

The Impact of the Right to Peace on Security seen in the
Deliberations in the United Nations

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list of abbreviations

| | |
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| AC | Advisory Committee |
| ASEAN | Association of Southeast Asian Nations |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CELAC | La Comunidad de Estados Latinoamericanos y Caribeños |
| CHSS | Critical Human Security Studies |
| CRC | Convention on the Rights of the Child |
| CSS | Critical Security Studies |
| EU | European Union |
| GPPAC | Global Partnership for the Prevention of Armed Conflict |
| HRC | Human Rights Council |
| HSS | Human Security Studies |
| IADL | International Association of Democratic Lawyers |
| IAEA | International Atomic Energy Agency |
| ICCPR | International Covenant on Civil and Political Rights |
| ICISS | International Commission on Intervention and State Sovereignty |
| ICC | International Criminal Court |
| ICJ | International Commission of Jurists |
| JFBA | Japan Federation of Bar Associations |
| MDGs | Millennium Development Goals |
| NATO | North Atlantic Treaty Organization |
| NPT | Treaty on the Non-Proliferation of Nuclear Weapons |
| NGO | Non Governmental Organization |
| SIPRI | Stockholm International Peace Research Institute |
| SSIHRL | Spanish Society for Human Rights Law |
| TICO | Transparency, Inclusivity, Consensuality, and Objectivity |
| UN | United Nations |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNOHCHR | United Nations High Commissioner for Human Rights |
| UNHCR | United Nations Human Rights Council |
| US | United States |
| WMD | Weapons of Mass Destruction |

Introduction

1. Background of the Problem

Whether it is in the Iraq war or the Ukraine war, only states have the authority to start, end, and cease wars in the modern international world, but do ordinary citizens have any say in this? The right to peace is the right of people to demand peace from states and international organizations. The right to peace was adopted by the United Nations General Assembly in 2016 as the UN Declaration on the Right to Peace.

In some countries, the right to peace is incorporated as a constitutional Human Right to Peace or a judicial right. In those countries, the right to peace is spoken of in the name of the individual or collective right to live in peace or the right to peace and is seen in the judicial arena as a right that plays a restraining role vis-à-vis the state's military actions.

However, although a meeting was held at the UN to implement and specify the right to peace after it was adopted by the UN in 2016, it has not made much progress in promoting and specifying the right to peace worldwide since then.

The discussions leading up to the UN Declaration on the Right to Peace included a lively international political debate on how the right to peace affects current international politics, with each country's representatives expressing their notions and values regarding peace and security. Since the right to peace is the right of individuals to seek peace against war and military action, the right to peace has been discussed to bring a new idea into the security field, which has been mainly based on the notion of national security. However, it must be clarified what effects the right to peace has and how it can influence security.

The right to peace is closely related to the concept of human security proposed by the United Nations in the 1990s. The right to peace and human security share the same ideological foundation in that they both aim to exempt people from fear and want and share the same concept of countering national security. However, human security has been advocated by the United Nations and has been treated as solely a policy issue, and academic theorization of human security has been rather weak in the first place. Therefore, the relationship between human security and the right to peace, and how the right to peace is theoretically positioned in human security theory, have not been discussed in human security theory.

Even in the field of legal studies, the right to Peace is at the stage of UN Declaration on the Right to Peace, and although it is sometimes listed as a comparison with other rights of solidarity, such as the right to development and the right to the environment, it has not

become a specific right as in international human rights treaties, so the right to Peace is not specifically discussed as legal interpretation.

2. Purpose of the Study

The purpose of this thesis, therefore, is to clarify what impact the advent of the right to peace has on security. The security addressed in this thesis is limited to the military security aspect. In particular, human security includes freedom from want, as well as freedom from fear, and the scope of security is broad, but since peace in the right to peace is understood to be, in the first sense, the absence of war, the right to peace refers primarily to rights related to the military aspect. The deliberations on the UN Declaration on the Right to Peace at the UN Human Rights Council were also mainly about the military aspects.

In response to this question, this thesis assumes that the right to peace can be a viable means of achieving human security by imposing on the state an obligation to achieve peace for individuals in national security matters.

This thesis will approach how the right to peace affects security from the following three perspectives.

(1) What does the right to peace mean as an individual right?

This is the viewpoint of the significance of establishing the right to peace as a right of individuals rather than groups or states and the significance of the imposition of peace-related obligations on states by individuals for international politics and the realization of human security.

Conventional international political theory has rarely discussed legal concepts in political terms, but since legal concepts also come into being in and influence the real world, it is possible to examine the impact of the right to peace from the perspective of international politics.

Traditional international laws govern the state-to-state relationship in the form of rights and obligations on each other, which include conventional international legal systems such as the UN Charter and various international laws. However, this state-to-state legal relationship has no direct means of legal enforcement in an international community that has no world government, and the International Court of Justice and other international judicial mechanisms can adjudicate only in limited situations and after the fact. In addition, the interpretation of those international law requirements is left to the judgment of national governments and the UN Security Council. This means that there can be no effective measures taken before a violation of international law objectively occurs. This shows the fact

that there were no effective legal measures to prevent the wars in Iraq and Ukraine, despite alleged violations of the UN Charter.

In contrast, international human rights, which perceive individuals and groups as right holders, create a legal relation in which individuals, as rights holders, impose obligations of action or inaction on the state. International human rights differ from traditional international law, which establishes rights and obligations between states. They cast questions about the violation of obligations by states from the perspective of individuals and human beings. Since this obligation of the state is toward actual flesh-and-blood human beings, it also has an ethical character, unlike the obligation of state-to-state relations.

While traditionally, the authority in security, the power over military action and related actions, has been monopolized by the state, with the advent of the right to peace, can we evaluate that this authority is now partially in the hands of the citizenry? Regarding the relationship between human security and human rights, Sen notes that the advantage of viewing human security as part of human rights is that rights can impose corresponding obligations. He points out that in order to give effect to the notion of human security, it is important to consider who and what obligations are imposed by human rights, just as it is important to impose obligations on the state such as to provide assistance to people [Sen 2003: 9].

This study examines what obligations can be imposed on states and international organizations for peace and military affairs by the right to peace by analyzing the deliberations and drafts of the right to peace at the United Nations, and explores the impact of the right to peace on the realization of security, safety of human beings.

(2) Does the right to peace encompass rights to structure?

Is the right to peace a right that can demand not only that a state take action or inaction against individual acts related to the state's military, but also that it can demand modifications or restrictions on existing structures, including norms and institutions, that have caused those state military acts, and how does the right to peace affect security?

Traditionally, existing social structures were seen as beyond the reach of individuals. The term structure here refers to not only international norms and institutions that only representative governments and international organizations have the authority to revise or abolish them, but also social order including social inequality and economic disparity that are beyond the reach of individuals. If peace is taken in a narrow sense as the absence of war, peace is a part of social and international order. Article 28 of the Universal Declaration of Human Rights provides for the right to social and international order, and in legal terms, the right to peace is said one of the rights to such social and international order.

If peace is threatened or war breaks out, and people's right to live is violated, the causes may not be limited to direct violations by the state or other actors, but may also lie in the social structures, norms and institutions that gave rise to such violations. For instance, the UN Security Council system, which grants special powers to the Permanent Council members, and the unequal non-proliferation regime, which grants monopoly on nuclear weapons to the major powers. In addition, institutions and organizations such as the World Bank and the International Monetary Fund support the economically powerful military giants. Does the right to peace entitle individuals to demand modifications in military actions based on international institutions and regimes, in addition to demand modifications and restrictions on the use of military expenditures by states?

We will examine the possibility of the right to peace having this structure by analyzing the deliberations and drafts of the UN Declaration on the Right to Peace in the UN and thereby clarify the impact of the right to peace on security.

(3) Can the right to peace prevail over the security of the state?

Is the right to peace a right that can constrain military actions (military actions and military preparations) of a state based on national security? Or is it merely a right that supplements the scope that state security cannot cover?

Regarding the relationship between human security and national security, the United Nations Commission on Human Security (2003) describes human security as complementary to national security. However, the "complementary relationship" is abstract, and the concept of human security can be defined only as covering human insecurity beyond the scope of national security, such as national defense. However, the report does not address whether human security can object to human insecurity caused by military actions on national security grounds, such as national defense or state existence.

In contrast, the right to peace is based on the idea that since it is a human right, it imposes certain obligations on the state without any inherent limitations. Thus, even in cases where there is a conflict between national security and human security, actions based on national security may be restricted to a certain extent by the right to peace. As such, unlike human security, the right to peace has a possibility to constrain a state's security and actions based on it more strictly.

Whether the right to peace is thus a right that can constrain a state's security-based actions will be examined based on deliberations on the UN Declaration on the Right to Peace and examples of judicial practice in various countries. It will clarify the impact of the right to peace on national security.

By locating the right to peace within human security theory, which should be clarified from the above perspectives (1)~(3), we can clarify the impact of the right to peace on security. Sen positioned human security within human rights.¹ However, since this thesis seeks to identify the impact of the right to peace on security, it rather locates the right to peace within human security and identifies how the right to peace contributes to the realization of human security and how it impacts security.

3. Research Methodology

For empirical clarification of the above points, analyzing the UN debate and the perceptions of governments, experts, and NGOs in the international political arena is crucial. Moreover, it is necessary not to arbitrarily extract statements from several countries' statements but to analyze them from the perspective of what opinions were expressed for and against the points contested or agreed upon without dispute and to what extent these opinions were shared as common understanding. This is because it will enable us to go beyond the mere wording of the adopted UN Declaration on the Right to Peace, and to clarify the recognition of the meaning implicit in it and the content of the right to peace substantially shared by the participants in the debate. Such analysis will clarify the role of the right to peace in terms of security as perceived by the real international community and empirically contribute to the study of the impact of the right to peace on security.

For the theoretical framework for analyzing what is shared by the UN deliberations, we adopt a normative research framework based on constructivist theory in international politics. Unlike rationalist political science, such as realism and liberalism, constructivism regards international norms as an essential element in international politics, and norms also affect each state's national interests and policies. Normative studies are the field of international politics and international relations that clarifies the relationship between actors and norms, that is, the interaction between actors in creating norms and how norms affect actors. Therefore, normative research based on constructivism is the most appropriate theoretical framework for analyzing the interactions among actors and the impact of existing norms on

¹ Sen states that "one of the advantages of viewing human security as a human right is that rights have corresponding obligations to people and institutions," and views human security within a human rights framework. Human rights are ethical demands that entail the responsibility to respect basic human freedoms, while human security is a fact-based notion of which freedoms are important and should be protected and promoted in order to eliminate insecurity in human life, and are complementary to each other [Sen 2003: 9].

actors in the norm-making process leading up to the adoption of the UN Declaration on the Right to Peace.

In the discussions leading to the adoption of the UN Declaration, especially in the Human Rights Council, government representatives, UN agencies, and NGOs expressed their views on the right to peace, and while opinions differed, controversy developed, ultimately that lead to the adoption by the UN General Assembly. Based on the perceptions of each actor on the right to peace and existing norms and institutions, as expressed in the analysis of the UN deliberations, it is possible to analyze what content and effects the participants, especially countries in favor, expected through the discussion of the right to peace. This analysis provides an essential clue for examining the impact of the right to peace on security, which is the theme of this thesis.

In analyzing the factors that contribute to norm-making, norm research assumes that norm entrepreneurs who promote the establishment of norms are indispensable. From the 1970s to the early 2000s, socialist governments (Poland, Mongolia, and Cuba) promoted UN Declarations on Rights to Peace, focusing on peoples' rights as collective rights. In contrast, in the deliberations of the UN Declaration on the Right to Peace at the Human Rights Council in the 2000s, peoples' rights were eliminated and converged on the right to peace as an individual right. Since the place where the right to peace has been intensively discussed is the Human Rights Council since 2008, this thesis will consider NGOs that advocated the right to peace as an individual right and Human Rights to Peace as norm entrepreneurs. We will then analyze as the second criterion how the NGOs' advocacy influenced the UN deliberations and the content of the right to peace.

The materials used in the above analysis will be based on documents published by the UN and NGOs relevant to the UN deliberations; additionally, examples of practices in various countries regarding the right to peace and the right to live in peace will also be taken into account. The author has participated in various UN Human Rights Council meetings as an NGO member and NGO campaigns outside the UN, so meeting notes other than published documents will also be used as sources.

