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The Adoption of the Declaration on the Right to Peace by the United Nations: a Human Rights Landmark

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Abstract

War and peace perpetually alternate and peace is always seen as an endless project, even a dream, to be realised in brotherhood by everyone all over the earth. Present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war. The UN Charter is the most solemn pact of peace in history, which lays down on the necessary basic principles for an enduring peace. Recently, in the context of the joint effort in the recognition of the high importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations, the General Assembly has raised the voice of victims to strongly condemn war and to openly reiterate their inalienable right to enjoy peace such that all human rights are promoted and protected and development is fully realized.

Keywords: *right to peace, human rights, United Nations, civil society*

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Introduction

This paper shall be focused about the legal approach on the right to peace, taking into account that on 19 December 2016, the plenary of the United Nations General Assembly (UNGA) ratified in its resolution 71/189 by a majority of its Member States the *Declaration on the Right to Peace* as previously adopted by the UNGA Third Committee on 18 November 2016 in New York and the Human Rights Council (HRC) on 1 July 2016 in Geneva (Guillermet Fernández and Fernández Puyana 2016e and 2016f).

In particular, the traditional approach to this notion since 1984 and the human rights advancement throughout the drafting process of the *2016 Declaration on the Right to Peace* will be studied. To elaborate this purpose, the paper will elaborate a twofold analysis: firstly, on the traditional understanding of the right to peace in line of the UNGA resolution 39/11 of 1984; and secondly, on the human rights approach elaborated by the HRC and the Open Ended Working Group (OEWG) on the Right to Peace (2013-15) (Zulficar and Guillermet Fernández 2016).

The elaboration of human dignity and how its legal subdivision shapes the notion of the right to peace will be analysed with the purpose of stressing the added value and positive contribution of this instrument in the promotion of peace and human rights worldwide by elaborating the *New Agenda 2030* and reinforcing the three UN pillars. This paper shall outline that Declaration is exclusively focused on those who truly suffer in a conflict: human beings and peoples. Consequently, the Declaration has a clear victim orientated approach, by stressing the right of everyone to enjoy peace, human rights and development (Guillermet Fernández and Fernández Puyana 2015a, 2015b and 2015c).

Finally, the principles of equality and non-discrimination, justice and the rule of law, and guarantee freedom from fear and want, as set out in article 2 of the 2016 Declaration, will be studied in light of the aspiration of building peace within and between societies. On the basis of this background, the Chairperson-Rapporteur decided to promote the effective implementation of the *Declaration and Programme of Action on a Culture of Peace*, taking into account that all the main elements on the right to peace identified by the HRC Advisory Committee (AC)¹ had previously been elaborated in the *Programmes of Action on Vienna and Culture of Peace* (Guillermet Fernández and Fernández Puyana 2014a).

¹ Human security and poverty, disarmament, education, development, environment, vulnerable groups, refugees and migrants.

1. Approach to the Right to Peace

1.1. Traditional Approach to the Right of Peoples to Peace

In its thirty-ninth session, the UNGA adopted on 12 November 1984 the *Declaration of the Right of Peoples to Peace* in its Resolution 39/11.

In general terms, most of the governmental representatives² who took the floor before the vote stated that the right of peoples to peace was implicitly recognised by the international community in accordance with the *UN Charter*. In order to protect and promote this right, they proposed that States should effectively implement and respect the following set of principles contained in art. 2 of the *UN Charter*, namely: prohibition of the threat or use of force against the territorial integrity or political independence of any State, the settlement of international disputes by peaceful means, the prohibition to intervene in matters within the domestic jurisdiction of any State, the cooperation among States, the self-determination of peoples and the sovereign equality of States.

These delegations also stressed that the respect of the latter principles should help to eliminate the scourge of war, which has brought only death and suffering, and to create a useful tool to fight for peace and against nuclear weapons. In addition, States stated that disarmament, the limitation of the arms race, the economic and social development of States, the improvement of the quality of life in our planet and the attainment to social progress and justice are vital to promoting the right of peoples to peace (Guillermet Fernández and Fernández Puyana 2014b).

