

BEZPIECZEŃSTWO LUDZKIE

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ENVISIONING THE “RIGHT TO LIFE AND ENJOY PEACE, HUMAN RIGHTS AND DEVELOPMENT” WITHIN THE HUMAN RIGHTS COUNCIL

Since 2008 the *Human Rights Council* (HRC) has been working on the *Promotion of the right of peoples to peace* through the adoption and promotion of several resolutions, particularly the GA resolution 39/11 of 12 November 1984, entitled *Declaration on the Right of Peoples to Peace* and the *United Nations Millennium Declaration*. However, it should be noted that the promotion of the right of peoples to peace within the UN human rights bodies started at the Commission on Human Rights in 2001.

Pursuant resolutions 8/9, 11/4 and 14/3, the Council requested firstly the *Office of the United Nations High Commissioner for Human Rights* to convene a workshop on this topic and secondly, the Advisory Committee to prepare a draft declaration on the right of peoples to peace. Afterwards, the HRC adopted resolutions 20/15 and 23/16 by which the Council decided firstly (2012) to establish and secondly (2013), to extend the mandate of the open-ended working group (OEWG) aimed at progressively negotiating a draft United Nations declaration on the right to peace, on the basis of the draft submitted by the Advisory Committee and without prejudging relevant past, present and future views.

The first session of the OEWG (February 2013) concluded that there were some governmental delegations that recognize the existence of the right to peace and other delegations which stated that a stand-alone “right to peace” does not exist under international law. Afterwards, the OEGW welcomed in its second session (July 2014) the approach of the Chairperson-Rapporteur of the OEWG, which is basically based on the relationship between the right to life and human rights, peace and development.

The HRC adopted another resolution in its 27th session (September 2014) by which it decides that the working group holds its third session for five working days in 2015 to finalize the text of the declaration, before the twenty-eighth session of the HRC (March 2015), which was held from 20 to 24 April. In addition, it requests the Chairperson-Rapporteur of the working group to prepare a revised text on the basis of the discussions held during the first and second session of the working group and on the basis of the intersessional informal consultations to be held. Finally, it also requests to submit it to the *Human Rights Council* at its twenty ninth session (June 2015). The final Declaration should be sent to the General Assembly of the United Nations for its final adoption in December 2015.

The purpose of this paper is to analyze this debate within the HRC by taking into account the positions showed by different stakeholders. Additionally, the three sessions of the OEWG on the right to peace will also be studied in order to see how the main legal concerns raised at the first session were result in the second one. In particular, the following matters will be analyzed: the mandate of the HRC, the relationship between the Advisory Committee's Declaration and the *Declaration and Programme of Action of Culture of Peace*, the condemnation of war, the role of women and education in the construction of peace and the importance of prevention of armed conflicts. Additionally, the paper will study the new approach elaborated by the Chairperson-Rapporteur in light of the three UN pillars, peace and security, human rights and development. This proposal is a means to overcome the political differences among all regional groups and to elaborate this notion in the context of the current mandate of the HRC in the field of human rights. The new challenges and proposals made by stakeholders will also be studied. Finally, the positions showed by the different regional groups on this topic, the legal content on the right of peoples to peace and the practical implications of the new approach will be analyzed.

DEBATE WITHIN THE HUMAN RIGHTS COUNCIL

In the last resolution on this topic presented before the Commission on Human Rights in 2005 (Doc. E/CN.4/2005/56), member States "calls upon the United Nations High Commissioner for Human Rights to carry out a constructive dialogue and consultations with Member States, specialized agencies and intergovernmental organizations on how the CHR could work for the promotion of an international environment conducive to the full realization of the right of peoples to peace, and encourages non-governmental organizations to contribute actively to this endeavour."

In 2008, the HRC, in light of the previous resolution of the Commission, requested the *Office of the United Nations High Commissioner for Human Rights* (OHCHR) to convene a workshop on the right of peoples to peace, which was finally held on 15–16 December 2009 in Geneva. In this workshop the current deep division about the existence of the right to peace could be seen even at the academic level. In fact, some well-known legal practitioners who participated at the *Workshop on the right of peoples to peace* stated that the right to peace had never been explicitly formalized into a treaty, including the UN Charter, and that the UN human rights instruments had not given proper expression to this enabling right (A/HRC/14/38 2010).

Some civil society organizations and academics took advantage of the process already initiated by the Commission in 2001 and afterwards, driven by the HRC in cooperation with them.

On 17 June 2010, the HRC adopted resolution 14/3 on the right of peoples to peace, which explicitly requested the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace.

First Session of the Open Ended Working Group on the Right to Peace

Pursuant resolution 20/15 of 5 July 2012, the HRC decided to “establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace, on the basis of the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views.” It also decided that the Working Group would meet for four working days prior to the twenty-second session of the HRC. It took place from 18 to 21 February 2013.

On 18 February 2013, Christian Guillermet-Fernández (Costa Rica) was elected by the Working Group as its Chairperson-Rapporteur, by acclamation. He was nominated by the delegation of Ecuador on behalf of the Group of Latin American and Caribbean Countries (GRULAC). This nomination was based on broad consultations with all regional groups and on agreement reached.