4 Structure of the thesis

Chapter 1 introduces the previous studies on national security and human security concerning the implications of the right to peace on security, which is the subject of this paper, and identifies what remains unexplored in these studies. To this end, we will take up critical security theory, which aims to construct a theory from the viewpoint of human emancipation in response to conventional security theory, and clarify points inadequately explained

theoretically by conventional security theory. This paper also proposes what kind of meaning the right to peace can have for these issues.

Even within human security theory, traditional human security theory has set human security as a policy issue and has not sufficiently pursued theoretical issues. However, Booth and others in critical security theory have pursued theoretical issues from the perspective of human emancipation. In this context, we identify issues that can be contributed to by clarifying the impact of the right to peace.

Chapter 2 will describe the historical background of how the right to peace came to be discussed in the United Nations. Authority over war and peace has been an area that only states have dealt with, and initially, there was no room for humanitarian law or the concept of the right to peace to emerge. However, the interests of individual human beings, which are often hidden behind the interests of states in security and war situations, have gradually been taken up as international norms as history has progressed. In the development of international human rights that emerged after World War II, for instance, the United Nations began to talk about the contribution of human rights guarantees to peacebuilding and peace as a precondition for human rights guarantees. This section clarifies the historical background of how security and human rights have approached each other. In this vein, the United Nations began to take up the Human Rights to Peace in the 1970s, although it took on various expressions as a term, and in the 2000s, the UN Human Rights Council began intensive discussions on the issue. This section will examine the meaning of the right to peace in light of these historical trends.

In Chapter 3, in analyzing the deliberations on the right to peace at the United Nations, we introduce preceding studies based on constructivism and propose an analytical framework for clarifying what kind of content in establishing the norm of the right to peace. Based on norms research that analyzes the factors in the norm-making process, this chapter proposes an analytical framework for analyzing the content of the deliberations at the United Nations.

Starting with Chapter 4, we will analyze the deliberations of the UN Declaration on the Right to Peace in 1978 and 1984, when the General Assembly adopted the UN Declaration for the first time. We will first discuss the contestation and what content was shared among the participating countries. Then, we will analyze the deliberations of the Human Rights Council in eight years since 2008. Particularly since 2010, when the UN Human Rights Council outsourced the drafting of the Declaration to the Advisory Committee, intergovernmental discussions have become more active, leading to the deliberations of the Intergovernmental Working Group from 2013 to 2015 and its adoption by the UN General Assembly. This analysis will focus on the content and activities of international NGOs, led by

the norm entrepreneur Spanish Society for Human Rights Law (SSIHRL), during those UN deliberations.

Chapter 5 will analyze what content was shared in the deliberations on the UN Declaration on the Right to Peace. With reference to court decisions in various countries, the chapter will also examine what the right to peace means in security theory.

The Final Chapter will present what has been clarified throughout this thesis, the impact and prospects of the right to peace in the international community in the future, and the challenges of this thesis.

Chapter 1: Preceding Studies on Security Theory

1. What is Critical Security Theory?

What does the right to peace, adopted in the UN Declaration on the Right to Peace, mean in security theory? The right to peace in the Declaration is an individual right in the security field. The concept of the right to peace set up a new relationship between individuals and states through rights and obligations. Contrary to traditional and realist-based national security dealt with the relationship between states, the right to peace, which covers the relationship between states and individuals, provides a different perspective. Generally, there are two types of security theory: traditional security theory, which is state-centered, and critical security theory, which aims to realize human emancipation and criticizes traditional security.

Let us first examine how critical security theory differs from traditional security theory. In security studies, Ken Booth, Richard Wynne Jones, and others from the Wales School (Aberystwyth School) developed a security theory based on critical theory. The basis of their argument is security as human emancipation: “security” is a state in which there is no oppression against human beings, meaning that there is “emancipation from oppression” [Booth 2005: 12-17]. Their theory is characterized by a critique of state-centrism, reexamining the concept of threat, and pointing out the political nature of knowledge and human emancipation [Igarashi 2022: 26]. Here, we will review the contents of critical security theory with a focus on Booth, a leading critical security theorist whose theory is aimed at human emancipation [Booth 2005: 12-17].

Critical security theory critiques traditional state-centered security theory, which is politically linked to realism. Traditional security theory consists of three elements: an emphasis on military threat, the need for a strong counterattack, and departure from the status quo; this approach concentrates attention on the state. According to Booth, however, security means the absence of threat, and emancipation means “freedom from physical and human constraints that prevent people from making free choices” [Booth 1991]. War, like poverty, lack of education, and political oppression, is a constraint that prevents freedom. Security and emancipation are two sides of the same coin, and emancipation, not power or order, constitutes true security. For Booth, the question is whether the object of security is the state or human beings, and whose security should be prioritized. He argues that human beings (people) should be the object of security, and the state should be the means to that end [Booth 1991: 319].

Realists seek the causes of political conflicts and power struggles—classical realists look for them in human nature, and neo-realists search the anarchic nature of the international community—but what they have in common is an emphasis on the importance of the sovereign state. Sovereign states seek to maximize their power in order to survive, expect interstate conflicts, crises, and wars, and promote the sanction of military force as a political tool [Booth 2005: 5]. Robert Cox was quoted to say that all theories are “for some one or for some purpose,” a statement that applies to realism. The notion of realism, in turn, is deeply rooted in society; it is seen as “common sense,” has no values, and is not perceived as an ideology [Booth 2005: 9]. Realism is a problem-solving theory that does not question current social power relations and institutions, as critical theory does, but reproduces the world’s reality as it is [Booth 2005: 4].

Booth believes that critical security theory must not only go beyond realism but also traditional critical security theory, because traditional critical security theory is only a body of knowledge and not a theory of security. For example, it does not theorize which referents (directive objects) of security should be prioritized in world politics, which threats to focus on, who the agents of change are, or how security should be defined [Booth 2005: 260]. While the above is Booth’s perception of critical security theory from the Wales School, there are other schools of thought for critical security theory: the Copenhagen School and the Paris School.

The Copenhagen School (Buzan, Wæver, etc.) uses the critical concept of securitization and holds that what people *regard* as a security issue *becomes* a security issue. They emphasize the act of speech and categorize all public issues as politicized and securitized [Buzan et al., 1998: 23-24]; however, emergency measures are required when issues are securitized. This school of thought, then, is concerned with exercising political power. Since this thesis is dedicated to deepening the scope of the content of security and not to the political meaning of being securitized, the theory of securitization is not employed. Buzan, a leading figure of the Copenhagen School, says that no new security can be named for human security. He also criticizes human security as being too broad in scope and as not telling us anything.

According to Foucault, a representative of the Paris School, the concept of governmentality—the “conduction of conduct” is used to address the issue of the power latent in administrative acts and institutions; for instance, he says that the execution of routine administrative tasks is a source of power. However, since this study’s purpose is to clarify the security significance of the right to peace in security theory, its perspective on normative power differs from that of the Paris School, which regards the issue of power in society’s administrative realities as problematic.

2. Positioning of Human Security

The study of human security, a policy concept proposed by the United Nations Human Development in 1994, includes traditional human security theory (HSS) and critical human security theory (CHSS). In the traditional understanding of human security, the referent of security is not the state but the human being; critical security theory also holds the human as the referent. The two approaches, however, debate whether the content of security includes only artificial or natural disasters or encompasses all harm to human beings. Furthermore, proponents of the two theories discuss whether only state actors cause insecurity or include non-state actors such as terrorism, whether states are the only actors providing security or international organizations and NGOs contribute, and what kinds of human insecurity led to the emergence of human security.

(1) State Security and Human Rights

The transition from state security to human security has created a paradigm shift in the field of security theory. First addressed by the UN Human Development report in 1994, the concept of Human Security has become firmly established within the UN, including creating the Commission on Human Security. In other words, the perspective of the individual human being has been incorporated into the security concept and brought into relationship with national security: the UN Commission on Human Security [2003] recognizes that human security supplements what the state alone cannot cover. One reason for this recognition, despite the end of the Cold War, human insecurity—including ethnic conflicts, famine, and poverty, which are not limited to inter-regime issues—arose. This historical context suggested that national security alone, with the state as the primary referent (object of protection), was no longer sufficient to cope with these issues.²

(2) Critical Human Security and Human Security

In contrast to the abovementioned human security as a UN policy, critical security studies attempt to broaden and deepen the scope of the content of “security” [Booth 2005: 14]. Among them, human security theory, from the standpoint of critical security theory, emphasizes the attempt to deepen that scope [Booth 2005: 12-17].

Newman goes one step further than Booth and advocates critical human security studies (CHSS) as an independent discipline because traditional critical security studies have largely

² Note that in the field of global governance, security is said to be the least advanced field compared to other fields such as environment and trade [Yamamoto 2008: 337]. In addition, international norms and institutions have not previously been emphasized as independent factors in the field of security studies [Deitelhoff and Zimmermann 2019: 4].

ignored the existence of human security [Newman 2010: 77]. This neglect is due to the following problems on the part of CHSS and traditional human security studies (HSS) [Newman 2010: 87-90].

First, CHSS has typically viewed human insecurity as an economic issue and has marginalized it. Also, while the traditional HSS requires a critique of the structures and norms that produce human insecurity, ontologically, it has, on the contrary, reinforced those structures. This means that (1) privileged structural problems under the UN Charter have been overlooked; (2) the determination of requirements for the exercise of the right of self-defense has depended on the state, and (3) there has been no criticism of the veto power of permanent members of the Security Council.

Second, human security has been applied in a variety of contexts. Canadian Foreign Minister Axworthy said that the NATO bombing of Kosovo was one concrete embodiment of human security; Kofi Annan also evaluated the intervention to protect civilians as a development of international norms and linked it to the idea of human security [September 20, 1999 Secretary-General Annual Report]. Since the term “human security” has been used in such contentious situations, the UN has hesitated to use the term—and because of this hesitation, issues such as using force for humanitarian purposes have not been openly addressed in human security studies.

Third, according to Cox, traditional human security studies have viewed human security from a problem-solving perspective and have focused on more policy-oriented discussions without asking theoretical questions such as “what is security?” [Newman 2010: 89]. However, the critical security studies approach raises questions about existing power structures and power relations. Critical security studies require such a critical understanding of security.

(3) Human Security as a Critical Concept

Critical security studies (CSS) and critical human security studies (CHSS), which take a critical approach to human security, seek to revise traditional security theory. In order to construct and embody a security theory for human emancipation, scholars should overcome traditional security theory that is based on realism in the international politics arena.

Realism emphasizes the struggle for power among nations because of an absence of political authority beyond the state; it assumes that war is an essential determinant in the formation of boundaries among the political community of nations. However, there is no human emancipation from the realist perspective in international politics because it does not envision international politics as capable of realizing universal, human-centered goals [Shigemasa 2015: 352]. Realism, then, results in man always being subordinate to the state.

In contrast, human security is a human-centered security concept, a policy concept proposed by the United Nations and an academic concept. One of the themes that critical

security studies should deepen regarding "human security" is how to grasp the relationship between the state and human beings. Any conceptual formation that fails to realize human emancipation from the state will fail to realize the purpose of critical security studies.

At the same time, however, human emancipation poses a "dilemma of emancipation": on the one hand, the state poses a threat to human security, but on the other, the state is also the guarantor of individual security. A related paradox arises when the use of military force to protect human beings harms others in the same country.

This issue is related to how we view the state's retention and use of military power. According to Linklater, five monopolies of power by the state have been factors in the state, as a political community, becoming the dominant form of governance. These are (1) the monopoly of the means of violence within its territory, (2) the right to collect taxes, (3) the right to demand constant political allegiance, (4) the sole authority to adjudicate disputes between citizens, and (5) being the sole representative of the rights of international law [Linklater 1992: 95-96]. The state's retention and use of military force are related to the first factor, its monopoly on violence in the territory. Critical security theory will press for a modification to this monopoly of the means of violence by the state [Shigemasa 2015: 353].