The *Declaration on the Right of Peoples to Peace* contains in its Preamble the following six far-reaching axioms: 1. Reaffirmation that the principal aim of the United Nations is the maintenance of international peace and security; 2. Reaffirmation of the fundamental principles of international law set forth in the Charter of the United Nations; 3. The will and the aspirations of all peoples to eradicate war from the life of mankind and, above all, to avert a worldwide nuclear catastrophe; 4. That life without war serves as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations; 5. That in the nuclear age the establishment of a lasting peace on Earth represents the primary condition for the preservation of human civilization and the survival

² Mongolia, Union of Soviet Socialist Republics, German Democratic Republic, Bulgaria, Viet Nam, Hungary, Poland, Byelorussian Soviet Socialist Republic, Lao People's Democratic Republic, Czechoslovakia, Cuba, India and Malaysia.

of mankind and 6. That the maintenance of a peaceful life for peoples is the sacred duty of each State.

The right to peace resolution contains four substantive sections: 1. The solemn proclamation that the peoples of our planet have a sacred right to peace; 2. The solemn declaration that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State; 3. The demand 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; 4. The supplication to all States and all international organizations to do their utmost in implementing the right of peoples to peace.

With the exception of the reference to the elimination of nuclear weapons, the rest of elements elaborated in the 1984 Declaration were properly included in the *2016 Declaration on the Right to Peace*. For this reason, all Member States agreed to refer to this international instrument in the preambular section of the *Declaration on the Right to Peace* along with the *Declaration on Preparation of Societies for Life in Peace* of 1978 and the *Declaration and Programme of Action on a Culture of Peace* of 1999.

Since the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* captures the main elements of the *1984 Declaration on the Right of Peoples to Peace*, Member States agreed to include the following elements as a part of the right to peace:

- the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;
- the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;
- the duty not to intervene in matters within the domestic jurisdiction of any State;
- the duty of States to cooperate with one another in accordance with the Charter;
- the principle of equal rights and self-determination of peoples, including those living under colonial or other forms of alien domination or foreign occupation;
- the principle of the sovereign equality of States;

- the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

The Declaration also proclaimed that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter, as stated in the UNGA resolution 2625 (XXV) of 24 October 1970.

The *1984 Declaration on the Right of Peoples to Peace* is not linked to international human rights law. In particular, this instrument does refer neither to the *Universal Declaration of Human Rights* (UDHR) nor other human rights instruments in its Preamble. There is only a general reference to human rights by affirming that ‘...life without war serves as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations’.

Consequently, in order to protect and promote this 1984 Declaration, Member States have traditionally understood that this right should be linked to principles contained in art. 2 of the Charter of the United Nations. In addition, they stressed that the respect of these principles should help to eliminate the scourge of war. This 1984 Declaration is principally devoted to the relationship among countries and the condemnation of war.

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

1.2. Human Rights Approach to the Right to Peace

During the *International Year of Culture of Peace* proclaimed for 2000, the Commission on Human Rights adopted its resolution 2000/66 by which it requested the OHCHR to organize a panel/forum on a culture of peace focusing on the contribution of the promotion, protection and realization of all human rights to the further development of a culture of peace. The

Expert Seminar on Human Rights and Peace was held in Geneva on 8 and 9 December 2000. The report prepared by the OHCHR concluded that ‘human rights should become the fundamental guiding principle for sound economic and social development and for the anticipation and prevention of conflict and for the reconstruction and rehabilitation of post-conflict societies’.

