

1. High Level Meeting for the Adoption of the DPCW, Saturday 17th September 2016

Topic: *Role of States in the adoption of a CSO declaration by the United Nations*

Prof Carlos Villán Durán, President, Spanish Society for International Human Rights Law.

Outline

Since the United Nations is an intergovernmental Organization, Member States are the principal actors in the development of the international law. However, the most significant progress in the field of international human rights law (IHRL) was due to initiatives of other international actors, such as civil society organizations, non-governmental organizations, academia and other international organizations. In addition, States trusted to independent experts with the task of carrying out implementation mechanisms of IHRL, including judicial and quasi-judicial mechanisms for the protection of human rights.

All CSO legislative initiatives in the field of International Law have to be endorsed by Member States of the United Nations. The end product will be a resolution adopted by the General Assembly by which Member States adopt a treaty or a declaration recognizing new human rights or establishing new implementation mechanisms.

The entry point for civil society to the UN system is twofold: Firstly, the **International Law Commission** composed of 34 independent experts. It may be invited by a State or international organization to draft a **convention on peace and cessation of war** along with the Declaration proposed by a significant number of civil society and academic organizations. The ILC may appoint a Rapporteur which could work in close relationship with civil society organizations (CSO) and governments. The draft convention will be forwarded to the Sixth Committee of the General Assembly for consideration by Member States and to the Plenary of the General Assembly for final adoption. The convention will then be opened to ratification by States before entering into force.

The second entry point -particularly used to develop international human rights law- is the **Human Rights Council** (47 Member States) and its **Advisory Committee** (18 experts). This is the way selected by CSO since 2007 to invite

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Member States to draft a **Declaration on the Human Right to Peace**, following the Santiago Declaration proposed by CSO. In 2010 the HR Council acknowledged the contribution of CSO and requested its Advisory Committee to draft a declaration on the right of peoples to peace. In 2012 the Advisory Committee submitted its Declaration on the Right to Peace, which included 85% of the standards proposed by CSO in the Santiago Declaration. The HR Council then appointed an intergovernmental working group to draft the UN declaration on the right to peace on the basis of the declaration submitted by the Advisory Committee. On 1st July 2016 the HR Council adopted resolution 32/28 by which it recommended the General Assembly to approve the annexed declaration on the right to peace. Action on this matter shall be taken by the General Assembly in December 2016.

The Declaration on Peace and Cessation of War shall be proposed by a State or an international organization to the ILC for the following reasons:

Firstly, it addresses mainly the inter-States relationship (Articles 1-7) and general principles of public international law, while human rights issues are referred to in the Preamble and Articles 8-9 (freedom of religion);

Secondly, it is focused on the negative dimension of peace as absence of war, a matter of particular relevance to inter-States relationship. From a holistic perspective, the positive dimension of peace should also address the structural violence (produced by economic and social inequalities in the international community and within our societies) as well as cultural violence (i.e. gender violence, violence against children and elder persons, mobbing, bullying). This positive dimension of peace is more related to the field of international human rights law and to culture of peace.

Thirdly, the DPCW was drafted like a declaration or a program of action to encourage States to advance peace as absence of war in their relations. To become a legally binding instrument (treaty), the Declaration must be reviewed by an international expert body in close consultations with both civil society organizations and governments. This is the role of the ILC.

The DPCW will be well received by **developing** States of all regions of the world, provided that the Declaration is mainly a restatement of well established principles in the UN Charter and GA resolution 2625 (XXV) of 1970, such as the prohibition of the threat or use of force; the right of peoples to self-determination; the territorial integrity and political independence of any State; the peaceful settlement of States'

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disputes, including the judicial settlement by the International Court of Justice; or the right to self-defense in accordance with Article 51 of the UN Charter.