Another issue for theorizing human security from a critical security perspective is how to assess the Conceptual Framework for Human Security [2002] report by the Secretariat of the Commission on Human Security. The critical security perspective criticizes the report as being premised upon the existing world order of state-centered neo-realism and neo-liberal globalization; human security as a policy is illuminated only in terms of the protection aspect for the vulnerable, while avoiding critical analysis and evaluation of the global structural and historical institutions that generated the vulnerable. Nor does the Secretariat's report challenge the contradiction between national security, military security, human security, or security for human beings. The restructuring of the international system toward militarization under globalization has blurred the boundaries between military and police actions, creating new threats [Hanochi 2002: 61] that are not addressed in the report.

(4) Challenges of Critical Human Security Theory

Newman, therefore, proposes critical human security studies (CHSS) from the standpoint of critical security studies (CSS) and identifies the following theoretical issues to be addressed [Newman 2010: 92-94]:

- 1) There is a need to address the contradictions within the concept of human security, mainly the contradiction between the scope and character of security and the means to achieve it. These concepts need to be explained in detail to move beyond the stagnant "definitional debate."

- 2) The question must be asked: How do existing values and institutions serve human welfare? There is no exploration of the pathologies of the international system structure that give rise to, for example, the use of military force to protect human beings, which is allegedly a progressive policy; the campaign to abolish certain types of weapons; the campaign to strengthen international criminal justice, and so on. For example, while poverty reduction and job creation are welcome from a human security perspective, the free-market approaches used by international financial institutions reduce the self-reliance of the communities receiving aid and lead to social deprivation. Conventional human security research tends only to identify insecurity and is insufficient in analyzing its structural causes.
- 3) Human security must develop the concept of human security through ontological and epistemological arguments about the nature of safety and insecurity, and challenge the structures and norms that produce human insecurity. This process will enable us to overcome the “human security contradiction” in which human security reinforces these structures and norms.
- 4) The relationship between structure and subject in security discourse needs to be theorized. Human security makes the individual one instrument for achieving security, but human insecurity arises from structural factors and power distributions that are beyond the individual’s reach. The study of this subject-structure relationship is the next task of human security.
- 5) In human security, the state is also the provider of the security of the individual, but the state generates threats to the individual’s security. It is necessary to elaborate on the theoretical and practical relationship between the state and the individual in such security-providing situations.

3. Human Security and the Right to Peace

Critical security studies and human security share the same orientation since human security aims to move away from state security and realism and goal of emancipating human beings. However, traditional human security theory has not theorized the aforementioned points raised by Newman. Therefore, the following points that Introduction Chapter indicated will be clarified by examining the deliberations on the UN’s right to peace declaration.

- (1) The Meaning of the Right to Peace—What does the right to peace mean as an individual right?

Making peace a right primarily places an obligation on the state to achieve peace. What does this mean for security theory? In particular, traditional theories of human security

enumerate human insecurity and make policy recommendations, but how these insecurities can be eradicated is within the scope of policy recommendations. By examining the content of the right to peace as suggested in the deliberations on the UN Declaration on the Right to Peace, this thesis examines whether the meaning of the right to peace can bring about substantial changes that go beyond policy recommendations.

(2) The Relationship between Individuals, States, and Structures—Does the right to peace encompass rights to structure?

Human security studies as a policy avoided critical analysis and evaluation of global structural and historical institutions. For example, new and unprecedented moves such as the use of military force to protect human beings, movements for the abolition of certain types of weapons, and movements to strengthen international criminal justice have emerged—but there has been no emphasis on exploring the pathologies of the international system structure that compel such moves. While traditional human security studies tend to focus only on a comprehensive view of the content of insecurity, critical security theory calls for analyzing the structural causes behind such insecurity.

Unlike traditional human security studies, the discussion of the right to peace has a new significance in that it not only reveals insecurity but also establishes a rights and obligations relationship between the individual and the structures, such as norms and institutions, that are the causes of insecurity. To realize human emancipation, perspectives and actions to change the structure are indispensable. Therefore, the right to peace is also a right to that structure.

(3) The Relationship between National Security and Human Security—Can the right to peace prevail over the security of the state?

The *Human Security Now* report [Commission on Human Security 2003] refers to human security as a complement to national security, but the two are not only complementary but also potentially contradictory: in the event of a conflict between the demands of the two, which takes priority? Since the right to peace is a right that individuals demand, even against the military and other state forces, it may conflict with the demands of national security. This thesis analyzes specific proposals and arguments for the right to peace raised in the deliberations on the UN Declaration on the Right to Peace, and considers whether human security complements or overcomes the security of the state with the incorporation of the right to peace into human security.

Chapter 2: The History Leading to the Establishment of the United Nations Declaration on the Right to Peace

1. Theories on Peace and Human Rights

The right to peace is a right whose content is peace. Although matters of peace and security were initially considered to be in different dimensions from those that housed rights and human rights, since the right to peace developed from a recognition of the close relationship between peace and human rights, this section reviews how the relationship between peace and human rights was historically perceived and how it has changed.

(1) Modern Human Rights and the State

In the Bill of Rights (1689), where rights were first codified, the rights enumerated referred to the nobles' rights against the king. That period saw the establishment of state sovereignty, and the concepts of individual rights and human rights were not recognized as much as they are today. The social contract theorizations of Hobbes (1588-1679), Locke (1632-1704), and Rousseau (1712-1778) summarized that government was established in a social contract to protect people's rights (natural rights), which became the logic of state legitimacy. Locke went one step further to recognize the right to resistance and revolution if the government broke that social contract [Tsuburaya 1994: 148]. Thus, "rights" in the Enlightenment-era social contract were used as the basis for state legitimacy and did not envision the realization of rights or even remedies, as the concept of rights does today. Later, in the American Declaration of Independence (1776) and the Declaration of the Rights of Man and Citizens in the French Revolution (1789), the word "rights" appears in documents influenced by social contract theory; however, unlike modern rights and human rights, there is no system of remedy for infringed rights, and the word was used as a symbol and justification for independence and revolution [Moyn 2010: 20].

Rights in the American Declaration of Independence and the French Revolution era were spoken of as rights premised on the state [Moyn 2010: 21, Tsuburaya 1994: 160]. These rights were entitled by law: the German constitution of the first half of the 19th century, the Belgian constitution, and other constitutions transformed natural rights into post-state rights rather than pre-state rights. In the Prussian Constitution (1850), "Prussian rights" were considered rights of a reflexive character derived by law, and rights were protected only by a form of guarantee through "reservations of law" [Tsuburaya 1994: 161]. In Japan, too, the Meiji Constitution (1889) was based on the theory of State-

endowed human rights and those rights were characterized as “reservations of the law” [Tsuburaya 1994: 169].

Internationally, the idea of individual and human interests as distinct from state interests first appeared at the Hague Peace Conference of 1899, as we will discuss later. To summarize briefly here, the concepts of natural rights and social contract theory, present in the domestic order since the 16th and 17th centuries, were reconstructed in 19th-century international law and order.

(2) The UN Charter and Human Rights

Realism in international politics acknowledges the existence of human rights but views human rights norms as non-legally binding norms, and when it comes to the fundamental interests of states, national security tends to take precedence, placing state sovereignty over human rights.

The UN Charter [1945], however, imposed restrictions on the absoluteness of state sovereignty by stipulating the principle of non-intervention as a symbol of state sovereignty (Article 2, Paragraph 7), as well as the principle of prohibition of the use and threat of force by the state (Article 2, Paragraph 4). It was also the first international law to explicitly guarantee human rights (Article 1, Paragraph 3, Articles 55 and 56). The Universal Declaration of Human Rights [1948] recognizes the right to social and international order in Article 28, and the concepts of social and international order are interpreted as including peace and security. The concept of state sovereignty had been virtually unconstrained since the Westphalian regime (1648), regarded as the first sovereign state system—however, state sovereignty became subject to certain restrictions by the UN Charter and the Universal Declaration of Human Rights [Dunne and Wheeler 2004: 14].

2. History of the Right to Peace in the UN

This section provides a historical overview of how the relationship between peace and rights has been discussed at the United Nations before entering into deliberations over the declaration on the right to peace.

(1) The Hague Peace Conference (1898)

Prior to the creation of the United Nations, the term “right to peace” was not discussed. At the Hague Peace Conference of 1898, the idea of international human rights—the protection of human beings from the states by international agreement—first appeared. The need for humanity was discussed against the state's right to war, and it was discussed at an international conference that the individual's interests should be taken into account, not just the state's interest in war [Normand and Zaidi 2008, 35-42]. The idea of protecting

individuals from the state's use of power, such as the conduct of war (i.e., separating the interests of the government from those of citizens), led to the emergence of individual rights and human rights as distinct from state rights [Normand and Zaidi 2008: 35]. The Hague Conference saw the expression of conflicts between the rights of unrestricted sovereign states and legitimate constraints on their sovereignty, between powerful states seeking to maintain control and weak states seeking to uphold international law, and between governments seeking to maximize their power to act and the masses demanding universal principles of justice [Normand and Zaidi 2008: 36]. Subsequently, the conference became the foundation for developing international humanitarian law and international human rights after World War II.

The Hague Regulation on Land and Naval Warfare, which resulted from the Hague Peace Conference, was enacted as a nearly non-binding regulation due to the resistance of military powers, but the significant outcome of the Hague Peace Conference was not the content of the resulting law, but its idea [Normand and Zaidi 2008: 40-41]. In other words, the idea that humanity, in addition to the state, is important—and that people have universal rights that should be protected from state abuse of power is what mattered [Normand and Zaidi 2008: 42].

The Hague Land and Naval Warfare Regulations failed to effectuate humane restrictions on arms during World War I. However, on January 6, 1941, Roosevelt delivered his General State of the Union Address to Congress, which emphasized four freedoms: freedom of speech, freedom of worship, freedom from want, and freedom from fear. The content of this speech played a role in shaping the international order not only during World War II but afterward as well. Among other things, Roosevelt's call for freedom from fear was aimed at reducing armaments on a global scale on the premise that no nation should be allowed to invade its neighbors [Normand and Zaidi 2008: 89]. This freedom implies a connection between peace and rights because the content of the right included military matters.³

According to Roosevelt, the ultimate goal of security was not to be achieved through military power alone but through the political, economic, and social development of a free citizenry. This view implies that human rights and peace are not only interdependent but

³ "The fourth is freedom from fear—which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world" [U.S. National Archives, "Franklin Roosevelt's Annual Address to Congress—The 'Four Freedoms' January 6, 1941"].

also coincide [Normand and Zaidi 2008: 89]. It can be said that this perspective is where theoretical ideas about human security and critical security originate.

The Hague Peace Conference and Roosevelt's advocacy for freedom from fear led to the emergence of ideas that reflected the interests and rights of individual human beings in wars and peace. These ideas led to the basis of the discussions on the relationship between human rights and peace in the United Nations after WWII.

(2) The Era of the UN Charter and Universal Declaration of Human Rights

Although the UN Charter [1945] stated the prevention of war as its fundamental purpose, peace was never discussed in the text as a matter of right or human rights. In addition, although the Charter incorporated general provisions for respect for human rights, it made no specific human rights provisions. The Allied governments at that time, especially the major powers, focused their efforts on discussing the creation of a postwar international order and were loath to limit sovereignty by human rights [Normand and Zaidi 2008: 103].

In the 1948 Universal Declaration of Human Rights, the human right to peace is not explicitly enumerated; however, the preamble of the Declaration states, "Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy the freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people," thus referencing Roosevelt's four freedoms, including freedom from fear.

In terms of the relationship between peace and human rights, the bitterness of the Nazi Holocaust in World War II, when human rights violations led to the destruction of peace itself, led the international community to recognize that human rights guarantees are essential for maintaining peace, and that peace and human rights are closely interrelated. Subsequently, the human rights guarantee clause was inserted in Article 1, Paragraph 3, and Article 55 of the UN Charter, and the Genocide Convention (1948) became the first international human rights treaty after the Second World War.

In the founding years of the UN Charter and the Universal Declaration of Human Rights, the phrase "close to the right to peace" was mentioned. In 1947, after the establishment of the UN Charter and during the discussion of the Declaration on the Rights and Duties of States, a proposal for the right of states to peaceful and secure development was made by the Ecuadorian government (A/340, art. 4) [Alston 1980: 323]. The International Law Commission also proposed the right to peace in response to a 1949 UN General Assembly resolution (Yearbook of the ILC 1949 No. 1957 V. 1, pp. 287-288) [Alston 1980: 323].