The session was opened by Kang Kyung-wha, Deputy High Commissioner for Human Rights (A/HRC/WG.13/1/2, 2013). She underlined that because of war and armed conflict, millions of innocent lives, civilians, children, women, elder and displaced people are suffering grave consequences, such as death, starvation and other violence nested in an instable context, where the value of the human life is unbearably low. Although the right of peoples to peace has been recognised in some universal and regional instrument, she also recalled that the UN Charter contains provisions related to peace (i.e. Art. 1.1 and 2.2). Also she underlined that both the 1993 Vienna Declaration and the 2005 World Summit contain references “to the importance of peace as a precondition for the full enjoyment of fundamental human rights, as well as the impact of respect for human rights on the creation of a peaceful society.”

Remigiusz Henczel from Poland, President of the HRC also participated in the opening of session. He referred both to Preamble of the Charter, which states that the United Nations was founded “to save succeeding generations from the scourge of war” and the proclamation of year 2000 as *International Year for the Culture of Peace*. In addition, he stressed that peace and human rights are intrinsically linked and that peace and security, development and human rights are the pillars of the United Nations system and foundations for collective security and well-being. All States, in accordance with the principles of the Charter, should use peaceful means to settle any dispute to which they are parties, he added.

Pursuant paragraph 4 of the HRC resolution 20/15 the Chairperson of the Drafting Group on the right to peace at the *Human Rights Council Advisory Committee* participated and also delivered a general statement. She said that the right to peace include not only negative peace (absence of direct physical violence or war), but also positive peace which addresses the conditions for just and sustainable peace and enables building an environment conducive to social justice, respectful of human dignity and protective of all human rights. She also indicated that the right of each individual to peace is a condition for the enjoyment of the right to life and all other civil, political, economic, social and cultural rights. According to her, the concept of human security addresses structural violence and includes freedom from fear and from want. She added that human life and dignity is being violated every day and every minute through violence, wars and endemic injustices. In addition, she underlined that the international

community have a “golden chance to address not only the prevention of wars and various forms of violence, but also structural violence, its underlying causes and to focus on the imbalances and the endemic injustices that render peace unjust.”

In his opening remarks, the Chairperson-Rapporteur referred to the relevant provisions in which peace is actually based on, namely: the *Charter of the United Nations*, the *Universal Declaration of Human Rights*, the *Vienna Declaration and Programme of Action* and other human rights treaties. He also underlined the basic principles for conducting the session of the Working Group (i.e. transparency, inclusiveness, consensus, objectivity and realism). He also recalled that he convened informal consultations with Member States and civil society in preparation of the first meeting of the Working Group. At its first meeting, the agenda and the program of work were adopted without comments by the Working Group. There was a general debate followed by a preliminary reading, article by article, of the draft United Nations declaration on the right to peace prepared by the Advisory Committee (A/HRC/WG.13/1/2, 2013).

Main points discussed during the session

Throughout the general debate and reading of the draft declaration on the right to peace prepared by the Advisory Committee, governmental delegations, representatives of international organizations and members of civil society raised the following doubts and points of concern (A/HRC/WG.13/1/2, 2013):

Firstly, some delegations stated that international community should make every effort to increase the international standards of protection in the field of human rights for the benefit of our own citizens. The full enjoyment of human rights is impossible if we do not live in peace. Other delegations also agreed that the preservation of peace is the founder, goal and main objective of our organization. They added that the promotion and protection of existing human rights can make a profound contribution to peace. It follows that the linkage between human rights and peace is pretty clear. Additionally, other delegations said that the right to peace is strongly inseparable from the most fundamental right, which is the right to life. They also stated that peace is a precondition or pre-requisite to protecting and promoting the enjoyment of all human rights. Other delegations re-phrased this latter concept by saying that “the United Nations, in its Charter, recognized that peace is both a prerequisite and a consequence of the full enjoyment of human rights by all.” Others added that peace should be seen as an enabling right which allows people enjoy their civil, political, economic, social or cultural rights.

Secondly, for many delegations, the concept of the right to peace was not new, but recognized in soft law instruments including in General Assembly resolution 39/11 of 12 November 1984, whereby the international community had adopted the *Declaration on the Right of Peoples to Peace*, and most recently in the *Human Rights Declaration* adopted by the *Association of Southeast Asian Nations* (ASEAN) on 18 November 2012. On the other hand, several other delegations stated that a stand-alone “right to peace” did not exist under international law. In their view, peace was not a human right in and of itself: it was rather a goal that could be best realized through the enforcement of existing identifiable and distinguishable human rights.

Thirdly, some delegations stressed that the current initiative of the right to peace could become a great opportunity to stop wars and armed conflicts in the world and consequently, to avoid all human rights violations, crimes against humanity and genocides, which usually occur in these dreadful situations. Also they indicated that this initiative is not only a clear reaction against war and conflict, but also a mean to eliminate all kind of violence against people. Others added that there is no possibility to exercise fundamental rights in a context of war. No socioeconomic transformation may work under a conflict. As indicated also by the delegations, in order to ensure the promotion and exercise of the right to peace, international community should exhaust all necessary efforts to eliminate the threat of war, in particular nuclear war, to settle disputes peacefully and to end all ongoing conflicts, which are seriously affecting the lives of millions of people. Some delegations stated that the Declaration should reflect the preventive role of peace in regards to the human rights violations. Other delegations also stressed the complementarity and interdependence of the three main pillars of the United Nations (i.e. peace, development and human right).