In addition, the current international crisis is focused on developing States from different regions, which are paying a high price in the ongoing armed conflicts in terms of lives, infrastructure and economic and social development. Once again it should be recalled the three pillars of the UN that are strongly interrelated: international peace and security, economic and social development, and respect for all human rights and fundamental freedoms of all. States need to alleviate the burden of military defense and increase their efforts in development and human rights to keep the balance requested by the UN Charter.

However, reference to the Security Council's role as guarantor of the collective security system established in the UN Charter and its poor performance in international crisis, was not addressed by the DPCW. It should be pointed out that a majority of States are in favor of the reform of the Security Council, aiming to its democratization and the revision of the veto right of the permanent members (P5). The methods of work should also be revised to improve transparency, as well as to allow participation of CSO in its proceedings. Should the reform entail amendments of the Charter, Article 108 requires the vote of a majority of two third of Member States, including the P5, to be approved.

States should be reminded of important legal precedents recognizing the right to peace, both at international and regional level. In particular, the 1978 GA Declaration on the Preparation of Societies for Life in Peace; the 1984 GA Declaration on the Right of Peoples to Peace; Article 23 of the 1981 African Charter on Human and Peoples' Rights; Article 10(1) of the 2003 Protocol on the Rights of Women in Africa; Article 4 of the 2005 Ibero-American Convention on Young People's Rights; and paragraph 38 of the Declaration on Human Rights adopted on 18 November 2012 by the Association of Southeast Asian Nations (ASEAN).

On the contrary, standards of the DPCW dealing with disarmament, reduction of armament production, particularly weapons of mass destruction, reduction of standing armies and military bases, will be refused by many **developed** States, in particular Western nuclear powers, which prefer satisfy the exigencies of their manufacturing industry in the production of armament.

A clear precedent was the Declaration on the Right to Peace, adopted by the Human Rights Council on 1st July 2016 (resolution 32/28). While it failed to

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recognize the human right to peace or its essential components as proposed by CSO, the Declaration was not adopted by consensus. In fact, it only proclaimed that “Everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized” (Article 1); and that “States should respect, implement and promote equality and non-discrimination, justice and the rule of law and guarantee freedom from fear and want as a means to build peace within and between societies” (Article 2).

As a matter of fact, the Declaration on the Right to Peace was adopted by the HR Council with a divided vote of 34 votes in favor (African, Asian and Latin American developing countries, in addition to China, Qatar, Russian Federation and Saudi Arabia), 9 against (Belgium, France, Germany, Latvia, Netherlands, Republic of Korea, Slovenia, The Former Yugoslav Republic of Macedonia and United Kingdom) and 4 abstentions (Albania, Georgia, Portugal and Switzerland).

A similar division is expected when DPCW, as proposed by CSO, will reach the United Nations. In order to anticipate the objections from developed States, the ILC should be invited to draft a treaty on peace and cessation of war in close consultations with CSO and governments, before reaching the General Assembly.

Finally, all States must recognize that the current World War III is unsustainable in ecological, economic, political and military terms. Therefore, it has to be confronted with commensurate measures in the field of international law, in order to make enforceable the collective security system established by the UN Charter. Moreover, States have to listen to their civil society, open new avenues to increase civil society democratic participation in the conduct of public affairs, and translate peoples’ cry for peace into public policies both at international and domestic level, appropriate to meet the current challenges.

Participants: Government ministers and officials, law experts from the HWPL International Law Peace Committee.

Moderator: Prof. Dr. Ciaran Burke (HWPL International Law Peace Committee, Professor of International Law at the University of Jena, Germany).

2. Conference for the Implementation of the DPCW (All participants), Monday 19th September 2016.

Topic: *Role of civil society in the adoption of the DPCW*

Prof Carlos Villán Durán, President, The Spanish Society for International Human Rights Law.

Outline

Nobody doubts that peace is a moral and universal value always sought, an essential achievement if we are to transform the world into a true home for all men and women living on Earth. However, achieving peace has never been easy mostly because of the negative impact of the culture of violence prevailing in human relations world-wide, as spelled out in a classic Latin dictum: *si vis pacem para bellum* (“if you want peace, prepare for war”).