After that, however, there was no significant discussion about the right to peace until the 1976 UN Commission on Human Rights resolution.

Essentially, the right to peace features peace as the content of a right, stepping further from the close connection between peace and human rights. At the time, however, the primary task of the international community was to embed respect for human rights, and there was not a keen awareness of the issue of individuals and groups being able to make demands in matters related to peace and security. These discussions took place immediately after World War II—a war between nations—and it took time for individual interests and human rights to be reflected in the peace and security field.

(3) The Interrelationship between Peace and Human Rights as Seen in International Human Rights Treaties

Subsequently, Article 20 of the International Covenant on Civil and Political Rights of 1966 prohibits propaganda for war (“Any propaganda for war shall be prohibited by law”), and the Human Rights Committee, in its General Comment No. 11 (adopted at its 1983 session) embodied the same article by stating that “any form of propaganda which is contrary to the Charter of the United Nations, which constitutes aggression or a breach of the peace, or which threatens to bring about such a state of affairs, shall be prohibited by law.” Article 20 is where human rights and keeping the peace intersect [Van Boven 2011], and maintaining peace has since become considered an element of human rights.

Meanwhile, the preambles of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both 1966) state, “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” This statement not only indicates the close relationship between the guarantee of human rights and peace, it recognizes human rights as the basis for world peace. Such provisions showing the close relationship between human rights and peace are also manifested in subsequent human rights treaties.

The Convention on the Elimination of All Forms of Racial Discrimination (adopted in 1965), in its preamble, affirms that racial discrimination is an obstacle to friendly and peaceful relations among nations that threatens to infringe upon the peace and security among peoples, indicating that racial discrimination may harm the peace. The Preamble to the Convention against Discrimination against Women (1979) states:

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, ... will promote social

progress and development and as a consequence will contribute to the attainment of full equality between men and women.

This document states that achieving peace contributes to equality between men and women. This quote is followed by a reasoning statement: "Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields" (Preamble, paragraph 13) means that equal participation of men and women is necessary to realize peace and outlines the interdependence between peace and equality between men and women.

The preamble to the Convention on the Rights of the Child (1989) states that the recognition of the rights of the child is fundamental to world peace as well: "Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The preamble further stipulates that children should be brought up in a spirit of peace, "taking into consideration that the child should be adequately prepared for life as an individual in society and should be brought up in accordance with the spirit of the ideals proclaimed in the Charter of the United Nations and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. " The intimate connection between respect for the rights of the child, a human right, and peace appears once more.

Thus, in the development of international human rights treaties after World War II, there has been a growing awareness of the closeness between peace and human rights, particularly in the context of UN documents naming human rights guarantees as the basis for peace and as requirements to ensure peace. These were the links between human rights and peace as expressed in international human rights treaties, but now, let us go back again to the United Nations discussions in the 1960s and 1970s.

(4) Before the Right to Peace Was Discussed In Depth at the United Nations

The period from the 1960s to the 1970s was one of ongoing war and military tension, with military aggression such as the Soviet invasion of the Czech Republic (1968), triggered by the Prague Spring, the start of the Vietnam War (1968), as well as the nuclear arms race between the United States and the Soviet Union.

At the same time, the Declaration on the Granting of Colonial Independence (1960) and the growing number of independent former colonies greatly changed the power distribution in the UN General Assembly; as a result, developed countries became a relative minority. There were also the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (1970), the General

Assembly Resolution on the Definition of Aggression (1974), and the Declaration on Strengthening Détente (1977), which reflected calls for peace in the United Nations. There were also developments in the field of international human rights, with the establishment of two international human rights covenants in 1966 and the first World Conference on Human Rights, which was held in Tehran in 1968. The World Conference declared that “peace is the universal aspiration of mankind and that peace and justice are indispensable to the full realization of human rights and fundamental freedoms,” thus placing peace as an indispensable prerequisite for the realization of human rights.

In the 1970s, the right to peace was taken up as a third-generation or solidarity right, mainly in socialist countries. The French scholar Karel Vasak proposed the concept of third-generation rights and the right to solidarity as a legal right; the right to peace was included in this concept by Vasak, along with the right to development and the right to the environment. Third-generation rights were supported by developing countries [Drzewicki 1984: 28]; according to Vasak, the first generation of human rights represented the values of liberty, the second the values of equality, and the third the values of fraternity and solidarity. The three ideals of the French Revolution, hence, were consistent with the human rights values of each generation [Drzewicki 1984: 29]. In addition, the peoples' rights as a group, which emerged during this period, were based on the idea that protecting the community and society is the only way to protect individual human rights, but this concept was deemed unacceptable by Western countries [Mushakoji 2011, 28].

Ultimately, the right to peace as a human right first appeared in the 1960s in an international NGO document —the Istanbul Declaration of the 21st International Conference of the Red Cross (1969)—and described as “the right to enjoy an enduring peace.”

In the 1975 UN Commission on Human Rights discussions, representatives of socialist countries argued that human rights must be seen in the context of peace and security, and as inseparable from the struggle against aggression, colonialism, and the illegal occupation of territory by foreign armies. In March 1976, the UN Commission on Human Rights Resolution 5 (17) enshrined the right to live in peaceful conditions as a human right by stating, “Everyone has the right to live in conditions of international peace and security and to fully enjoy economic, social and cultural rights and civil and political rights” [Drzewicki 1984: 34].

When this idea of peace as a right arose, it developed in various forms; for instance, the concept of human rights guarantees as essential to peace, the idea that being peaceful is the foundation of human rights, and assertions of the right to live in peaceful conditions.

In these contexts, the debate on the right to peace as a direct agenda item began in the 1970s.

Chapter 3: Analytical Framework of the Norm-Making Process

1. Analysis of norm-making process based on constructivism

(1) Purpose of the Analysis and Objectives of the Analysis

As mentioned in the Introduction Chapter, we analyze the content of the right to peace as discussed in the deliberations of the United Nations to investigate what new notions and values of the right to peace were brought in response to traditional notions of national security for the realization of human security? Through this analysis, we can identify what new notions the right to peace has proposed for the relationship between the individual and the state and between the individual and the structure in the security field.

This section presents an analytical framework for examining these issues. In order to reveal what new notions of the UN Declaration on the Right to Peace adopted during the UN deliberations, we need an analytical framework for examining the discussions leading up to the establishment of new norms, and determining what agreed-upon content meant in terms of those new norms.

(2) Theoretical Position of the Analytical Framework

When analyzing the process of norm-making, realism and liberalism take a fixed view of each country's national interest—and the attitude toward norms reflects that interest, which leads to technically oriented analyses about how to compromise on them in negotiations. However, this approach cannot explain the changes in national interests and values held by the representatives of each country often seen during the deliberation process of norm-making as it is practiced. It is also difficult to propose criteria for analyzing the words and actions of NGOs, which are non-state actors, because this approach views states as the only norm-making actors. In actual cases of norm-making, however, the preferences and interests of countries may change due to interactions among actors and shared normative situations—and furthermore, during deliberations, NGOs as non-state actors may well be involved in the norm-making process and influence country representatives as they reach a final norm agreement. In such cases, the mechanisms that lead to norm-making cannot be further analyzed within the framework of conventional realism and liberalism.

Constructivism is a theory of international politics that emerged from the inability of conventional realism and liberalism to grasp international political developments in terms of fixed national interests (power and economic interests). Constructivism views national interest as being influenced and formed by interactions among actors; it is thus relative and intersubjective. It also assumes that international norms are important elements in international politics and can influence the national interests and policies of individual

states. Therefore, constructivism is the most appropriate theoretical foundation for analyzing interactions among actors and the influence of existing norms in norm-making.

(3) The scope of the norm-making process targeted in this study

Constructivist-based norms research focuses on the “life cycle” model, which describes how norms are created, disseminated, and implemented; this normative framework is also used in this thesis. In the life cycle model of norms, the first stage is norm making, followed by norm diffusion, and the third stage is norm implementation [Finnemore and Sikkink 1998, Rosert 2019: 1105]. The main focus of the analysis of the UN Declaration on the Right to Peace in the current study is the deliberation process from the 1978 UN Declaration to the 2016 UN Declaration, in particular the process during the 21st century, when norm entrepreneur NGOs and government representatives from Cuba and other countries led the UN deliberations, thus increasing the number of countries in favor of the declaration and leading to the adoption of the declaration by a majority vote at the UN General Assembly.

The deliberation process of the UN Declaration on the Right to Peace was indeed a norm-making one. Although some previous studies in the second stage of the life cycle, norm diffusion, have included an analysis of the norm-making process, this thesis’s analysis of the process up to the adoption of the UN declaration would initially be categorized under the first stage of the life cycle, norm making. In the case of the UN Declaration on the Right to Peace, we can see the process of spreading the proposed normative idea to concerned parties before it is adopted⁴, so the results of previous studies on the norm-diffusion process will be referred to when setting the analytical framework for the norm-making process in this study. In addition, the normative environment that leads norm entrepreneurs to act in the norm-making process—especially in situations concerning compliance with and contestation of international legal norms—will influence actors’ values and behavior so that the normative environment will be incorporated as one element of the current study’s analytical perspective.

2. Preceding studies that provide an analytical framework for the norm-making process

(1) Constructivist-based norms research

There are a number of studies in norms research that focus on norm-making, diffusion, and implementation with a constructivist approach. Most of those are case studies on the efficacy and trajectory of norms research after their enactment, and few studies have focused

⁴ Madokoro defines a normative idea as the content of a norm at a stage prior to its establishment in the international community [Madokoro 2020: 16].

on the norm-making process prior to norm enactment⁵. The studies discussed next, however, empirically analyze the norm-making process in the security field and propose an analytical framework.

(2) Factors for consideration in the security norm-making process

Since norm-making, in general, always creates some new value or institution and imposes some obligation on countries, opposition from those upholding values and institutions based on existing norms can be fully anticipated in the norm-making process, and thus, it is not always easy to create new norms. Moreover, since new norm-making in the security arena imposes restrictions on sovereign states that can exceed those required by existing norms, sovereign states often put up a strong resistance to protect the value of extant norms. For instance, at the 1899 Hague Peace Conference, opponents argued that restrictions on a state's use or threat of self-defense would make it appear weak and could encourage war rather than prevent it [Normand and Zaidi 2008: 38]. Depending on the content of the proposed new norm, the norm may not be established; furthermore, new norms that *are* established do not always subsequently implement the norm's content as envisioned by the norm entrepreneur.

Therefore, when a norm is established, the mechanism of the norm-making process can be clarified by identifying the factors that led to its establishment. In the next section, we discuss a few previous studies that have offered an analytical framework for this purpose.

(3) Perspectives based on achievements with agenda-setting

According to Rosert [2019], the factors that lead to the adoption of norms are based on analyzing the extent to which norm entrepreneurs succeeded in setting new value-based norms or normative ideas in the discussion forum agenda within each stage of the norm-making and norm-diffusion processes.

Rosert states that norm research has included several models, which can be divided into macro-, meso-, and micro-models. The macro-model takes the emergence of norms as the initial stage and analyzes the stages of norms as a whole, from institutionalization and diffusion to internalization and compliance; typical macro-models include the pattern of evolution, the norm life cycle, and the analogy between norms and genes. Meso-models depict specific stages of norm emergence, diffusion, enforcement, and erosion; examples of these models include the signaling model, the erosion/regression model, and the

⁵ The leading study of international human rights norms, *The Persistent Power of Human Rights: From Commitment to Compliance* [Risse et al. 2013], deals with empirical studies of norm processes, from ratification to compliance. The cases look at the norm processes of international human rights treaties after adoption.

interactive translation model. Micro-models depict subphases, such as the adoption of initial challenges by norm entrepreneurs and the negotiation of institutional set-up; these models are typified by the persuasion model and the funnel model [Rosert 2019: 1105].

Rosert [2019] criticizes all three models as insufficient to explain the norm-making process, saying that the macro model is too rough, the micro model does not make clear how the subphases lead to the whole, and the meso-model primarily covers subjects other than the norm-making process. To determine whether norm entrepreneurs succeeded in adopting the agenda they were aiming for, Rosert divided the norm-making process into four stages: (1) problem adoption, (2) issue creation, (3) candidate norm creation, and (4) norm creation, and then proposed criteria for evaluating whether norm entrepreneurs successfully implemented their agenda diffusion strategies at each stage.

