universal Declaration of Human Rights recognizes that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized. Its Article 26.2 states that education shall further the activities at the United Nations for the maintenance of peace.

The constitutive elements of the human right to peace are justiciable under the Optional Protocol Procedures of the Human Rights Committee and of the Committee on Economic, Social and Cultural Rights and by petitioning the special procedures Working Groups and Special Rapporteurs; among

others, the rights to life, to integrity, to liberty and security of person; the right to freedom of opinion and expression; the right to peaceful assembly and association; the rights to health, education, social security, culture and the right to an adequate standard of life including food, drinking water, sanitation, clothing and housing.

Other universal instruments and documents, including the Declaration on the Right to Development; the Vienna Declaration and Program of Action; the UN Millennium Declaration (2000); the World Summit Outcome Document (2005) and the 2030 Sustainable Development Goals (2015) have further strengthened the legal bases of the human right to peace. Particular mention deserves the General Assembly resolution 2625 (XXV) of 24 October 1970 which contains the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. According to the Declaration, "*the threat or use of force constitutes a violation of international law and the Charter of the United Nations*".

ILO Constitution and relevant international labor conventions recognizes that peace requires social justice, which provide for the right to a decent work and to enjoy fair conditions of employment and trade union association.

The right to peace is also part of the African Charter on Human and People's Rights (1981) and its Protocol on the Rights of Women in Africa (2003); the Ibero-American Convention on Young People's Rights (2005) and the ASEAN Declaration on Human Rights (2012).

The human right to peace is a prerequisite to the enjoyment of all universally recognized human rights, including the rights to development and environment. The principal duty-bearers of the human right to peace are the States.

As previously stated, peace should not only be considered as the mere absence of war but as a context in which all human rights can be fully realized. The human right to peace has its foundation on the very concept of human dignity, which is the basis for all human rights. Peace is not limited to the absence of armed conflict, but has a positive dimension aimed to meet the basic needs of all human beings; to eliminate all forms of violence (armed, structural, gender, family, job, school) and to reach an effective respect of all human rights for all.

The human right to peace implies the peaceful settlement of disputes and needs the establishment of a new international economic order which ensures a just distribution of global resources and the realization of social justice. Indeed, social injustices entail a structural violence that is incompatible with peace, in both the domestic and international sphere.

The necessary elements to guarantee a context of positive peace are strongly rooted in international law. They include, among others, the right to life; the right to physical and psychological integrity; the right to liberty; the right to human security; the right to resistance and opposition to oppression; the rights to development and environment; the rights of individuals belonging to vulnerable groups; the rights of migrants, asylum-seekers and refugees; the right to peace education and training; the right to conscientious objection to military service; and the right of victims of human rights violations to truth, justice, reparation and guarantees of non-repetition. The human right to peace includes the need to address the root causes of long-standing conflicts and disputes; the right to education on and for peace and the construction of democratic and multicultural societies.

As stated in the Santiago Declaration (Art. 6.2) and the Advisory Committee Declaration (Art. 4.3), war propaganda and the glorification of violence and its justification should be prohibited. Both Declarations defend the conscientious objection to military service as a main element of the human right to peace (Articles 5). In its General Comment on Article 18, the Human Rights Committee stated that the right of conscientious objection can be derived from Article 18 of the Covenant. Every individual should have the right to conscientious objection to military service as part of the right to freedom of thought, conscience and religion.

The right to life, the right to security and the right to disarmament are essential elements to guarantee the human right to peace. The right to life should be interpreted as the right to live with dignity, in a private and public environment that is safe and healthy. As stated in Article 3 of the Santiago Declaration, it also implies the right to be protected against any act or threat of physical or psychological violence, whether originating from State or non-State actors.

Every threat of physical or psychological violence should be considered as incompatible with the development of a life with dignity. The right to security includes freedom from fear. In its General Comment No. 35, (para. 55) the Human Rights Committee stated that the right to security protects individuals against intentional infliction of bodily or mental injury, included injuries caused by officials of States. Human security should imply the right to enjoy sustainable development and civil, political, economic, social and cultural rights, as well as the possibility for all individuals to develop fully all their capacities.

However, the human right to peace continues to experience systematic violations throughout the world. These transgressions occur in both armed violence and the structural violence generated as a consequence of extreme poverty and famine.

The human right to peace implies that States work towards a complete disarmament, under international supervision. That implies the suppression of illegal arms trade as well as a transparent control of arms trade.

It is urgently needed to avoid any new armed conflict and propose a non-violent way of life as well as to create an international environment that prevents the eruption of conflicts. Mechanisms should be developed and strengthened to eliminate inequality, exclusion and poverty as they generate structural violence.

We hope that the human right to peace be recognized as a right of all persons and peoples by the UN General Assembly. It seems urgent to continue with the codification process and progressive development of the human right to peace.

Thank you very much.