

**United Nations Human Rights Council 35<sup>th</sup> Session**

**Expert Meeting**

***The Human Right to Peace***

**Oral statement by Miguel de la Lama**

***Legal Foundations of the Human Rights to Peace***

Geneva, Palais des Nations, 13 June 2017

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

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. 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.

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, former Commission on Human Rights and Human Rights Council resolutions.

All United Nations Member States have expressed the commitment to promote peace, human rights and development. 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

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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 Protocols Procedures of the Human Rights Committee and of the Committee on Economic, Social and Cultural Rights and by petitioning the HR Council's special procedures -Working Groups and Special Rapporteurs- covering, 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 1986 Declaration on the Right to Development; the 1993 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 labour conventions recognize 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).

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, the GA also 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"*.

On 10 December 2010, the Santiago Declaration on the Human Right to Peace was adopted by the international civil society, under the leadership of the Spanish Society for International Human Rights Law. It was a people initiative, an important track in the struggle for peace. Its Preamble includes relevant universal and regional legal instruments providing solid background to the codification of the human right to peace.

As stated in the Santiago Declaration (Art. 6.2), war propaganda and the glorification of violence and its justification should be prohibited. The Santiago Declaration defends the

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conscientious objection to military service as a main element of the human right to peace (Article 5). In its General Comment on Article 18, the Human Rights Committee stated that the right of conscientious objection is part of Article 18 of the International Covenant on Civil and Political Rights. Every individual should have the right to conscientious objection to military service as part of the right to freedom of thought, conscience and religion.

In addition, 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. States should promote peace by seeking to resolve their internal and international disputes in a non-violent way.

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.

All persons and peoples subjected to forced migration deserve special attention as possible victims of violation of the human right to peace.

The human right to peace implies the eradication of structural violence produced by economic and social inequalities; the eradication of family violence; gender-related violence; cultural violence; a new international economic order; sustainable development; the protection of environment; non-discrimination and the satisfaction of basic human needs.

In 2012, with the support of non-governmental organizations, the HR Council's Advisory Committee adopted its Declaration on the Right to Peace, which included 85% of the standards proposed by the Santiago Declaration.

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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 March 2016, the Spanish Society for International Human Rights Law presented, on behalf of 677 worldwide civil society organizations, a revised Santiago 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 its Declaration on the Right to Peace and recommended it for adoption by General Assembly. 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.

On 19 December 2016, the General Assembly, by a recorded vote of 131 in favor , 34 against and 19 abstentions, adopted its resolution 71/189, by which it endorsed the Declaration on the Right to Peace that was recommended by the Human Rights Council. The Assembly decided to continue its consideration of the promotion of the right to peace at its seventy-third session in 2018, under the item entitled "Promotion and protection of human rights" (paragraph 3).

Regrettably, the Declaration failed to recognize the human right to peace and its essential components. The Santiago Declaration provides room for substantive improvement in the language of the Declaration on the Right to Peace adopted by the General Assembly. There is scope for improving the Declaration.

Civil society organizations should continue supporting the Santiago Declaration, with the aim to persuade states to revise in 2018 the approved Declaration. This is particularly urgent since brutal 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. 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 armed conflicts the biggest obstacle to human development. The recognition of the human right to peace is today more urgent than ever. States 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.

We hope that in 2018 the human right to peace be fully recognized as a right of all persons and peoples by the General Assembly. Under the inspiration of the Luarca, Barcelona, Bilbao and Santiago Declarations, we should support the codification process and progressive development of the human right to peace.

Thank you very much.