Fourthly, in regards to the legal standards of the Declaration elaborated by the Advisory Committee, some delegations said that the thematic areas selected seem to have been arbitrarily picked. In addition, they indicated that many concepts of human rights included in the Declaration are new and unclear, which generate that the current process can become an unproductive, futile and frivolous exercise. By introducing a broad concept of the right to peace, said some delegations, the drafters included many binding disparate issues to peace. In addition, most of delegations added that the issues that the draft Declaration purports to address are already addressed in other, more appropriate forums, some under the HRC, and some not. They also added that the Declaration includes and subsumes a range of existing human rights and that it is inconsistent with relevant international norms, including the UN Charter. Furthermore, some of them said that the major misgiving is to use undefined, ambiguous and un-grounded concepts that lack any consensus in international law or to insert topics that do not have a slightest linkage to the purpose of the declaration. Several delegations called for the drafting of a brief, concise and balanced declaration that would be guided by international law as well as by the *Charter of the United Nations*, compliant with its Article 51. The declaration should avoid referring to controversial issues and unidentified and vague topics that did not presently enjoy international support and consensus.

Fifthly, as indicated by some delegation, "the draft declaration has attempted to re-invent the wheel by formulating new concepts and definitions, whereas it should be guided by international law, basing itself on the UN Charter." In addition, others stressed that the essence of the next phrase in the resolution which indicates "and without prejudging relevant past, present and future views and proposals" is an open door to revise, to adjust or to change the text with new ideas and formulations.

Second Session of the Open Ended Working Group on the Right to Peace

On 13 June 2013, the HRC adopted resolution 23/16 by which the HRC requested the Chairperson-Rapporteur of the working group to prepare a new text on the basis of

the discussions held during the first session of the working group and on the basis of the inter-sessional informal consultations to be held, and to present it prior to the second session of the working group for consideration and further discussion thereat.

The second session took place from 30 June to 4 July 2014 in Geneva. The preliminary ideas of the Chairperson-Rapporteur were included in a letter addressed to the members of the working group, which circulated as an official document at the session (A/HRC/WG.13/2/2). In accordance with the above letter, the following points of concurrence among all delegations were highlighted by the Chairperson-Rapporteur:

1. The declaration should be short and concise and should provide an added value to the field of human rights on the basis of consensus and dialogue.
2. The declaration should be guided by international law, basing itself on the Charter of the United Nations and the promotion of human rights and fundamental freedoms.
3. The legal basis of the human rights legal system is the concept of human dignity.
4. Human rights and fundamental freedoms, in particular the right to life, are massively violated in the context of war and armed conflict. In addition, there is no possibility to exercise fundamental rights in a context of armed violence.
5. Cooperation, dialogue and the protection of all human rights are fundamental to the prevention of war and armed conflict.
6. The promotion, protection and prevention of violations of all human rights would make a profound contribution to peace.
7. Human rights, peace and development are interdependent and mutually reinforcing.
8. Many concepts of human rights included in the draft declaration elaborated by the Advisory Committee are new and unclear, which results in the risk that the current process will become an unproductive, futile and frivolous exercise. Many notions have already been addressed in other more appropriate forums, some under the Human Rights Council, and some not.

On 30 June 2014, Christian Guillermet-Fernández (Costa Rica) was elected by the Working Group as its Chairperson-Rapporteur, by acclamation. He was nominated by the delegation of El Salvador on behalf of the GRULAC.

The session was opened by Bacre Waly Ndiaye, the Director of the HRC and *Special Procedures Division* on behalf of the *United Nations High Commissioner for Human Rights* (A/HRC/27/63, 2014). The Director recalled that the realization of peace lies at the very heart of the principles and purposes of the United Nations, as reflected in its Charter. He pointed to the prominent role of peace in the fulfilment of the fundamental rights of every person, as recognized in numerous international and regional human rights instruments. He commended the efforts of the Chairperson-Rapporteur to actively engage with States, civil society and academia in the intersessional period in order to reconcile the diversity of views and positions with regard to the right to peace.

Baudelaire Ndong Ella, President of the HRC recalled that peace and international security faced new challenges not only from local conflicts, but also from the proliferation of terrorism and transnational organized crime. International peace and cooperation were central to the founding principles of the United Nations. He reiterated that the HRC attached great importance to the question of peace as an essential element for the full enjoyment of all human rights by all around the world. The President welcomed the

Chairperson’s new text as the basis for future negotiations and expressed hope that the constructive approach and enriching discussions among States and all stakeholders witnessed from the outset would continue also during this session.

In his opening remarks, the Chairperson-Rapporteur referred to the main elements and legal instruments, in which his text was based, such as: (1) the *Charter of the United Nations*, the *Universal Declaration of Human Rights* and the two *International Covenants: on Civil and Political Rights*, and on *Economic, Social and Cultural Rights*; (2) the *Declaration on the Right of Peoples to Peace* and content of the relevant resolutions adopted by the Human Rights Council since 2008; (3) the points of convergence found among all delegations; (4) the results of the consultations held in the context of the ongoing process; (5) legal standards proposed by the Advisory Committee on the *Declaration and Programme of Action on a Culture of Peace* and the *Declaration and Programme of Action* of Vienna, and finally, international law and human rights law, in particular the *Declaration on the Preparation of Societies for Life in Peace*.

At the final meeting of its second session, on 4 July 2014, the OEWG welcomed the participation of the Director of the HRC and Special Procedures Division on behalf of the UN High Commissioner for HR and the President of the HRC; acknowledged the constructive dialogue, broad participation and active engagement of governments, regional and political groups, civil society and relevant stakeholders, and took note of the input received from them and finally welcomed the approach put forward by the Chairperson-Rapporteur.