In the context of the 2014 International Day of Peace, which is commemorated every year on 21 September all over the world, the Secretary General of the United Nations calls upon international community to enhance all human rights and fundamental freedoms as preventive measure to avoid wars and conflicts as follows:

‘The theme for the Day this year acknowledges the 30th anniversary of the UNGA Declaration on the Right of Peoples to Peace, with its central message that humanity’s sustainable progress and the realization of fundamental rights and freedoms depend on peace and security. It is central to the Rights up Front approach, which calls upon the international community to act earlier and more concertedly in the face of human rights violations, which are often the precursors of worse to come’ (Guillermet Fernández and Fernández Puyana 2014c).

Although originally the *Declaration on the Right of Peoples to Peace* lacks a human rights perspective, the HRC has elaborated this perspective since 2008. The elements of human rights and international law included in the resolutions 14/3 (2010) and 17/16 (2011) on the right of peoples to peace were positively elaborated by Member States within the HRC. Additionally, the notion of peace was traditionally developed in connection to the right to life (Guillermet Fernández and Fernández Puyana 2014d and 2014e).

Along the inclusive and transparent negotiation process of the Declaration, conducted by the Chairperson-Rapporteur of the OEWG on the right to peace, Ambassador Christian Guillermet-Fernández of Costa Rica, all delegations and some civil society organizations actively participated in the three consecutive sessions of the OEWG in Geneva (2013-2015) (Guillermet Fernández and Fernández Puyana 2014f and 2016g).

A majority of Member States and important sectors of civil society supported the *Declaration on the Right to Peace*, which is the clear result of a complex and difficult negotiation process. This positive approach was elaborated in light of the following elements: firstly, international law and human rights law; secondly, the mandate of the HRC in the field of human rights and thirdly, the human rights elements elaborated by the resolutions on the right of peoples to peace adopted by the HRC in the past years (Guillermet Fernández and Fernández Puyana 2015f).

Among the main human rights elements developed by the HRC since 2008 and consequently, retained in the *Declaration on the Right to Peace* by Member States would be the following:

- Importance of peace for the promotion and protection of all human rights for all;
- Increasing poverty is a major threat to global prosperity, peace, security and stability;
- Peace and security, development and human rights are the pillars of the United Nations;
- The establishment, maintenance and strengthening of international peace and an international system based on respect of the principles enshrined in the Charter and the promotion of all human rights and fundamental freedoms, including the right to development and the right to free self-determination of peoples;
- Vital importance of education for peace;
- Promotion and effective implementation of the *Declaration and Programme of Action on a Culture of Peace*;
- The importance of mutual cooperation, understanding and dialogue in ensuring the promotion and protection of all human rights.

The new elements included in the 2016 *Declaration on the Right to Peace*, which had been not originally enshrined in neither resolutions 14/3 (2010) nor 17/16 (2011) on the right of peoples to peace, were the following.

Firstly, the phenomenon of terrorism and the obligation to promote and protect human rights and the rule of law in the fight against this scourge. There is a reference to the *Declaration on Measures to Eliminate International Terrorism* and in particular to the provision which states that «acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations and may pose a threat to international peace and security, jeopardize friendly relations among States, threaten the territorial integrity and security of State (Guillermet Fernández and Fernández Puyana 2017b).

Secondly, the recognition that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities is an integral part of the development of a society as a whole and within a democratic framework based on the rule of law.

Thirdly, the recognition of that racism, racial discrimination, xenophobia and related intolerance, where they amount to racism and racial discrimination, are an obstacle to friendly and peaceful relations among peoples and nations, and are among the root causes of many internal and international conflicts, including armed conflicts.

For this reason, the *Declaration on the Right to Peace* recalls the need to design, promote and implement, at the national, regional and international levels, strategies, programmes and policies, and adequate legislation, which may include special and positive measures, for furthering equal social development and the realization of the civil and political, economic, social and cultural rights of all victims of racism, racial discrimination, xenophobia and related intolerance.

The *Declaration on the Right to Peace* makes a balance between the principles of international law enshrined in the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* and the protection of all human rights by all. The Declaration has a clear victim orientated approach. Therefore, this instrument is exclusively focused on those who truly suffer in a conflict: human beings and peoples.