1) Problem Adoption

At this stage, the existing status quo, which is undesirable from a normative perspective, becomes an agenda problem for the norm entrepreneur. This challenge may arise from the nature of the problem or concerning other organizations. The former includes an assessment of (1) the attributes of the issue, such as simplicity, proximity, and prominence; (2) its compatibility with the overall issue and the issues of other norm entrepreneurs; and (3) the influence the issue has on other issues. The latter includes factors such as the issue's relationship to the principal mission of the entrepreneur's organization and those of other organizations. Once norm entrepreneurs have successfully set this agenda, they launch a norm-setting campaign. [Rosert 2019: 1108]

2) Issue Creation

Once the norm entrepreneurs have set an agenda, they capture the attention of the masses for a period of time, seeking to increase their influence on the norm addressees (i.e., governments that have the obligation of the norm) through setting a mass mobilization campaign. Through media, demonstrations, and the like, the norm entrepreneur's agenda evolves from an individual or organizational agenda into one for the masses [Keck and Sikkink 1998: 19-21], using framing to specify, categorize, and emotionalize the problem. *Specifying* the problem means defining the current situation as well as the desired situation and pointing out the discrepancy between the two [Kingdon 2003: 110]. In addition, the problem's scope and causes are clarified, the actor responsible for solving the problem is named [Keck and Sikkink 1998: 27], and a network of experts in a particular field becomes crucial [Haas 1992: 4]. *Categorizing* means sorting the problem into broader categories [Kingdon 2003: 111], and *emotionalizing* means pointing out the character of the problem in a way that uplifts the public's feelings—for example, by invoking fear over moral values or bodily harm [Keck and Sikkink 1998: 27].

During this stage, norm addressees are exposed to public social pressure through naming, blaming, and shaming [Schimmelfennig 2001: 64]. The resulting debate and persuasion can cause actors to change their opinions. According to Rosert, if these policymakers take up the issue and incorporate it into their institutional agendas, the issue creation project is a success [Rosert 2019: 1108-1109].

3) Candidate Norm Creation

In this stage, candidate norms are generated through an ongoing process of problem definition and ideational change that is essential for achieving policy consensus and creating negotiation willingness [Charnysh et al. 2015: 328, Hirsch 2014: 812]. The discussion becomes more solution-oriented [Joachim 2003: 248]; candidate norms demonstrate the solution to the problem. To ensure institutional fit and to demonstrate both the need for and feasibility of solving the problem, new candidate norms must be grafted onto and adapted to existing normative resources such as organizational culture, problem analogies, and precedents [Elgström 2000b: 461, Price 1998: 628-630].

At this stage, cooperative strategies and coalition building among the actors are essential. The various norm entrepreneurs (e.g., transnational and domestic nongovernmental networks, international organizations, like-minded states) must combine their resources to compensate for each other's structural shortcomings, such as limited institutional access or deficits in mobilization structures, expertise, authority and credibility, and direct influence [Elgström 2017: 227-228, Joachim 2003: 251-252]. In these communities, the involvement of like-minded norm addressees (governments) is crucial because they serve as examples: they enact national laws, complement official diplomatic pressures with peer pressure, and are convincingly persuasive [Elgström 2000b: 463]. Although conflicts between norm addressees may strengthen the position of norm entrepreneurs by allowing them to play a role in creating compromises [Joachim 2003: 263], selecting institutional venues that provide favorable opportunities through membership, mandates, outputs, procedural rules, and legitimacy is also important [Coleman 2013: 168-170]. When no such place exists, norm entrepreneurs can either seek to change the institutional setting or create a new one [Cottrell 2009; Fehl 2014], and this shift of place is facilitated when the subjects of norms conflict [Norman 2018: 17].

The creation stage of the candidate norm is successful when norm addressees place the candidate norm on the institutional decision-making agenda [Rosert 2019: 1109].

4) Norm Creation

During this stage, norm entrepreneurs work to ensure that norms are formally adopted. Norm creation begins when a candidate norm is on the decision-making agenda.

Successful norm negotiation combines both internal and external different strategies. Inside negotiations, funneling (narrowing the discursive space by including certain problem definitions and solutions and excluding others) is the main strategy for norm prescriptions [Holzscheiter 2010]. Moreover, the process specifies the behavior and formal provisions of norms. In order to level the asymmetry of power and facilitate convincing addresses of the norm's utility, certain institutional conditions must be established. Namely, the communication process must be open, equal, and fair and subject to public scrutiny [Deitelhoff and Müller 2005: 172-175]. The adoption of a norm concludes the norm-creation stage and the entire norm-making process [Rosert 2019: 1110].

Indeed, since the factors considered during these stages leading to norm creation are critical elements of the norm-making process, this paper proposes criteria for a systematic and comprehensive analysis of these factors. However, as seen in Hirsch's [2014] study, forming a certain new norm takes a long time due to the competition between new and existing values, and the new norm must abandon old values and create new ones. Therefore, norm-making develops nonlinearly—it also follows a complex process of twists and turns. Analyzing how new values are agreed upon requires an analytical framework that considers norm entrepreneurs' strategies and factors such as changes in actors' perceptions and controversies during the norm-making process. With these requirements in mind, we review several prior studies.

(4) Ideational change through contestation

According to Hirsch [2014], focusing on changes in the perception content of the decision-making actor, the state, not only allows more accurate depictions of norm-making but also more convincingly explains how norms are formed [Hirsch 2014: 813]. Normative entrepreneurs are necessary for articulating, discussing, and diffusing ideas, but it is also imperative to explain how the ideas changed the perception of the state [Hirsch 2014: 814].

Finnemore and Sikkink [1998: 891] defined norms as “a standard of appropriate behavior for actor states”; therefore, perceptual change is also based on the notion of appropriateness. The formation of new norms encourages the formation of new appropriate standards of behavior. There are three types of changes in perception before that appropriate action is solidified: the first is a change in subjectivity that seeks results; the second is a change in the subjectivity of value and identity; and the third is a change in subjectivity that the practical embodiment requires [Hirsch 2014: 814-815]. Viewed from the lens of these changes in perception, the process of norm-making can be analyzed from several angles: (1) the new values added by new norms, (2) the pros

and cons in accepting values and (3) the differing evaluations of shared values before and after new norms are created [Hirsch 2014: 815].

In the norm-making process of establishing the Truth and Reconciliation Commission, which Hirsch [2014] discussed as a case study, the perception of “justice” (i.e., through trial) was dominant at the outset, however, in the debate among the countries involved as to whether “truth” (the Commission) or “justice” (the trial) was more important, a change in perceptions about the merits of “truth” occurred—for instance, the rise of a viewpoint that “justice” (trial) would solidify enemies and allies, and thus lead to revenge and violence, accompanied by the idea that reconciliation (the Commission) is more suitable for the healing of victims' trauma, which resulted in the establishment of Truth and Reconciliation Commissions [Hirsch 2014: 818-819]. Hirsch [2014: 825] says that this change in perception, along with the work of norm entrepreneurs, were factors at the heart of norm-making in this case.

Certainly, norm-making always involves the creation of new values; therefore, it involves a shift from old values to new values at some point. What causes it to occur, according to Hirsch [2014], is the dispute between the old and new values—but some new norms emerge because a new value is recognized, and so explanations for the emergence in terms of change (new value) are nothing more than a tautology. The question here is what *specific* contestation causes a change in perception regarding this controversy in explaining the norm-making process, which needs to be clarified. In terms of Hirsch's case study, it is necessary to explicate the process by which the “controversy of whether it is truth (the committee) or justice (the trial)” arose and whether norm entrepreneurs generated it. The example of the Truth and Reconciliation Commission can be explained by the Deitelhoff and Zimmerman criterion to be seen later: If the contestation is such that the content of the new norm is learned, the new norm is more likely to be established; conversely, if the contestation is such that the fundamental value of the new norm is denied, the new norm is less likely to be established.

(5) Normative and institution-setting change through persuasion and discourse

According to Deitelhoff, the outcome of treaty negotiations cannot be explained by national power or initial national interests because national interests change during negotiations [Deitelhoff 2009: 34]. This factor necessitates a theoretical model regarding under what conditions persuasion and discourse influence decisions [Deitelhoff 2009: 35].

In establishing the Statute of the International Criminal Court (Rome Statute), which Deitelhoff addressed, the draft initially proposed by the International Law

Commission (1994) had the Court less independent from the UN Security Council and other political branches. However, the Rome Statute, finally adopted in 1998, gave the Court greater independence. Since the national interests of the governments involved changed during this period, the UN established a more-independent norm for the ICC.

Deitelhoff attempts to explain such changes in national interests through an approach of persuasion and discourse on the part of norm entrepreneurs [Deitelhoff 2009: 36, 43]. The discourse approach is to find “islands” (approximations of discourse in certain phases and between certain actors during) of persuasion in the negotiation that changes the process and the negotiation’s outcome [Deitelhoff 2009: 45]. She outlines the following considerations in this process:

- 1) Understanding the turning point of a change in position as a change through persuasion and discourse unless the change can be explained by other factors (e.g., power or public opinion).
- 2) Tracing whether the normative framework has changed, whether there has been a change in the institutional setting of the deliberative forum and whether this has led to persuasion and discourse in terms of norm concentration, inclusiveness, equality, consensus, fairness, and so on.
- 3) Assessing which actors are responsible for changes in the normative and institutional settings and how these processes have affected the negotiations.

In the case of the Rome Statute of the ICC, the original International Law Commission proposal reflected real political power relations, with the powers of the Security Council at the International Criminal Court exceeding those of the Court; subsequently, however, persuasion and discourse influenced normative changes.

Concerning the normative framework, there was agreement that the newly created court should be an “effective” one. In determining the meaning of “effective,” however, there was a debate between the discourse of the power countries that political realities should not be ignored and the discourse of NGOs and like-minded countries (small and middle powers), which held the court should not yield to political forces, with persuasion by the latter prevailing to positive effect [Deitelhoff 2009: 51-53].

As for changes in the institutional setting, there were shifts from a system that relied on expert organizations such as the International Law Commission toward regional meetings that were held for the Preparatory Commission to the Rome Conference, where countries from the same culture were able to open up and talk to each other during negotiations. There, they succeeded in dispelling the distrust of the ICC among African countries and others, which led to their understanding of the

establishment of the ICC [Deitelhoff 2009: 53-56]. NGOs and like-minded countries played an important role in these processes as actors: they defended the public interest framework against the political framework [Deitelhoff 2009: 56]. Despite not reaching a consensus of all countries, the Rome Statute of the ICC was eventually adopted with the support of 120 countries.⁶ The number increased more than at the beginning of the negotiation.

Deitelhoff [2009] presented a criterion of analyzing the extent to which persuasion and discourse had an impact from the perspective of a changing normative framework and a changing institutional setting. Analyses according to that criterion led to the finding that the strategies of norm entrepreneurs to guide contestation through discourse and to manage changes in institutional settings were the factors that contributed to the norm's establishment. She then points out what persuasion and discourse led to the new norm's establishment, what is necessary for its establishment as a change in institutional setting, and the need to specify the norm's concentration, inclusiveness, equality, consensus, and fairness.

While this analytical framework allows for analyzing the mezzo-factors in establishing norms, more specific criteria are needed to determine what became common understandings in the debate and contentions. However, Deitelhoff's framework serves as indicators for analyzing the complex process leading to norm establishment, in which changes in actors' perceptions, achieved through persuasion and discourse, move alongside changes in the normative and institutional setting of the field.

In the deliberations of the UN Declaration on the Right to Peace at the Human Rights Council, normative change was identified as a new value shift from the collective to the individual and the obligation of states to ensure peace. Institutional changes were evidenced by the Advisory Committee to the Intergovernmental Working Groups, NGOs, and governments in favor of the UN, and the Advisory Committee played a significant role in these changes. This process in the Human Rights Council can be analyzed in terms of what persuasion and discourse influenced normative change, whether there was a strategy to win support for institutional change, and whether that strategy was successful. Regarding norm concentration, comprehensiveness, equality, consensus, and fairness, the change in the deliberation method from a majority voting system (Human Rights Council

⁶ One hundred and twenty countries voted in favor; there were 21 abstentions and 7 voting against (US, Israel, China, Yemen, Qatar, Libya, and Iraq).

resolutions) to a consensus system (Intergovernmental Working Groups) contributed to the activated controversy. Regarding the concentration of the norm, the Advisory Committee's proposal was specific—but the Working Group Chairperson's Proposals 1 and 2 were reduced to only five articles, and the consensus method made it difficult to adopt a specific set of articles.