In addition, following the discussions held during the Working Group, the Chairperson-Rapporteur recommended to the OEWG the following: “1. That another session of the OEWG be held before its twenty-eight session to finalize the text of the declaration; 2. That permission be given to him for the holding of informal consultations with Governments, regional groups and relevant stakeholders in the intersessional period; 3. That he be entrusted with the preparation of the revised text on the basis of the discussions held during the second session of the working group, and to present this text before the third session of the working group for consideration and further discussion thereat” (A/HRC/27/63, 2014).

Main points discussed during the session

As stressed, the new approach by the Chairperson-Rapporteur as included in his text (Annex I) was welcomed by the OEWG, which is open to all States, civil society organizations and other stakeholders represented in the United Nations. This approach was accepted by the majority of participants and afterwards, adopted “ad referendum” by all in its final report as the correct way to find the necessary consensus in this difficult topic. Delegations stated their appreciation for his efforts to prepare a new text carefully reflecting the various positions expressed in the first session of the working group and during the various inter-sessional consultations. Some cautiously appreciated the direction in which the drafting was heading on the basis of broad consultations. In particular, the approach is based on the following five ideas, which are a clear attempt to give an answer to the main points of concern raised at the first session:

Firstly, unlike the Security Council, the HRC is not the competent body to deal with those matters linked to the maintenance of international peace and security in the world. Pursuant to UNGA resolution 60/251 of 2006, the HRC is trusted to work in some of the purposes and principles contained in the UN Charter (i.e. friendly relations among nations, self-determination of peoples, international cooperation and promotion of human rights and fundamental freedoms for all), but never on matters related to breach of peace, the use or threat of force or the crime of aggression.

The HRC is exclusively focused on those who truly suffer in a conflict: human beings and peoples. It is a forum for dialogue, not confrontation, which always works by and for the victims. Since the mandate of the HRC is to promote and protect human rights, peace should be elaborated in light of some fundamental human right, which has already been recognised by the international community as a whole, such as the right to life. Indeed, the right to life in peace is more linked to human rights than the so called right to peace in both its individual and collective dimension. Therefore, instead of re-creating new rights without the necessary consensus or unanimity, the international community should progressively elaborate existing and already consolidated rights in international law. The linkage between the right to life and peace was recognised in Art. 1 of the *Declaration on the Preparation of Societies for Life in Peace* as follows: “Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace.”

Secondly, the added value of the new Declaration is not only to recall again the linkage between the right to life and peace, but also to elaborate the right to life in connection to peace, including also human rights and development, which has not still elaborated in international law. The United Nations does not need to re-invent the wheel, but only to strengthen the right to life linked to peace, human rights and development. Therefore, the recognition of the right to life and the affirmation of the right to live in peace, human rights and development are intended to ensure that the authorities take measures to guarantee that life may be lived in a natural and dignified manner and that the individual has every possible means for this purpose.

Thirdly, the new Declaration should bear in mind two issues: the need to promote peaceful relations among countries and the condemnation of war. In order to protect and promote the right of peoples to peace, States should implement and comply with all the principles contained in art. 2 of the *Charter of the United Nations*. Therefore, the essential content of this Declaration, and in particular the strong condemnation of war, should be a cornerstone of the future declaration in the line of the Declaration on the Right of Peoples to Peace.

Fourthly, in regard to the Declaration prepared by the Advisory Committee, it should be stressed that all the main elements proposed by the *Human Rights Council Advisory Committee* were already included in the *Declaration and Program of Action of Culture of Peace*. In particular, the concepts proposed by the Advisory Committee have been elaborated by different stakeholders in the line of the *Programme of Action of Culture of Peace* (i.e. human security and poverty, disarmament, education, development, environment, vulnerable groups, refugees and migrants). It follows that in spite of including in the future Declaration concepts that are being currently dealt with by other competent bodies, the international community should progressively elaborate

these notions in light of agreeable Declarations already adopted by the General Assembly, such as the *Declaration and Programme of Action of Culture of Peace*.

Broad support was expressed for the new concise and focused text as a significant improvement over the previous Advisory Committee draft (A/HRC/20/31) and as a basis for further discussion during the present session. Delegations welcomed that a number of ambiguous issues included in the Advisory Committee draft that did not yet enjoy international consensus were no longer found in the new text and noted that it was not appropriate to include in this text controversial issues or concepts lacking in clarity still being discussed in other forums.

Fifthly, the new approach builds upon the role of women in the construction of peace, the importance of prevention of armed conflicts in conformity with the UN Charter, the contribution of the *Human Rights Council* to the prevention of violations of human rights and its response to human rights emergencies and the role of education on peace. In addition, another important element is the notion of human dignity. It should be noted that this concept has become a ubiquitous idea and central concern of international law. As a foundational norm within the United Nations, human dignity is a necessary response to war's atrocities. The inclusion of human dignity in contemporary international law is a response to the widespread revulsion of the horrors of the Second World War. Therefore, it prohibits the worst excesses possible in war and claims the observance of minimal standards of civil, political and social recognition in time of war and peace.

Several delegations welcomed the inclusion of the notions of human dignity, the role of women in the construction of peace and the role of education.

Third Session of the Open Ended Working Group on the Right to Peace

On September 25, 2014, the *Human Rights Council* adopted resolution 27/17 as a continuation of the work done on this topic in recent years. The draft resolution requested to convene a third session of the OEWG on the right to peace with the purpose of finalizing the Declaration, which was held from 20 to 24 April 2015. The Council further requested the Chairperson-Rapporteur to prepare a revised text on the basis of the discussions held during the first and second sessions of the working group and on the basis of the intersessional informal consultations to be held, and to present it prior to the third session of the working group for consideration and further discussion thereat.