In the definition of the right to peace, the legislator desired to stress in its article 1 the idea that everyone has the right and is entitled to enjoy and access the benefits stemmed from peace, human rights and development, founding pillars of the whole UN system. Denying the access of human beings to the enjoyment of the three pillars has a consequence the failure of the United Nations after its creation 70 years ago (Guillermet Fernández and Fernández Puyana 2015g).

As indicated by a Group of States³ within the Third Committee, the Declaration has some value because it develops the New Agenda 2030 and also reinforces the three UN pillars - peace and security, development and human rights-. Also they pointed out that the Preamble of the Declaration additionally contains many elements that will benefit for the clarity and greater balance in order to ensure and to represent the full range of views among memberships.

Consequently, the *Declaration on the Right to Peace* adopted by the UNGA on 19 December 2016 will pass to the history for having elaborated the human rights approach to a notion, which was traditionally devoted to the relations among States without referring to the importance of protecting the fundamental freedoms of victims of war and conflict.

2. The Elaboration of Human Dignity and its Legal Subdivision in the Right to Peace

Throughout the long negotiation process, Member States decided to elaborate in its article 2 the human rights approach of the right to peace as

³ Australia, Liechtenstein, New Zealand, Norway, Switzerland and Iceland.

follows: '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'.

This particular provision of the *2016 Declaration on the Right to Peace* is absolutely based on the notion of human dignity. In accordance with the first recital of the Preamble of the UDHR, those who want a world with freedom, peace and justice must recognize that all members of the human family have inherent dignity. The wanting of this peace does not make for or create these inherent rights, but these rights are inherent and inalienable and therefore, our recognition thereof will help humankind bring about the desired freedom, justice and peace in the world (Morsink 1999).

The UDHR proclaimed in its article 1 that 'all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'. The drafters wanted to stress that all members of the human family have inherent dignity because they are born with equal and inalienable rights.

Human dignity has become a ubiquitous idea and a central concern of international law (Rabkin 2013). As a foundational norm within the United Nations, 'human dignity served to signify that moral consensus, indeed universality, was a necessary response to war's atrocities' (Riley 2010). The inclusion of human dignity in contemporary international law is a response to the widespread repulsion at the horrors of the Second World War (Wicks 2012). Therefore, it prohibits the worst excesses possible in war and claims the observance of minimal standards of civil, political and social recognition. Consequently, human dignity is a basic norm which 'can be read as a reaction against pre-war sovereigntist conceptions of legality which allowed positive law to become the tool of crimes against humanity apparently without contradiction' (Riley 2010).

The *Declaration and Programme of Action on a Culture of Peace* recognised the importance of human dignity in the educational process. In accordance with report *In Larger Freedom* prepared by Kofi Annan 'All human beings have the right to be treated with dignity and respect... No security agenda and no drive for development will be successful unless they are based on the sure foundation of respect for human dignity'.

Human dignity, on which article 2 of the Declaration on the Right to Peace is rooted, can be divided into three components: '*intrinsic values*, which identify the special status of human beings in the world; *autonomy*, which expresses the right of every person, as a moral being and as free and equal individual, to make decisions and pursue his own idea of the good life; and *community value*, conventionally defined as the legitimate state and social

interference in the determination of the boundaries of personal autonomy' (Barroso 2012).

2.1. *Intrinsic Values*

As to the *intrinsic values* of human dignity, it should be noted that intrinsic value is the origin of a set of fundamental rights. The first of these rights is the right to life, a basic pre-condition for the enjoyment of any other right. Another right related to intrinsic value is equality before and under the law. This means not being discriminated against due to race, color, ethnic or national origin, sex or age. The last fundamental right is the right to integrity, both physical and mental (Barroso 2012).