Despite this, the alternative **culture of peace** was nurtured by civil society, framed by UNESCO and finally the UN General Assembly adopted the 1999 Declaration and Program of Action on a Culture of Peace (resolution 53/243, of 13 September 1999).

Since 1978 both the General Assembly and the former Commission on Human Rights proclaimed the right of peoples to peace, demanding that States guarantee the effectiveness of the collective security system established in the UN Charter. In this context were adopted the 1978 GA Declaration on the Preparation of Societies for Life in Peace and the 1984 GA Declaration on the Right of Peoples to Peace.

Unfortunately, the end of the Cold War –materialized in the fall of the Berlin Wall on 9 November 1989 and the collapse of the Soviet Union- was not followed by a reduction of armies, or the research and production of new weapons of mass destruction. As pointed out by SIPRI, world-wide military expenditure raised to 1.7 billion dollars in 2014, representing an increase of more than 50% since year 2000.

Therefore, the right to disarmament is still pending of development within the United Nations. The excess of armament often fuels armed conflicts in the world and the collective security system drawn up by the UN Charter was never effective, since the key body called to enforce it –the Security Council- was burdened by its undemocratic composition, the lack of transparency of its methods of work, and not

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allowing access of civil society to its proceedings. The right to veto of the P5 led the Security Council to paralysis.

If we listen to civil society and the scientific community, maintaining peace in the 21st century has become a crucial requirement to stop the current War World III and to ensure the continuation of life on Earth.

In the absence of an effective response from the international community, civil society and academia in the field of international law have traditionally been the promoters of legal changes which, in long term, have been essential to the improvement of the living conditions of all people, regardless of their culture, religion or social conditions.

Success histories of the pacifist movement were the recognition of conscientious objection to military service as part of the right to freedom of conscience and religion recognized in Article 18(1) of the International Covenant on Civil and Political Rights and confirmed by the Human Rights Committee in leading case-law regarding the Republic of Korea. In addition, the so-called **Ottawa process** which led to the approval of the 1997 Anti-personal Mine Ban Treaty (with 162 State parties). Moreover, the **Rome process** leading to the establishment of the International Criminal Court by the 2002 Rome Statute (with 124 State parties) to address individual accountability for genocide, war crimes and crimes against humanity. Finally, the NGO coalition supporting the adoption of the 2013 **Arms Trade Treaty** (with 87 State parties).

The 21st century pacifism is less Utopian than in former times: It is more realistic because it has better understanding of the causes of war and the conditions for peace. It assumes that it is not possible to build peace in the world if it is not accompanied by justice, social and economic development, as well as the guarantee of all human rights for all. We have also learnt that international law and multilateral institutions must be more efficient to peacefully settling conflicts and to better address legitimate demands for justice and the right of peoples to self-determination. Today we also know that societies where women and youth are active in the field of social and political partnership are less likely to use force to settle international conflicts.

To achieve peace is necessary to eliminate structural violence resulting from the gap between rich and poor countries, which has widened considerably. The number of victims of hunger, extreme poverty and social exclusion already stands at 800 million human beings, most of whom being women and children from

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developing countries. The mass exodus produced by 20 million of refugees, 57.3 millions of internally displaced persons and 244 million of migrants who flee extremely adverse conditions in their countries, feed the South-South migration and multiply at the borders of developed countries.

Increase of xenophobia and discrimination practices threaten peaceful coexistence among different cultures and religions. The systemic crisis pushed workers without resources to the limbo of unemployment and poverty. Climate change is giving rise to a new category of refugees. Our development pattern based on the ultraliberal “Consensus of Washington” is not sustainable. To sum up, **armed, structural and cultural violence** are incompatible with the basic principles on which global peace should be founded.