The resolution 27/17 paths the way to introduce progressively the new approach proposed by the Chairperson-Rapporteur for the following reasons: (1) this resolution is not referring to the draft Declaration on the right to peace elaborated by the Advisory Committee. As indicated by the Chairperson-Rapporteur in his report (A/HRC/27/63), the Advisory Committee, in its draft declaration, had built on and elaborated further elements contained in the *Declaration and Programme of Action on Culture of Peace*; (2) it opens the possibility to take into consideration not only the *Declaration on the Right of Peoples to Peace*, but also other important relevant instruments in the field of peace (i.e. *Declaration and Programme of Action on a Culture of Peace*, the *Vienna Declaration and Programme of Action* and the *Declaration on the Preparation of Societies for Life in Peace*); (3) the resolution welcomes not only the work performed by civil society organizations, but also academia and other stakeholders (i.e. international

organizations); (4) it clearly stresses that the new stage of the process will be based on the inputs received from Governments, regional and political groups, civil society and relevant stakeholders, and the text presented by the Chairperson-Rapporteur. A summary of the discussions is included in the report of the working group on its second session, which has to be read in conjunction with the compilations of the proposals made by States and by other stakeholders. This compilation, which is contained in document A/HRC/WG.13/2/CRP.1 is available on the website of OHCHR.

On 20 April 2015, the session was opened by the Officer-in-Charge of the *Human Rights Council Mechanisms Division* of the *Office of the United Nations High Commissioner for Human Rights* (OHCHR), on behalf of the High Commissioner. The Officer-in-Charge recalled that the realization of peace lay at the very heart of the principles and purposes of the United Nations, as reflected in its Charter. He referred to the 2005 *World Summit Outcome* (General Assembly resolution 60/1 of 16 September 2005), and the *Rights up Front Action Plan*, launched by the Secretary-General in 2013, in which the complementarity between peace and human rights was clearly reflected (Report A/HRC/29/45, para. 4).

The Chairperson-Rapporteur introduced his new text, and explained that it was a result of extensive consultations held with a wide range of interested stakeholders, including States, intergovernmental organizations, United Nations entities, civil society organizations and academia. In this light, the revised text did not include any paragraph or provision that had not been previously discussed with or in the working group. The revised text was short and concise, and did not aim to provide a stand-alone definition of the right to peace as such, but rather focused on the elements composing the right to peace that had already been identified by the Human Rights Council in previous years (Para. 16).

Delegations congratulated the Chairperson-Rapporteur on his re-election and commended him for his able leadership on the issue and for his approach based on transparency, inclusiveness, consensual decision-making and objectivity that has contributed to narrowing the gaps with regard to diverging opinions among delegations on the initial draft declaration. Numerous delegations also stated their appreciation of his efforts to prepare a revised text, carefully reflecting the various positions expressed at the second session of the working group and during the various intersessional constructive consultations with delegations, regional groups and other stakeholders (Para. 22).

At the conclusion of the session, a number of delegations expressed their sincere gratitude for the leadership, flexibility and efforts demonstrated by the Chairperson-Rapporteur in working with all parties towards consensus. Appreciation was also expressed for the contributions by non-governmental organizations and the support provided to the Chairperson-Rapporteur (Para. 79).

As conclusion of the Chairperson-Rapporteur, he acknowledged the respectful atmosphere and spirit of dialogue and cooperation that reigned during the third session of the working group while moving towards a consensual outcome (Para. 80).

Main points discussed during the session

On 24 April in the afternoon the Chairperson-Rapporteur presented a new revised text (see Annex I), which would be based on the following agreeable points and ideas

raised by some States and civil society organizations during the third session of the Working group:

Firstly, there has been much confusion in how to declare a “human” right to peace on the basis of the “right of peoples to peace or right to peace” – current mandate of the Working Group-, such as it was recognised by the General Assembly in 1984. Some people have taken gateways, which legally or politically are not convincing. In 1984 the holders of this right were the States. The last preambular paragraph is clear in this regard, by recognizing: “... the promotion of its implementation constitute a fundamental obligation of each State.” Although there are some similitudes, it is not the same from the legal viewpoint the “human” right to peace and the right of peoples to peace as recognised in 1984 or even the right to life in peace (*Declaration on the Preparation of Societies for Life in Peace*: Art. 1), the right to live in peace (Security Council resolution 242), the right to enjoy peace (*ASEAN Human Rights Declaration*: Art. 38) or the right of peoples to peace and security (*African Charter on Peoples and Human Rights*: Art. 23). Putting together all these notions, without making the effort in distinguishing them, creates a deep confusion and misleads the process. It follows that affirming that all developing countries support the “human” right to peace, taking into account that they vote in favour in the Council resolutions, is a mistake because currently their real and political compromise is with the promotion of the right of peoples to peace or the notion of the right to peace after resolution 20/15 of 2012. Consequently, the objective of the Chairperson-Rapporteur is to work on the notion of the right of peoples to peace or right to peace from the human rights perspective in accordance with all the work made by the HRC on this topic in the latest years.

Secondly, the international community is absolutely ripe to advance in the progressive elaboration of the right of peoples to peace through the development of those elements that compose it. More than the existence of the legal notion of the right to peace, which today it is a very complicated task taking into account that in this issue there is a clear division of opinions in the international community, it is much more useful to focus our attention on its main components. Despite the different positions about the existence of this right, all member States, even those which do not recognize it, agreed to recall the 1984 Declaration on the right of peoples to peace in the preambular paragraph 4 of the new text.