Respect for the integrity of the person requires states to protect the right to life and respect the prohibition of torture and ill-treatment. The rights to integrity are of utmost importance. This is reflected by the fact that unlike some other rights which contain clauses permitting their restriction on grounds such as the need to maintain public order it is never possible to justify restrictions to these rights. A second important attribute of the rights to integrity is that they cannot be derogated in time of public emergency.

The right to life and its linkage to peace can be found in the last preambular paragraph of the *2016 Declaration on the Right to Peace* as follows: '...to that end, present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war'

Other elements contained in article 2 of the *2016 Declaration on the Right to Peace* are the principles of equality and non-discrimination, which are held to be positive and negative statements of the same principle (Guillermet Fernández and Fernández Puyana 2015h). One is treated equally when one is not discriminated against and one is discriminated against when one is not treated equally (McCrudden 2004; Bayesfsky 1990). Equality and non-discrimination are better understood as distinct norms that are in creative tension with each other than subsumed under the human rights concept. This is founded in equal moral status and equal moral status is realized through individual human rights. As principle, it is never defined in a single and uniform fashion (Besson 2013).

In his dissenting opinion to the ICJ judgment in the South West African Cases, Judge Tanaka undertook to examine whether the legal principles of non-discrimination and equality, denying apartheid, can be recognized as general principles. He came to maintain the position that

'The principle of equality before the law, however, is stipulated in the list of human rights recognized by the municipal system of virtually every state

no matter whether the form of government be republican or monarchical and in spite of any differences in the degree of precision of the relevant provision. This principle has become an integral part of the constitutions of most civilized countries of the world’.

The principles of ‘elementary considerations of humanity’, ‘human dignity’ and ‘equality before the law’ have considerably broadened the scope of human rights law and its link with other fields of written and unwritten international law (Bedi 2007).

The *Vienna Declaration and Programme of Action* of 1993 recognised the concept of equality as a principle of international law in the following terms:

‘Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity’.

The *Declaration and Programme of Action on a Culture of Peace* adopted by the UNGA in 1999 recognised the importance of equality between men and women as follows: ‘Actions to ensure equality between women and men...’ and the non-discrimination principle in connection with education: ‘Ensure that children, from an early age, benefit from education on the values, attitudes, modes of behaviour and ways of life to enable them to resolve any dispute peacefully and in a spirit of respect for human dignity and of tolerance and non-discrimination’.

The *World Summit Outcome Document* considered equality as a fundamental value in international relations in the following terms: ‘we reaffirm that our common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, are essential to international relations’ and ‘we are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter. We rededicate ourselves to support all efforts to uphold the sovereign equality of all States...’.

2.2. *Autonomy*

The idea of autonomy in the human dignity, as contained in article 2 of the Declaration on the Right to Peace, is the concept of existential minimum, also referred to as social minimum or freedom from want, or the basic right to the provision of adequate living conditions. This requires access to some essential utilities, such as basic education and health services, as well as some

elementary necessities, such as food, water, clothing and shelter (Guillermet Fernández and Fernández Puyana 2014d and 2014e). In addition, autonomy is the ability to make personal decisions and choices in life without undue external influences. It would be linked to the freedom from fear.

The *World Summit Outcome document* considered freedom as a fundamental value in international relations in the following terms: ‘we reaffirm that our common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, are essential to international relations’.

The *Declaration and Programme of Action on a Culture of Peace* recognised the respect of fundamental freedoms as a part of culture of peace as follows: ‘a culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on...: (c) Full respect for and promotion of all human rights and fundamental freedoms’ and ... ‘(i) Adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations.

Additionally, the *Vienna Declaration and Programme of Action* of 1993 recognised that ‘... the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms’.

The freedom from fear and want refers to the proclamation made by the President Franklin Roosevelt in his 1941 message to Congress by which proposed those four fundamental freedoms that people ‘everywhere in the world’ ought to enjoy, namely: freedom of speech, freedom of worship, freedom from want and freedom from fear. The declaration of the Four Freedoms as a justification for war would resonate through the remainder of the war, and for decades longer as a frame of remembrance (Bodnar 2010).