In the case of the ICC Rome Statute, there was an implicit consensus idea of an “effective” court (an “island”) that was the basis for a common argument, but can we say that there was such an idea in the deliberations on the UN Declaration on the Right to Peace? Among countries in favor, the “need for individual involvement in the military” could be an island of persuasion that would leave room for people's involvement in the authority of the state by allowing individuals the right to demand security-related matters against the state, instead of leaving the authority over military affairs as a power exclusive to the state. According to Deitelhoff's [2009] criteria, such an analysis would be possible.

(6) Other constructivist studies

Adachi [2015] noted that norm guardians should be considered when analyzing criteria for the norm-making process in general. He said that norm life cycle theory should be analyzed by considering what norms were shared in society until new norms emerged as well as by whether there were norm guardians who had a vested interest in maintaining existing norms [33].

Madokoro [2020] emphasized the elements of the normative environment and the creation of coordination ideas between old and new norms as criteria for evaluating a given norm-making process. Madokoro investigated the establishment of the Responsibility to Protect, adopted in 2005 at the UN World Summit, by analyzing the concept of civilian protection—trending since the late 1990s—as the normative environment of the time, the establishment of the International Commission on Intervention and State Sovereignty (ICISS) at the initiative of the Canadian government, and the successful coordination between the demands of civilian protection and state sovereignty through the creation of the idea of the responsibility to protect, resulting in the establishment of the Responsibility to Protect (2005).

Kurusu [2013] said that the process of advocacy and diffusion by norm entrepreneurs in multilateral negotiations, such as those of the United Nations, should be analyzed in terms of decision-making methods (e.g., the package method unique in multilateral forums) and the coalition-making elements of norm promotion. In Kurusu's examination of the 2010 UN General Assembly resolution on human security, which focused on the role of norm entrepreneurs such as the Japanese government, she divided the analysis into (1) the

process of including a paragraph on human security in the outcome document of the 2005 UN World Summit; (2) the norm-making process within the network called Friends of Human Security after 2006; and (3) the process that led to the adoption of the 2010 UN General Assembly resolution from the perspectives of norm-entrepreneur persuasion, use of said network, and reaffirmation of national interests [Kurusu 2013].

3. Analytical framework for this thesis

(1) Summary of literature review

In these studies mentioned above on the norm-making process, Rosert [2019] divided the norm-making process of the Convention on Cluster Munitions into four stages and analyzed the establishment of the Convention from the norm entrepreneurs' perspective on how the agenda could be set at each stage. Deiterhoff's [2009] analysis centered on persuasion and discourse in the norm-making process, saying that changes in normative perceptions through persuasion and discourse and changes in institutional settings led to adopting a new norm, in this case, the ICC Rome Statute. Hirsch's [2014] analysis focused on controversy and changing perceptions, saying that controversy in the norm-making process led to changes in actors' perceptions and gave rise to a new norm in the form of the Truth and Reconciliation Commission. In addition, other authors proposed using other factors that appear in the norm-making process, such as norm guardians [Adachi 2015], coordinating ideas [Madokoro 2020], and deliberation methods [Kurusu 2013] as evaluative criteria. These research findings, however, are difficult to use as standalone analytical frameworks.

(2) Analytical framework for this thesis

Therefore, following Rosert's [2019] classification of normative models, this thesis presents a specific analytical framework from the following standpoints: (1) as a model, it rests on the life cycle of the norm on a macro level; (2) it emphasizes the staged strategies of actors; and (3) it traces the process of contestation and persuasion. This framework focuses on what new normative meaning was shared among actors and the extent to which NGO involvement was essential.

(A) What new norm meanings were shared?

Constructivist norms research includes analysis and case studies from various angles, such as the interrelationship between norms and subjects, persuasion, and the contestation process within the norm-making process, diffusion, and implementation. This thesis focuses on contestation, which allows us to highlight the distinction between existing norms and new norms in conflict situations and be more explicit in clarifying the role played by actors in these situations.

Contestation, according to Wiener, is the reconstruction/construction of the meaning of a norm and is a conflict over the meaning of a norm [Wiener 2014: 19]. Although traditional norms research views contestation as undermining the stability of norms, critical norms research sees contestation as a positive, norm-constituting practice [Deitelhoff and Zimmermann 2013: 3]. Since contestation represents a tension between stability and change over a particular norm, the actors involved do not necessarily accept the controversial norm. If a common understanding of the content of norms among actors is lacking, norms are unlikely to be established; in fact, even if norms are established, contestation can arise afterward [Wiener 2004, Wiener and Puetter 2009: 7].

Through controversy, established normative content may be elaborated upon, meaning that content may be shared and norms strengthened—or norms may decline or disappear [Krook and True 2012; Panke and Petersohn 2011]. In addition, Deitelhoff and Zimmermann classify contestation in terms of when norms become shared and when they go extinct: they hold that a contestation about the validity of a norm will lean toward extinguishing the norm, while a contestation about the application of a norm tends to move in the direction of strengthening the norm, even if a violation of the norm is found [2019:11, 2020: 529]. For instance, the Chemical Weapons Convention does not weaken the validity of the norm itself when violations are observed. On the other hand, contestation regarding the validity of a norm weakens the foundation for its establishment and leads the norm toward extinction. However, there is an exception to this standard: a norm may head toward extinction if many contestations deny its application. Deitelhoff and Zimmermann (2020) cite the commercial whaling ban norm as a case study of this exception, but in practice, it is difficult to determine whether actors contested the ban's validity or its application, which means that a distinction has to be made as to which contestation was more dominant [Deitelhoff and Zimmermann 2020: 59].

The cases discussed in Deitelhoff and Zimmermann's norms research are mainly contestations within the norm implementation process after the norms' establishment, such as the Chemical Weapons Convention and the commercial whaling ban norm. Since there are few empirical studies of contestation in the norm-making process, the authors themselves would expect more case studies in the norm-making process [Deitelhoff and Zimmermann 2020: 71].

The norm-making process includes a contestation over which value has priority: the normative idea that embodies the new value or the existing value that embodies the existing norm. When many actors share the new value, which takes priority over the existing value, a new value is born—and thus a new norm. In what conditions, then, does a new norm emerge?

Applying Deitelhoff and Zimmermann's [2020] theory of the relationship between the nature of contestation and the efficacy of norms to the situation of norm establishment, the efficacy and robustness of a norm will increase if the process of learning the meaning of the norm, such as contestation regarding its application, is acknowledged [Deitelhoff and Zimmermann 2020: 70]. In other words, if a norm-making process of learning the meaning of a norm that increases the norm's efficacy in the contestation context is recognized, then a norm with high legitimacy has been established.

Therefore, when analyzing the factors that led to the establishment of a norm, an analytical framework is set up to determine what content of the new norm's meaning was learned and shared by the disputants in the contestation. If shared content implies that the meaning of the new norm was learned through contestation, then this content legitimizes the new norm by imparting more content to it than the adopted text.

In the Intergovernmental Working Group deliberations on the UN Declaration on the Right to Peace, there was no unanimity of opinion between supporting and opposing countries on the fundamental question of recognizing the right to peace. However, if the approximately two-thirds majority of countries in favor of the Declaration were in contestation with opposing countries over the premise of the meaning assumed by the new norm, the right to peace, it can be said that the substantive content of the new norm has been shared about the meaning of that norm. Therefore, for each situation in which contestation is assumed, we will examine and identify the norm's substantive shared meaning among the governments of the countries in favor, with a primary focus on the adopted wording.

(B) Involvement of NGOs

Using Rosert's [2019] criteria, this thesis will evaluate the involvement of NGOs by examining how norm entrepreneurial NGOs and actors (e.g., like-minded governments and the Advisory Committee) succeeded in incorporating the agenda of the UN Declaration on the Right to Peace into the Human Rights Council's meeting agendas at various stages, particularly during the adoption process. This analytical framework allows us to analyze the role played by NGOs in adopting the UN Declaration on the Right to Peace.

According to Rosert [2019], the norm entrepreneur's agenda diffusion strategy is divided into four phases: (1) problem adoption, (2) issue creation, (3) candidate norm creation, and (4) norm creation. A brief recap of these stages follows.

- 1) Problem adoption. In this stage, the existing status quo, undesirable from a normative point of view, becomes the norm entrepreneur's agenda problem.
- 2) Issue creation. Norm entrepreneurs develop the problem into a public issue through the media, demonstrations, and so on, using framing to specify, categorize, and

emotionalize the issue. Actors are exposed to social pressure through naming, blaming, and shaming, and policy makers change their opinions through debate and persuasion.

- 3) Candidate norm creation. A candidate norm demonstrates a solution to the problem through an ongoing process of problem definition and ideological change to achieve policy consensus and create a willingness to negotiate. New candidate norms need to be grafted onto and adapted to existing normative resources such as organizational culture, issue analogies, and precedents to ensure institutional fit and demonstrate the need for and feasibility of solving the problem. In this stage, coalition building among actors is essential, and the involvement of like-minded norm-setters (e.g., governments) is critical. Choosing institutional venues is also an important task.
- 4) Norm creation requires funneling (narrowing the discursive space by including certain problem definitions and solutions to exclude others). Norm behavior and formal stipulations are needed for successful norm negotiations, as is a forum for open, equal, and fair communication.

Each of these four stages of norm-making appears in the case of the 2016 UN Declaration on the Right to Peace. If NGOs as norm entrepreneurs are assessed as being successful in setting the agenda at each stage, we can evaluate that NGO activity was a significant factor in the UN's adoption of the Declaration and point toward the indispensability of the NGOs' role.

Chapter 4: Analysis of the UN Deliberation Process

1. 1970s and 1980s: Two UN Declarations

In analyzing the process leading to the passage of the UN Declaration on the Right to Peace in 2016, we will first address the discourse in the deliberation process of the right to peace since the 1970s, when the discussion of the right to peace began at the UN, and analyze how the discourse on the relationship between the right of peoples to peace and the state changed to the discourse of the individual right to peace.

(1) 1978 UN Declaration

As we saw in Chapter 2, 2(4), the 1978 UN Declaration was prepared on the basis of the UN Commission on Human Rights Resolution 5 (17) of March 1976 [Cofelice 2014: 89]. The name of the 1978 UN General Assembly Resolution was the Declaration on the Preparation of Societies for Life in Peace, and in this declaration, the collective and individuals' right to live in peace (right to life in peace) was enshrined. Although the term "right to peace" is not necessarily used, the right to live in peace is considered one of the rights to peace, as discussed in the draft of the Advisory Committee to the Human Rights Council. In this case, the subject matter of the right is the group or the individual. In the deliberations of the UN Human Rights Council, the 1978 Declaration has often been referred to in the context of the individual right to peace, along with the 1984 Declaration on the Right of Peoples to Peace.

The 1978 UN General Assembly resolution "Declaration on the Preparation of Societies for Life in Peace" (A/RES/33/73) was adopted at the initiative of the Polish government. It was adopted with 138 countries in favor and 0 against, with two countries abstaining, the United States and Israel. The Declaration affirms in its preamble that "Reaffirming the right of individuals, States, and all mankind to life in peace," and in Article 1 it states that "Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace." The declaration stipulates the right of individuals, states, and all humankind, that is, the right to live in peace as the right of individuals and groups.

According to Matsui, in the discussions leading to the adoption of the Declaration, the collective aspect refers to the right to independence, sovereignty, and territorial integrity of a country, which is guaranteed by the principle of prohibition of the use of force, while the individual aspect was emphasized as a fundamental human right, but was not examined more precisely than the collective right [Matsui 1981: 13]. However, compared to the 1984 Declaration of peoples' rights, the 1978 Declaration was more favored in the

vote because it addressed collective rights and individual rights at the same time. In principle, a declaration of rights proposed by a socialist country should address only collective rights, and the individual should be the subject of obligations, but in the case of the 1978 Declaration, the socialist countries' position was that individual rights were also acceptable [Henkin 1979: 57]. The 1978 Declaration was subsequently reaffirmed in UN General Assembly resolutions in 1984, 1987, 1988, and 1990 [Cofelice 2014: 90], and deliberations continued to the extent that follow-up meetings were held to implement the Declaration but did not lead to further codification [Guillermet and Fernández 2017: 54-62].