Thirdly, the revised new text is the result of the work done by everyone during the week of the third session. It has taken into account comments and recommendations proposed by all stakeholders. In the text there is no preambular paragraph or provision, which has not previously been discussed within the Group and has not been included in the compilation of the second session of the Working Group.

Fourthly, the Preamble of the new revised text, which is composed of 37 paragraphs, includes all the specific measures aimed at preserving the right of peoples to peace identified by the HRC since 2008 – Res. 11/4 of 2009, 14/3 of 2010 and 17/16 of 2011: (1) the principles of the *Charter of the United Nations*, such as the peaceful settlement of disputes, international cooperation and the self-determination of peoples; (2) the elimination of the threat of war; (3) the three pillars of the United Nations (i.e. peace, human rights and development); (4) the eradication of poverty and promotion of sustained economic growth, sustainable development and global prosperity for all; (5) the

wide diffusion and promotion of education on peace and (6) the strengthening of the *Declaration and Programme of Action on a Culture of Peace*.

Fifthly, the three UN pillars have been recognised by the *Human Rights Council* as a fundamental element aimed to promoting the right of peoples to peace. In particular, Council resolutions on the right of peoples to peace have constantly stressed in its operative sections that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being. Therefore, it follows that the three UN pillars are strongly linked to content of the right of peoples to peace.

Sixth, the new revised text invites solemnly in the last preambular paragraph 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, the 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 linkage between the right to life and peace is again reaffirmed in this paragraph.

Seventh, the first provision of the new revised text proclaims that “Everyone has the right to enjoy peace such that security is maintained, all human rights are promoted and protected and development is fully realized.” This proposal of language, inspired in Article 38 of the *ASEAN Human Rights Declaration*, was made by Indonesia during the third session and obtained the support from Malaysia, India, Venezuela, Pakistan and Philippines, and some civil society organizations (i.e. *Associazione Comunità Papa Giovanni XXIII* and *United Network of Young Peacebuilders*). It is interesting to highlight that, with this provision's assertion of the “right to enjoy peace,” the notion of “peace” is read in conjunction with the “the right to enjoy.” According to the *Black Law Dictionary*, the expression “enjoyment” is defined as the “possession and fruition of a right, privilege or incorporeal hereditament,” and synonymous with “comfort, consolation, contentment, ease, happiness and satisfaction.” It thus follows that “peace”, which this document inexorably links to the idea of “enjoyment”, can be understood either as a right of all people, or as an aspiration or privilege to be reached by all humankind.

Eighth, the second new provision proclaimed that “States should respect, implement and promote equality and non-discrimination, justice and the rule of law and guarantee the security of their people, fulfil their needs and ensure the protection and promotion of their universally recognized human rights and fundamental freedoms as a means to build peace.” This second article was jointly drafted by USA, Australia, EU, Malaysia, Indonesia, Morocco, Tunisia, Iran and Egypt.

Ninth, in accordance with Article 3 of the new text, the main actors on which rest the responsibility to make reality this highest and noble aspiration of humankind are human beings, States, United Nations, specialized agencies, international organizations and civil society. They are the main competent actors to promote peace and dialogue in the world.

New challenges

In his report of the third working session, the Chairperson-Rapporteur recommended to the Human Rights Council that an assessment be conducted as to whether

the international community was in a position to further develop the right to peace in a consensual manner at this point in time.

Consensus is a process of non-violent conflict resolution. In this type of process, everyone works together to make the best possible decision for the group. All concerns are raised and addressed, until all voices are heard. Consensus decision making is a creative and dynamic way of reaching agreement between all members of a group. It follows that consensus is the norm and tendency not only in international relations, but the United Nations.

Taking into account that most of the preambular paragraphs and some ideas contained in the operative articles of the new revised text has been almost accepted by Member States, the international community shall have the greatest opportunity to jointly advance in the world peace agenda in the June session of the HRC, when it decides the future steps to be taken, including the eventual adoption of the new revised text. This year the United Nations is commemorating the 70th Anniversary since its inception. The most important message that should be given by the Human Rights Council is the adoption by consensus of a Declaration, which takes into account all different positions, and above all, pays real tribute to all victims of war and conflict.

ANALYSIS

Establishment of the right of peoples to peace

On 12 November 1984, the General Assembly adopted the *Declaration on the Right of Peoples to Peace* by 92 to none and 34 abstentions. 29 states were absent for the vote and two countries were present in the room, but they decided not to participate in the vote – since both, absents and presents which did not vote – disagreed with the initiative.

In general terms, most of the governmental representatives, which took the floor in 1984 to explain their position 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 the 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 of social progress and justice are vital to promote the right of peoples to peace.

Other governmental delegations, principally Malaysia and Philippines, stated that while peace is an indispensable condition of human survival, it cannot be peace at any price. In addition, peace should be developed in accordance with the principles of the UN Charter and the rights to freedom, to self-determination, to justice and to a decent life.

Finally, another group of countries, such as the European Community, stressed that the right of peoples to peace has no legal basis. In addition, it does not explain how the right to peace might correspond with these principles or fit in with the established and carefully constructed body of law developed from them. The concept of peace is not fully compatible with the concept of which the *Charter of the United Nations* is based. The Charter indeed proceeds on a substantive notion of peace, not merely a formal concept.