The phrase of ‘freedom from fear and want’ derived from the *Atlantic Charter* of 1941, which proclaimed in its Preamble ‘Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want’.

In accordance with second recital of the UDHR ‘... freedom from fear and want has been proclaimed as the highest aspiration of the common people’. Additionally, both the International Covenant on Civil, Political, Economic, Social and Cultural Rights recognized in its Preamble that ‘... the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone

may enjoy his civil and political rights, as well as his economic, social and cultural rights’.

Dag Hammarskjöld, second UN Secretary General, stated that ‘the work for peace is essentially working for the most elementary human right: the right to security and freedom from fear’. Therefore, in his view, the UN had a ‘responsibility to assist governments in protecting this essential human right without them having to hide behind a shield of weapons’.

As indicated by the ‘Human Development Report’ prepared by the United Nations Development Program (hereinafter: UNDP) in 1994, in the process of establishing an international organization like the United Nations, the questions were first, how to ‘maintain international peace and security’ and secondly, how to pursue ‘freedom from fear and want’. The peace of the world could be established not only through preventing war and military conflicts among sovereign states, but also by taking initiatives to ‘achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’ (Okubo 2007).

As spelled out by the *World Summit Outcome Document*, ‘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’.

When Kofi Annan launched *In Freedom from Fear* in 2005, the title was deliberately chosen so as to ‘stress the enduring relevance of the Charter of the United Nations’. The report acknowledges that there is much work that still needs to be done in order to achieve the goals set by the Millennium Declaration. Specifically, he highlights several key areas that need substantial work, including goals relating to freedom from want (such as financing for development and meeting Millennium Development Goals), and freedom from fear (preventing catastrophic terrorism, the proliferation of biological, chemical, and especially nuclear weapons, building a lasting peace in war torn lands), goals ensuring the freedom to live in dignity (such as establishing the rule of law), and the strengthening of the United Nations.

In accordance with the Annan’s report ‘larger freedom implies that men and women everywhere have the right to be governed by their own consent, under law, in a society where all individuals can, without discrimination or retribution, speak, worship and associate freely. They must also be free from want – so that the death sentences of extreme poverty and infectious disease are lifted from their lives – and free from fear – so that their lives and livelihoods are not ripped apart by violence and war. Indeed, all people have the right to security and to development’.

Freedom from want addresses development and encompasses the eight Millennium Development Goals and the Sustainable Development Goals (i.e. eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and empower of women; reduce child mortality; improve maternal health; combat AIDS, Malaria and other diseases; ensure environmental sustainability and develop a global partnership for development). Freedom from fear bears on collective security (i.e. terrorism prevention; nuclear, biological and chemical weapons; reduced risk and prevalence of war; use of force; peacekeeping and peacebuilding; disarmament and mercenarism).

2.3. *Community Values*

The third and final element of human dignity, as contained in article 2 of the Declaration on the Right to Peace, is community values, which is related to the social dimension of dignity. It emphasizes 'the role of the state and community in establishing collective goals and restrictions on individual freedoms and rights on behalf of a certain idea of good life' (Barroso 2012). The pursuit of peace through justice is one of the most important objectives to be progressively realized by States as spelled out in their national constitutions (*ibidem*).

Justice is one of the most important moral and political concepts. The word comes from the Latin *jus*, meaning right or law. This aspect of the concept of justice is based upon the rights and duties of the individual person. The liberal concept of justice is an interpersonal one - resolution of conflicts between individuals.

In accordance with art. 29 of the UDHR: 'Everyone has duties to the community in which alone the free and full development of his personality is possible'. Additionally, the African Charter of the Rights of Man and of Peoples states in its article 27 that every individual 'shall have duties towards his family and society, the State and other legally recognized communities and the international community'. Additionally, as indicated by Mary Robinson, former High Commissioner for Human Rights, the message of article 29 of the UDHR is clear: the individual must work to improve human rights, whether individually or in the community or as a member of a non-governmental organizational group in its widest sense (Robinson 2002).