The norm-making process of this 1978 Declaration is characterized by the fact that NGOs were not involved, and it was proposed and initiated by socialist countries such as Poland, unlike the 2016 UN Declaration on the Right to Peace. The deliberations were also centered on the UN General Assembly, compared to the 2016 UN Declaration, which was deliberated for eight years mainly in the Human Rights Council. The discussions of the 1978 Declaration were not sufficient in terms of time, and more essentially, the discussion of the Declaration did not have the main objective, the affirmation of the right to live in peace [Muto 1995: 325]. In this sense, the debate over the existence of the right to peace between discourses that seek to protect existing norms and those that seek to create new norms was not fully engaged. However, it is the first UN General Assembly resolution that explicitly states the right to life in peace, and it is a UN General Assembly resolution that is often used as a reference point in subsequent UN deliberations, in that it had no opposition and was endorsed by almost all member states.

(2) 1984 UN Declaration on the Right to Peace

In 1984, the UN General Assembly adopted the Right of Peoples to Peace Declaration. This declaration was also the basis for the subsequent deliberations of the Human Rights Council regarding a UN General Assembly resolution that received many endorsements. The deliberations of the Human Rights Council since 2008 have been carried out under the name of the Right of Peoples to Peace.

The 1984 UN General Assembly resolution Declaration on the Right of Peoples to Peace (A/RES/39/11) was proposed and initiated by socialist countries such as Mongolia. Since it covered the right of peoples to peace, it was seen as a right as a relationship of rights and obligations between states rather than as an individual human right. The result of the adoption was 92 countries in favor, 0 against, and 34 abstentions; the number of abstentions was higher than that of the 1978 Declaration. This means that

a considerable number of countries were opposed to the Right of Peoples to Peace as a collective right between states.

In the deliberations of the UN General Assembly, the countries in favor said that the UN Charter implicitly recognizes the right of peoples to peace and that to guarantee this right, the principles of prohibition of the use of force, the principle of peaceful settlement, the principle of non-interference in internal affairs, the right of peoples to self-determination, and sovereign equality must be implemented, while the 34 countries that abstained, most of which are, in effect, opposing countries. The reasons for opposition were reciprocated: the right to peace has no legal basis, it is inconsistent with existing institutions, and the concept of peace is incompatible with the concept on which the Charter stands (A/39/PV.57) [Guillermet and Fernández 2017: 62-71]. This debate can be described as a "dispute" between opposing countries seeking to defend existing norms and those favoring new ones.

Proponents view the right to peace as the right to demand certain actions to the state, but the meaning of this right varies. Some extend the subject matter of the Right of Peoples to Peace to individuals as well as to the state. First, the following statements were made about the fundamental nature and content of the right to peace. Many countries in favor of the right of peoples to peace see it as implicitly recognized by the UN Charter of 1945, which states in its preamble the need to save future generations from the horrors of war. Mongolia says that the right to peace is above other fundamental rights, that it is the right of all peoples and individuals to live in peace and to struggle for peace, and that it has aspects of actively building peace as well as passively restraining the use of force. Vietnam said that the right to peace is an inherent right for all human beings and is essential for achieving freedom, social progress, and justice. Hungary declared that the danger to the right to peace is the use of nuclear weapons and that the right to live in peace should be not only regulatory but also a right to strengthen international peace. Poland proposed that if the right to live in peace is not guaranteed, other human rights and developments will be meaningless; that the abolition of just war theory can only be achieved if existing anti-war laws are supplemented by legislation on the right to peace; and that the right to peace is the right to live in peace possessed by all human beings, individual and national. The subject of the right is taken in the same way as in the 1978 Declaration.

Next, emphasizing the obligation of the state, the Soviets said that guaranteeing the right to peace meant that the state's policy should be to eliminate the threat of nuclear war, renounce the use of force, and settle international disputes in a peaceful manner in accordance with the UN Charter. East Germany said that the right to peace is the most

important and fundamental human right and that states are required to have legal guarantees for peace in situations of disarmament and the use of force, while Bulgaria said that the right to peace obliges states not to use force, not to threaten, to resolve conflicts peacefully, to jointly protect generations from the scourge of war. Belarus argued that to guarantee the right to live in peace; states must remove the threat of nuclear weapons, promote disarmament, and cease the use of force. For India, the right to peace means that the state must avoid the danger of nuclear war and make it its duty to ensure that its people live in peace.

What did the dissenting countries say in response to the opinions of these proposing countries? Most of the 34 abstaining countries are North American and Western European countries, which, by the content of their opinions, are substantial opponents. Ireland spoke in opposition on behalf of 10 EC countries. He raised fundamental questions about whether the right to peace is consistent with established principles and institutions, and further questioned (1) whether it is unclear whether it is compatible with the right to self-defense of states under the UN Charter, (2) how it relates to the human rights and freedoms set forth in the Charter, (3) who will exercise the Right of Peoples to Peace, (4) what existing international law places such an obligation on a state, (5) what are the grounds for such an obligation, and (6) how is it compatible with Article 2.4 of the Charter (the principle against the use of force), which prohibits not only the use but also the threat of force, and other reasons for opposition [Guillermet and Fernández 2017: 62-71].

The majority of the countries in favor of the declaration were socialist countries, including the Soviet Union. Many countries in favor of the declaration viewed the right to peace as an individual, national, and collective right, and many countries mentioned the inseparability of peace, human rights, and development. In addition, in the international context of the ongoing nuclear arms race between the United States and the Soviet Union in 1984, many of the countries in favor of the right to peace referred to it as something that would eliminate the danger of nuclear war. [Guillermet and Fernández 2017: 64]. However, with regard to the character of the rights, the "rights of the peoples" were not always seen as "rights of the state" within the countries in favor, and many countries in favor emphasized the obligations of the state rather than the rights, so the character of the legal rights did not share a more concrete meaning than the wording adopted as the shared meaning of the new norm. However, it can be said that the content of the right and the obligation of the state to end the nuclear arms race and more thoroughly prohibit the use of force as the content of the right and the obligation of the

state were shared within the countries in favor. It can be said that the content of the right was shared as the meaning of the adopted Right of Peoples to Peace.

Opposing countries had some dissenting views on whether to recognize the right to peace, questioning its relationship to the right to self-defense of states. However, compared to the deliberation of the 2016 UN Declaration, the deliberation period was shorter, only at the UN General Assembly, and the course of the debate did not go so far as to create a shared understanding of the meaning of the right to peace in relation to the right of self-defense.

After the adoption of the Declaration on the Right of Peoples to Peace, UN General Assembly resolutions reaffirmed the need to implement this Declaration on the Right of Peoples to Peace: the 1985 General Assembly Resolution (40/11; 109 countries in favor, 0 against, 29 abstentions),⁷ the 1986 General Assembly Resolution (41/10; 104 countries in favor, 0 against, 33 abstentions), the 1988 General Assembly Resolution (43/22, 118 countries in favor, 0 against, 29 abstentions), the 1990 General Assembly resolution (45/14 adopted without vote), and the 2002 General Assembly resolution (57/216, 66 countries in favor, 53 against, 14 abstentions) calling for implementation of the 1984 UN Declaration [Guillermet and Fernández 2017: 73-82, Cofelice 2014: 90]. However, the conflict between countries in favor and those opposed (abstaining) remained in these UN General Assembly deliberations.

On April 4, 1986, following the 1985 UN General Assembly resolution (40/11), the UN Secretary-General issued a statement to member states. There, Australia criticized the 1984 Declaration on the Right of Peoples to Peace, saying that the Declaration on the Right to Peace of the Peoples says nothing about its relationship to the UN Charter, Universal Declaration of Human Rights, and Covenant on Civil and Political Rights, which have been agreed upon until now, and that the implementation of the Declaration should not be sought at the expense of other human rights. Conversely, the socialist countries in favor of the declaration, such as Bulgaria, the Czech Republic, and Mongolia, said that the Declaration on the Right of Peoples to Peace is critically important in these complicated and tense times and insisted on the need to implement the Right of Peoples to Peace through the media (International Year of Peace [A/41/628], p. 125) [Guillermet and Fernández 2017: 76].

⁷ It should be noted that in the preamble of this General Assembly resolution of November 11, 1985 (40/11), peace is an inalienable right of every human being, and as a UN General Assembly resolution, it also recognized its aspect as an individual right [Cofelice 2014: 90].

During the debate on the adoption of General Assembly resolution (41/10) in 1986, opposing countries urged Secretary-General de Quayle to have each country report on its implementation of the 1984 Declaration. In response, the United Kingdom, speaking on behalf of 12 EU countries, said it abstained from the resolution because of doubts about the compatibility of the 1984 Declaration with the UN Charter and the method of the declaration approach in terms of making a substantive contribution to peace. The United States and Australia also spoke against the resolution (A/41/pv.49, pp. 88, 91, 93).

These two declarations by UN General Assembly resolutions in 1978 and 1984 did not progress to the work of international codification with article formulation, as did the UN Declaration on the Right to Peace in 2016, but they were resolutions that formed the basis for the deliberations of the Human Rights Council.

In terms of the movement of peace rights at the regional level during this period, the African Charter on Human and Peoples' Rights, adopted in 1981, recognizes the right to peace and security as a collective right (Article 23). The African Charter on Human and Peoples' Rights, adopted in 1981, recognizes the right to peace and security as a collective right, stating that "All peoples shall have the right to national and international peace and security" (Article 23), while at the same time stating in Article 2 that "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter" [Drzewicki 1984: 35]. The introduction of the right to peace in these regional legal instruments was also a normative circumstance in creating the UN Declaration of 1984.

(3) 1990s UNESCO, UN Commission on Human Rights

In 1997, apart from the UN General Assembly, an expert meeting on the human rights to peace was held in Las Palmas, Spain, organized by UNESCO, where it was pointed out that the right to peace has been recognized in UN instruments,⁸ and it was also confirmed that the declaration of peace as a human right should be recognized at the international level. Also in 1997, a UNESCO conference on the right to peace was held in Oslo, where the "Oslo Declaration on the Human Rights to Peace" (A/HRC/AC/6/CRP.3, Annex pp. 40-41) stated that the right to peace has legal basis in the UN Charter, UNESCO Charter, Universal Declaration of Human Rights and two international human rights conventions [Guillermet and Fernández 2017: 101-109]. In these declarations, the right to peace was adopted as a human right to peace, a novelty

⁸ These instruments included the Istanbul Declaration of the International Conference of the Red Cross, Resolution 17 of the Commission on Human Rights, the 1978 UN Declaration, and the 1984 UN Declaration.

not found in the Declarations of 1978 and 1984. The expression of human rights has a strong connotation of individual and collective rights, not state rights.

In 1998, at UNESCO's International Consultation of Intergovernmental Experts on Peace as a Human Right, Secretary-General Kofi Annan issued a message on the interdependence of human rights and peace: "Respect for human rights is the foremost guarantee of peace, and the establishment of lasting peace is a condition for respect for human rights. The interdependence of human rights and peace is a condition for establishing lasting peace. However, the EU countries and Japan voiced opposition, saying, "How can the right to peace be enforced?" "The Declaration confuses human rights and peace, which should be treated separately," and "If the right to peace is recognized, other human rights will not be respected. " The gap between the opinions of those in favor and those opposed was not narrowed, but in summarizing the meeting, the Rapporteur perpetuated the three categories of participants' opinions: those who believe that the right to peace is well established as a human right, those who believe that it should be recognized as a moral right, and those who believe that peace is not a human right but an aspiration of human beings. The participants confirmed that they agreed that peace can only exist where human rights are respected and that there is an inseparable link between human rights and peace (154 EX/40, 1998) [Guillermet and Fernández 2017: 110-114]. The controversy at UNESCO at this time shows a broad shared understanding of the close relationship between peace and human rights.