The pacifist movement also took part in the global Summits called by the UN during the 1990s to debate on humanity’s main problems, such as social development, population and development, housing, human rights, women and children rights.

With regard to peace, the 1999 Conference of The Hague Appeal for Peace called by the pacifist movement, approved the “Agenda for Peace and Justice for the 21st Century”, which included appeals on disarmament and human security; prevention, resolution and transformation of violent conflicts; and to address the root causes of war and promote a culture of peace to challenge our current culture of violence.

In 2005 the second Summit of Heads of State and Government held in New York included in its Outcome document the recognition of the close relationship between international peace and security, social and economic development, and the respect for human rights, the three pillars of the UN Charter.

Supported by these international documents, peace activists assumed that the defense of human rights was an essential part of a holistic view of peace. Translating peace from the universal ethic value to the legal category of human right was the task undertaken by the Spanish Society for International Human Rights Law (SSIHRL) since its foundation in 2004. To this purpose the SSIHRL made the following steps:

Firstly, it organized extensive consultations in Spain with experts and CSO to achieve a legal instrument on peace as human right. The outcome document was the **Luarca Declaration on the Human Right to Peace** of 30 October 2006, drafted by 15 experts.

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Secondly, the SSIHRL conducted a world campaign in favor of the international recognition of the human right to peace, organizing expert consultations with more than 500 CSO and experts in all regions of the world, where the *Luarca Declaration* was discussed and revised. The end product was the **Santiago Declaration on the Human Right to Peace**, approved on 10 December 2010 by the International Congress of CSO on this issue, which received the support of more than 2000 CSO, cities and public institutions world-wide.

Both Declarations refer to the holistic approach to peace, since peace is not limited to the strict absence of armed conflicts. It also has a positive dimension aiming at the satisfaction of basic needs of all human beings, the elimination of cultural violence, and the effective respect for all human rights and fundamental freedoms for all, without discrimination.

Thirdly, the SSIHRL and associated CSO brought the *Luarca* and *Santiago Declarations* to the **UN Human Rights Council**, inviting Member States to initiate the official codification of the human right to peace. In 2010 the HR Council acknowledged the contribution of CSO and requested its Advisory Committee (18 experts) to draft a declaration on the right of peoples to peace. In 2012 the **Advisory Committee** submitted its *Declaration on the Right to Peace*, which included 85% of the standards proposed by CSO in the *Santiago Declaration*. The HR Council then appointed an intergovernmental working group to draft the UN declaration on the right to peace on the basis of the declaration submitted by the Advisory Committee. On 1st July 2016 the HR Council adopted resolution 32/28 by which it recommended the General Assembly to approve the annexed *declaration on the right to peace*. Action on this matter shall be taken by the General Assembly in December 2016.

To achieve this result, the SSIHRL had organized at the Human Rights Council and its Advisory Committee's sessions parallel expert meetings, submitted joint CSO oral and written statements to both bodies with the support of some 2000 CSO; it commemorated the International Day of Peace on 21st September each year in Geneva and New York advocating for the human right to peace; it encouraged the establishment in Geneva of the Group of Friend States with the codification process of the human right to peace; and called on all international actors to adhere to the World Alliance for the Human Right to Peace.

To conclude, civil society has to participate with governments in the codification and progressive development of international law. Participation is the essence of



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democracy. Indeed, CSO represent the conscience of Humankind and their voices are essential to ensure progress in the action taken by States within the United Nations.

The DPCW provides positive elements to foster the dialogue and reconciliation among religions. Religious leaders should continue their work against the fundamentalism and the political instrumentalization of some religions. Women, youth and political leaders from around the world, are invited to join their voices to achieve peace and cessation of war as a binding rule of all States. United we can get it.

Participants: Civil Society Leaders (70), Press (50), Heads of State and Government (100), Religious Leaders (200), IPYG members (100), IWPG members (150), Ambassadors to Korea (30). *Total = 700 participants*