The *World Summit Outcome Document* considered justice as a fundamental principle in international relations in the following terms: 'We rededicate ourselves ... to uphold resolution of disputes by peaceful means and in conformity with the principles of justice and international law'.

The *Declaration and Programme of Action on a Culture of Peace* included justice as a part of the culture of peace: 'a culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on ...adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations; and fostered by an enabling national and international environment conducive to peace'.

The delicate balance between peace and justice laid out in the Charter had quickly been tested by the Nuremberg trials, because several issues that have proved problematic for peacemakers left unresolved during the drafting process, namely: the retroactive application of law, human rights observance as a necessary condition to enduring peace and the situation of past accountability in contemporary discussions of post-war justice.

The post- War World II collective system had to reconcile and link two central goals: to maintain peace and security in the world and at the same time foster respect for human rights within the domestic legal system. These twin goals are described in the Preamble of the Charter, which declares that the United Nations are determined 'to save succeeding generations from the scourge of war', 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small', as well as, 'to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained'.

The World Conference on Human Rights held in Vienna in 1993 stressed that 'all persons who perpetrate or authorize criminal acts associated with ethnic cleansing are individually responsible and accountable for such human rights violations, and that the international community should exert every effort to bring those legally responsible for such violations to justice'.

In accordance with the UNESCO transdisciplinary project entitled 'Towards a culture of peace' of 1996, 'Justice - there is no justice without freedom - is essential to peace-building. Injustice lies at the very roots of conflict and without justice there can be no peace...'

The Preamble of the UDHR does not declare that the deprivation of rights caused the war, but it does make note that the 'disregard and contempt' for rights occurred both and during the war.

The rule of law is a form of government, in which people enjoy rights to be free from oppression, interference and discrimination and in which they may exercise rights of free expression, conscience and belief. Some topics related to the rule of law are good governance, the adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-

making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (McGuinness 2011).

The *Vienna Declaration and Programme of Action* of 1993 recognised the concept of rule of law as a principle of international law in the following terms:

‘Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity’

In addition, as indicated by the *World Summit Outcome Document*, the linkage between human rights, rule of law and democracy is very closed. It states that

‘We recommit ourselves to actively protecting and promoting all human rights, the rule of law and democracy and recognize that they are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations, and call upon all parts of the United Nations to promote human rights and fundamental freedoms in accordance with their mandates’.

Since 2006 the has regularly adopted a resolution without vote entitled ‘The rule of law at the national and international levels’⁴ by which it reaffirmed that rule of law and international law is essential for peaceful coexistence and cooperation among States; that it is essential for the realization of economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and that it should guide the activities of the United Nations and of its Member States.

Conclusions

On 19 December 2016, the plenary of the UNGA ratified in its resolution 71/189 by a majority of its Member States the Declaration on the Right to Peace. The Declaration has positively become an important landmark on the field of human rights and fundamental freedoms.

The *2016 Declaration on the Right to Peace* updates the *Declaration on the Right of Peoples to Peace* adopted in 1984 by including a human rights

⁴ Doc. A/RES/61/39, 18 December 2006; A/RES/62/70, 8 January 2008; A/RES/63/70, 15 January 2009; A/RES/64/70, 15 January 2010; A/RES/65/32, 10 January 2011; A/RES/66/102, 13 January 2012 and A/RES/67/07, 14 January 2013.

perspective. As studied, Member States have traditionally understood that the right of peoples to peace should be linked to principles contained in art. 2 of the Charter of the United Nations. Additionally, they stressed that the respect of these principles should help to eliminate the scourge of war. The 1984 Declaration is principally devoted to the relationship among countries and the condemnation of war.