Since 1984 to now the *Group of Eastern and Western European and Others States* (i.e. Japan and Republic of Korea), have constantly showed their opposition to this UN process by using the following arguments within the *Human Rights Commission* and HRC: the absence of peace cannot justify the disrespect of human rights, this notion deals almost exclusively with the relations between states and most of the issues raised should be treated in other international bodies with the competence to do so.

Legal approach to the notion

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 world-wide 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 of mankind and (6) that the maintenance of a peaceful life for peoples is the sacred duty of each State.

Taking into account these axioms of the *Preamble*, 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.

Although originally the Declaration lacks a human rights perspective, the HRC has elaborated this perspective since 2008. The elements of human rights and international

law included in the Council resolutions 11/4, 14/3 and 17/16 on the right of peoples to peace would be the following:

- 1) importance of peace for the promotion and protection of all human rights for all;
- 2) increasing poverty is a major threat to global prosperity, peace, security and stability;
- 3) peace and security, development and human rights are the pillars of the United Nations;
- 4) the elimination of the threat of war in accordance with the *Charter of the United Nations*;
- 5) 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;
- 6) principles and purposes of the Charter;
- 7) the duty of all states, in accordance with the principles of the Charter, to use peaceful means to settle any disputes;
- 8) vital importance of education for peace;
- 9) promotion and effective implementation of the *Declaration and Programme of Action on a Culture of Peace*;
- 10) the importance of mutual cooperation, understanding and dialogue in ensuring the promotion and protection of all human rights.

Last year marked the 30th anniversary of the adoption of resolution 39/11 (1984) on the *Declaration on the Right of Peoples to Peace*. It follows that the Secretary-General has decided to commemorate this anniversary in the context of the 2014 International Day of Peace. Taking into account that this Declaration is principally devoted to the relations among States and not properly to human rights, the Secretary-General called upon the international community in his message of 13 June 2014 that the central message for the Day should focus on humanity’s sustainable progress and the realization of fundamental rights and freedoms as an indispensable condition to achieve peace.

Future perspectives of the new approach of the OEWG

Although many of the States have supported the on-going process on the right of peoples to peace, some of them have not recognized the existence of the right to peace under international law. However, they were very open to the new approach proposed by the Chairperson-Rapporteur and consequently, actively participated in the second and third session of the OEWG.

The new 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. This new approach has been openly welcomed and accepted by the international community during the second session of the OEWG (June–July 2014). In addition, this approach was extensively developed by the Working Group in its third session.

This approach has as a clear purpose to give a proper answer to the main points of concern raised by delegations during the first and second session. In particular, it focuses on the notion of the right to life and enjoy peace and security, human rights and development as a means to overcome the political differences among all regional groups about the recognition of the right of peoples to peace.

All states, even the most reluctant, expressed support about the linkage between life and peace as follows: “they were supportive of the new approach, focusing on the right to life and peace” (A/HRC/27/63, 2014: para. 22). Additionally, on 3rd July the non-governmental organizations delivered a joint oral statement in support of this approach by which “they made an appeal to all delegations to take a leap forward with the declaration by endorsing the right to life in peace, in line with article 1 of the *Declaration on the Preparation of Societies for Life in Peace*” (ibidem: Para 89).

The new approach also includes clear references to the condemnation of war, terrorism, racism, the role of women and education in the construction of peace, the importance of prevention of armed conflicts, human dignity and fundamental freedoms.

The enhancement of international co-operation at the international level should be carried out through the understanding, tolerance and friendship among all individuals, nations and peoples.

In accordance with the statements delivered by the different stakeholders during the Special Sessions of the HRC, which are devoted to specific armed conflicts, States should strengthen international cooperation with the human rights mechanism and among nations in order to reduce the cycle of violence and consolidate universal peace.

The special procedures of the HRC are a useful way “to monitor the human rights situation in the countries and take all action to avoid a repetition of past patterns when conflicts ravaging a country have made international headlines, only to be forgotten until a new crisis emerges” (Chaloka Beyani, Central African Republic, 20 January 2014). Human rights violations are often a root cause of conflict and human rights are always an indispensable element in achieving peace and reconciliation. It follows that the failure to adequately address the root causes of the conflict will risk leading to further outbreaks of large-scale violence. The priority of the special procedures is that the interests of justice be served and to assist in ensuring that all human rights be protected.

By virtue of their independence and the nature of their mandates, the different mandate holders are “well placed to function as early warning mechanisms, as alarm bells,” according to the *High Commissioner for Human Rights*, Navi Pillay. Since those special procedures cover all types of human rights, they are able to help defuse tensions at an early stage. The mandates focus on specific situations and make recommendations to governments to address problems, wherever they occur in the world.

Therefore, the HRC should become a body of prevention of armed conflicts, in which the cooperation of different Council special procedures in the line of the GA resolution 60/251 should be strengthened. The future Declaration to be adopted by the General Assembly in 2015 pretends to be a means to promote, among other issues, the principle of international cooperation and to prevent armed conflict in the world through the promotion, protection and implementation of human rights and fundamental freedoms.

* * *

The concept of peace and international security within the *Charter of the United Nations* should be understood in connection to the outstanding legal provisions of international human rights law.

In order to create a more peaceful world, the *Charter of the United Nations* established in its articles 1 and 2 the following “Purposes and Principles”, inter alia: the prohibition of acts of aggression or other breaches of the peace, the development of friendly relations among nations, the self-determination of peoples, the enhancement of international co-operation, the respect of the territorial integrity, the prohibition of interference in the domestic affairs of a sovereign country, the promotion of human rights and fundamental freedoms, the settlement of international disputes by peaceful means, the prohibition of threat or use of force against the territorial integrity or political independence of any State.

However, the United Nations has been always guided by a conception of peace understood in a wider and more positive way, in which the well-being of individuals and societies, including economic welfare, social security and human rights, has a clear prevalence over a conception of peace related exclusively to use of violence or force.

Unlike the *Declaration on the Preparation of Societies for Life in Peace* of 1978, the *Declaration on the Right of Peoples to Peace* of 1984 is not linked to international human rights law. In particular, it does not make a clear reference to the *Universal Declaration of Human Rights* or another human rights instrument in its Preamble or operative section. The 1984 Declaration is principally devoted to the relationship among States in light of Art. 2 of the *Charter of the United Nations*.

Chapter VII of the *Charter of the United Nations* grants the Security Council extensive powers in the field of maintenance of international peace and security. This is the only competent body to determine the existence of any threat to the peace, breach of the peace, or act of aggression. On the other hand, the HRC is the competent body aimed at addressing situations of gross and systematic violations of human rights and also contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies. Therefore, the HRC is exclusively focused on those who truly suffer in a conflict: human beings and peoples.

Since 2008 the HRC has been working on the *Promotion of the right of peoples to peace* inspired by previous resolutions on this issue approved by the UNGA and the former CHR, particularly the GA resolution 39/11 of 12 November 1984, entitled *Declaration on the Right of Peoples to Peace*.

On 4 July 2014, the *Open-Ended Intergovernmental Working Group on the right to peace* welcomed the approach put forward by the Chairperson-Rapporteur, which is mainly based on the linkage between the right to life and the three pillars of the United Nations (i.e. human rights, peace and development).

On 24 April 2015, the working group adopted the draft report on its third session ad referendum and decided to entrust the Chairperson-Rapporteur with its finalization. At the conclusion of the session, several delegations and non-governmental organizations taking the floor expressed hope that this work would continue and an agreement would be reached in the near future.

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ABSTRACT

War and peace have perpetually alternated in history. Consequently, peace has always been seen as an endless project, even a dream, to be in brotherhood realized by all members of international community. Since the XVII century the elimination of war and armed conflict has been a political and humanitarian objective of all nations in the world. Both the League of Nations and the United Nations were conceived with the spirit of eliminating the risk of war through the promotion of peace, cooperation and solidarity among Nations. The *Universal Declaration of Human Rights* and the subsequent human rights instruments were drafted with a sincere aspiration of promoting the value of peace and human rights worldwide. International practice shows the close linkage between the disregard of human rights and the existence of war and armed conflict. It follows that the role of human rights in the prevention of war and armed conflict is very important. Since 2008 the Human Rights Council has been working on the "Promotion of the right of peoples to peace." Pursuant resolutions 20/15 and 23/16 and 27/17 the Council decided firstly to establish, and secondly and thirdly to extend the mandate of the open-ended working group (OEWG) aimed at progressively negotiating a draft United Nations *declaration on the right to peace*. The OEWG welcomed in its second session (July 2014) the approach of the Chairperson-Rapporteur, which is basically based on the relationship between the right to life and human rights, peace and development. Consequently, this approach could be developed during the third session of the Working Group (April 2015). At its 8th meeting, on 24 April 2015, the Group adopted the draft report on its third session ad referendum and decided to entrust the Chairperson-Rapporteur with its finalization.

UWZGLĘDNIENIE "PRAWA DO ŻYCIA W POKOJU I KORZYSTANIA Z POKOJU, DO PRAW CZŁOWIEKA I DO ROZWOJU" W PRACACH RADY PRAW CZŁOWIEKA ONZ

STRESZCZENIE

Wojna i pokój stale zmieniały bieg historii. W konsekwencji, pokój postrzegany był jako marzenie, niedokończony projekt, możliwy do osiągnięcia jedynie dzięki braterstwu wszystkich członków społeczności międzynarodowej. Od XVII wieku eliminacja wojny i konfliktów zbrojnych była politycznym i humanitarnym celem wszystkich narodów. Zarówno Liga Narodów, jak i Organizacja Narodów Zjednoczonych powołane zostały w dążeniu do wyeliminowania ryzyka konfliktów przez promocję pokoju, współpracy i solidarności między narodami. *Powszechna Deklaracja Praw Człowieka* i kolejne międzynarodowe akty prawne gwarantujące ochronę praw człowieka, przyjęte zostały jako wyraz dążenia do promowania wartości podstawowych, za jakie uznano pokój i prawa człowieka. Praktyka międzynarodowa pokazuje zależność między naruszaniem praw człowieka a pojawianiem się wojen i konfliktów zbrojnych. Jasnym jest więc, że w zapobieganiu konfliktom zbrojnym istotne znaczenie ma ciągle podkreślanie wagi praw człowieka. Od 2008 r. *Rada Praw Człowieka ONZ* podejmuje prace nad promocją prawa człowieka do pokoju. W myśl rezolucji 20/15, 23/16 i 27/17 Rada zdecydowała o ustanowieniu, a następnie o rozszerzeniu mandatu grupy roboczej (tzw. OEWG), której aktywność skierowana jest na opracowanie projektu *deklaracji w prawie prawa do pokoju*. Podczas drugiej sesji w lipcu 2014 r. eksperci zaakceptowali propozycję Przewodniczącego, wskazującą na związek między prawem do życia, prawami człowieka, pokojem i rozwojem. To podejście zostało rozwinięte podczas trzeciej sesji grupy roboczej w kwietniu 2015 r.