The new human rights instrument makes a balance between the Charter of the United Nations and the protection of all human rights - civil, political, economic, social and cultural rights-. Taking into account that in a context of war all human rights are violated, the Declaration has a clear victim orientated approach, by stressing the right of everyone to enjoy the three UN pillars –peace, human rights and development – (Guillermet Fernández and Fernández Puyana 2015j).

Since the HRC is exclusively focused on those who truly suffer in a conflict in light of the existing linkage between peace and security, development and human rights, the Declaration on the Right to Peace has some value because it develops the New Agenda 2030 and also reinforces the three UN pillars. In this context, the *2016 Declaration on the Right to Peace* has positively reinforced the human rights machinery in its linkage of peace as a vital requirement for the full enjoyment of all human rights by all (Perry et al. 2015).

On the basis of the notion of human dignity, the *Declaration on the Right to Peace* has elaborated in its article 2 the principles of 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.

As to the relationship between the right to life and peace, it should be taken into account that on 12 December 1996, the UNGA adopted resolution 51/95 by which takes note of the *UNESCO Declaration of the Principle on Tolerance* and the follow-up Plan of Action and invited Member States to consider applying the Declaration of Principles at the national level. Art. 1.4 states that ‘... means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behaviour and values, have the right to live in peace and to be as they are’.

Deepening in this linkage, the last preambular paragraph of the *2016 Declaration on the Right to Peace* invites ‘...solemnly all stakeholders to guide themselves in their activities by recognizing the high importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace; to that end, present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war’.

As indicated, the explicit recognition in the 2016 Declaration of the linkage between the right to life and peace based on the notion of tolerance and cultural diversity can also be found in the report A/54/546 on the *United Nations Year of Dialogue among Civilizations* of 1999 elaborated by the Secretary-General, when he says that other concepts with similar and complementary purposes and values have preceded the Dialogue among Civilizations, such as the recent UNGA resolutions on the culture of tolerance and the culture for peace. He also said that tolerance ‘... is the recognition that human beings are diverse and have the right to live in peace with their diversity while not imposing their beliefs on others’.

On 10 December 2015, the UNGA adopted without vote resolution 70/109 (2015) on a world against violence and violent extremism, in which Member States agreed to include by consensus the Declaration on the Right of Peoples to Peace (res. 39/11, of 12 November 1984) and the resolution about the promotion of peace as vital requirement for the full enjoyment of all human rights by all (res. 67/173, of 22 March 2013), among other instruments⁵, as a measures to be taken by the international community in the fight against violence and violent extremism.

In light of these precedents, the future of the 2016 Declaration requires that all stakeholders work on the basis of dialogue, inclusiveness, transparency and consensus. In order to evolve from a culture of conflict to a culture of peace, human rights and development, it is strongly desirable for the promotion of peace worldwide to strengthen the positive trend on this matter already initiated in the times of the UN Commission on Human Rights and positively followed by the HRC and the UNGA (Guillermet Fernández and Fernández Puyana 2013, 2016a/b and 2017c).

The message of the 2016 Declaration for the succeeding generations is that only through humanity peace can be achieved and that the main aspiration of men and women in the XXI century is to create a world free of war and conflict. For this reason, in the New Millenium, denying the right of every human being to access and enjoy the three pillars –peace, human rights and development- is to deny the same existence of the United Nations (Guillermet Fernández and Fernández Puyana 2015k and 2016c).

⁵ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (res. 25/2625, of 24 October 1970); Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (res. 36/103, of 9 December 1981); Declaration and Programme of Action on a Culture of Peace (res. 53/243, of 13 September 1999); International Day of Peace (res. 55/282, of 7 September 2001); Global Agenda for Dialogue among Civilizations (res. 56/6, of 9 November 2001); Alliance of Civilizations (res. 64/14, of 10 November 2009) and several Declarations and resolutions on the fight against terrorism.

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