In the 2000s, 2003, 2005, 2010, and 2012 UN General Assembly resolutions used the term "right of the people to peace," indicating an attempt to implement the 1984 Declaration on the Right of Peoples to Peace, rather than the 1978 Declaration. However, the rights content had not been developed more concretely than in the 1984 Declaration [Guillermet and Fernández 2017: 81].

At the UN Commission on Human Rights, the Cuban government took the initiative in 2001 and 2002 to propose a resolution, "Promoting the Right of Peoples to Peace." At the Commission on Human Rights in 2001, the Cuban representative submitted a draft resolution (E/CN.4/2001/L.95) to promote the right to peace of peoples. He proposed that life without war is a prerequisite for economic development, human rights, and so forth as stated in the Declaration of 1984. In response, Belgium, on behalf of the EU, opposed the collective right of peoples' rights because they are rights of states against states and do not address the state versus human rights relationship (Summary record of the 78th meeting 2001, para. 24). Canada and Norway argued that the place for discussion of the right to peace in the first place should be dealt with in the UN General Assembly, Security Council, and Disarmament Assembly, not in the Commission on Human Rights

(Summary record of the 78th meeting 2001, para. 25) [Guillermet and Fernández 2017: 117]. Costa Rica countered that disarmament is essential for the protection of human rights and is an agenda item that should be addressed by the Commission on Human Rights [Guillermet and Fernández 2017: 118]. Although the two sides remained at odds, the resolution was adopted with 29 in favor, 16 against, and 7 abstentions (2001/69 in E/CN.4/2001/L.11/Add.7, April 25, 2001).

At the Commission on Human Rights in 2002, Spain, on behalf of the EU, also said that the rights of peoples in the draft resolution submitted by Cuba (E/CN.4/2002/L.90) should deal with the right to peace outside the Commission on Human Rights because it deals with relations between states and not with relations between states and peoples, which is the task of the Commission on Human Rights. He stated that the right to peace should be addressed outside the Human Rights Commission. Canada similarly stated that the subjects of peace and disarmament should be dealt with in other fora [Guillermet and Fernández 2017: 119]. Opposing states opposed discussing the right to peace in the UN Commission on Human Rights, and no substantive discussion of its content progressed. Thus, the disagreement between the supporting and opposing countries was not resolved, but the draft resolution was adopted by a majority vote of 33 in favor, 15 against, and 5 abstentions (2002/71 in E/CN.4/2002/L.11/Add.6, April 26, 2002) [Guillermet and Fernández 2017: 120].

Cuba became the leading proponent of implementing the right to peace in the East in the 1990s, replacing the former Mongolia and Poland as socialist countries transitioning out of socialism due to the collapse of the Cold War. It is because of the firm intention of Cuba to implement the Declaration that the Commission on Human Rights continued to adopt resolutions despite the strong opposition of the Western countries. Procedurally, the UN General Assembly and the UN Commission on Human Rights use majority-vote adoption to proceed with their meetings, so the resolution by vote continued to be adopted as long as there were many countries in favor.

The Commission on Human Rights resolutions in 2003 and 2004 emphasized that the international system must be based on the UN Charter and the promotion of human rights and that the peaceful resolution of disputes is critically necessary for the guarantee of human rights and the human rights component was incorporated into the content of the resolutions (2003/61 para. 4, 2004/65 para. 6). Cuba also added a new clause in its explanation of the 2003 draft resolution (E/CN.4/2003/L.76) that peace is critically necessary for human rights guarantees (E/CN.4/2003/SR61 para. 24). However, the US opposed the resolution, saying that it was not appropriate for the Commission on Human Rights (para. 26). Ireland, on behalf of the EU, said as before that the resolution dealt

with relations between states and not between states and their citizens, and that it was outside the scope of the Commission on Human Rights (para. 27).

Although the disagreement remained the same, the human rights component of the right to peace was proposed by Cuba and others. Hence, the Commission on Human Rights in 2003 adopted a resolution that removed the words right to peace from the title of the resolution and replaced it with the name "Promotion of peace, which is critically necessary for the enjoyment of human rights by all" [Guillermet and Fernández 2017: 121].

In its explanation during the vote on the 2004 resolution, Ireland de-emphasized that the lack of peace cannot justify not respecting human rights (E/CN.4/2004/SR57 para. 34-39) and in the debates in the deliberations of the Commission on Human Rights since 2001, there has been a shared recognition that peace is a precondition for human rights guarantees [Guillermet and Fernández 2017: 123]. Among the deliberating parties, the understanding of the right to peace has shifted from the right of peoples to peace as a relationship between states to a perception of the relationship between peace and human rights in general as "peace for the enjoyment of human rights." This indicates that the discussion of the right to peace, with peace as the content of the right, was returning to the discussion that had been taking place since the founding of the UN Charter. The weakening of the power of the socialist countries following the collapse of the Cold War was another factor in the lack of progress in the embodiment of the Declaration on the Right of Peoples to Peace as the content of the right to peace.

The UN Human Rights Council was then established in 2006, but the discussions during the time of the Commission on Human Rights, the predecessor of the Human Rights Council, were a prelude to deliberations on the codification work in the Human Rights Council starting in 2008.

Looking back at the debate on the relationship between peace and human rights in the United Nations and the discussion of the right to peace in the UN since the 1978 and 1984 Declarations, in the area of security, governments, especially militarily superior Western countries, showed strong resistance to the possible restriction of their authority over their security and self-defense, and there were some controversies seen between the opposing countries and the favored countries. The opposing countries avoided discussion in the Commission on Human Rights and tried to avoid creating and embodying new human rights.

Regarding the collective rights of peoples' rights, opposing countries, especially in Europe, argued that the concept was not recognized because peoples' rights were a state-to-state relationship. During the Cold War, the difference between the Western and

Eastern regimes was also reflected in their different conceptions of the right to peace. The Western powers checked the creation of the right to peace as a right of the state to the state out of concern that it would become a right demanded by the Eastern powers to Western ones. Controversy continued in discussions at the Human Rights Commission in the 2000s.

The above state of debate on peace, human rights, and the right to peace from the founding of the UN to the early 2000s can be seen in some of the same issues as in the deliberations on the 2016 Declaration. The deliberations on the 2016 Declaration will be analyzed in light of this prehistory.

2. Deliberations of the UN Human Rights Council since 2008

(1) Factors to consider in the analysis of the deliberations

Before analyzing the deliberations over the UN Declaration on the Right to Peace at the Human Rights Council, it is necessary to keep in mind the unique elements of its normative status: (1) the fact that a UN Declaration is soft law, (2) the use of consensus in conducting the deliberations of the Human Rights Council's Intergovernmental Working Group, and (3) the normative environment of the early 2000s.

(A) The UN Declaration as soft law.

The UN Declaration of Rights was adopted as a General Assembly resolution, but these resolutions are not legally binding under the UN Charter in the way that Security Council decisions are. The UN Declaration of Rights is a document that recognizes the existence of rights and obligations of states, individuals, and groups, but it is soft law. The Declaration of Rights' unbinding legal nature affects the content and nature of the deliberations.

Because the UN Declaration of Rights focuses more on acknowledging the general existence of human rights than the specific aspects outlined in international human rights treaties, its content is more abstract. For this reason, disputes during the establishment of UN declarations are less clear-cut than those in deliberations of international human rights treaties. On the one hand, the abstract and vague content about the obligations of the addressee allows a wider margin of acceptance [Percy 2014], although the content remains an abstraction when analyzing the meaning of the shared new norms within the deliberations' controversies.

On the other hand, the abstract nature of those norms that are established makes them more open to controversy because it is that much more difficult for the norms' addressees to predict their future obligations [Abbott and Snidal 2000], and some UN rights declarations of the past resulted in later deliberations that developed into international

treaties. Declarations of rights at the United Nations—from the Universal Declaration of Human Rights (1948) to the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights (1966), and from the Declaration of the Rights of the Child (1959) to the Convention on the Rights of the Child (1989), to name a few—were UN Declarations of Rights that later became international human rights treaties. Those promoting the passage of the Declaration of Rights also promote codification in the hope that it will become an international treaty with more substantial legal effect in the future, even as the norms' addressees trying to prevent its passage cannot predict the extent of their obligations in that same future in which it is an international treaty—so those in opposition must become defensive and increase the controversy.

In the case of deliberations on the UN Declaration on the Right to Peace at the Human Rights Council, the government representatives and NGOs present discussed the declaration with the possibility of it becoming a future international human rights treaty in mind. In particular, the Advisory Committee Draft had 14 articles, many of which were quite detailed, and similarly, the US representative and others were quite prepared to comment on almost every article of the Advisory Committee's draft. Since a new norm within the realm of peace and security can be a significant constraint on the use of military force on the part of the state or government to which the norm is addressed, the opposing states spent much time preparing for and actively participating in the deliberations, making the debate intense. Therefore, although the UN Declaration on the Right to Peace is soft law, analyzing it based on prior normative studies that envision a declaration as future hard law is possible.

(B) The use of consensus.

The deliberations in the Human Rights Council's Intergovernmental Working Group (2013-2015) should also be considered when analyzing the discussions among government representatives; these took place in a consensus fashion.

Under the UN Charter, a UN General Assembly resolution can be adopted by majority vote, but the consensus method is a means of voting and deliberation in which a consensus is formed without a vote unless strong objections are raised. Since negotiations must be conducted to reach a consensus, it generally takes longer, and if consensus cannot be reached, the resolution is adopted by a majority vote. The consensus method has been widely used in the United Nations since the 1982 establishment of the United Nations Convention on the Law of the Sea, which necessitated establishing uniform, worldwide standards for territorial waters and economic zones. Afterward, when making rules that bound all member states was necessary, the United Nations often adopted the consensus method. Proponents of the

UN Declaration on the Right to Peace similarly aimed to create rules binding all member states.

Since the results of deliberations based on the consensus method reflect the opinions of all the discussion's participants, it is easy for them to express opinions regardless of their positions—and since their goal is to reach a single consensus, participants' arguments become more active trying to persuade those who hold opposing opinions, which allows sufficient time for deliberations to share the meaning of the new norms. Therefore, even countries that oppose the adoption of the agenda will actively participate in the deliberations to express their opposition to the content of the agenda and make amendments [Zemanek 1983].

From the perspective of those seeking to establish new norms, a UN Declaration is soft law and abstract in content, making it easy to reach consensus; thus, it fits well with the consensus approach. Moreover, suppose the UN Declaration is further developed and a treaty is adopted to advance its concretization and implementation. In that case, those concrete discussions will take place after the Declaration has been established, which means that proponents will give more consideration to achieving as much consensus agreement as possible in the declaration stage.

The resolution to prepare an Advisory Committee Draft at the Advisory Committee was a procedural matter that unfolded following a Human Rights Council resolution based on the principle of majority rule. At the same time, deliberations at the Intergovernmental Working Group were conducted by consensus after the Chairperson of the Working Group proposed that deliberations be conducted in that manner, and the Working Group approved the proposal. Deliberations by consensus appealed to the proponents, who wanted to have the right to peace effected through a normative formation that included the opponents, and the opponents were incentivized to participate in consensus to either block the agreement or change the content of the Declaration agreement to something more acceptable.

During the deliberations at the drafting stage of the Advisory Committee, the US government representatives opposed taking up the right to peace in the Human Rights Council itself because only the Security Council retained authority over international peace and even refused to enter substantive deliberations. However, when it came to the deliberations in the Intergovernmental Working Group, it participated in the deliberations and was prepared to offer its views: the United States spoke on almost every article, more than any other country. The United States, which had opposed taking up the right to peace in the Human Rights Council, voiced its opposition to the draft declaration under the consensus method, effecting a kind of veto. Adopting the

consensus method in the Working Group led to a policy change to make the draft declaration's content acceptable by devaluing the standards of consensus rather than refusing to deliberate if it wanted to prevent the passage of a new norm.

After three years of deliberations by the Intergovernmental Working Group, no consensus was reached at the Human Rights Council, and the treaty was eventually adopted by a majority vote. However, since the deliberations were conducted by consensus, a greater number of participating states participated in the deliberations and engaged in discussion. The consensus method of deliberation was also an influential factor in stimulating debate and forming a shared understanding of the meaning of the norms.

(C) The normative environment at the time of the deliberations

In general, when a new norm that differs from conventional values is emergent, it is not easy to create a new norm that differs in content from the norms previously agreed upon by the international community and the degree to which the values of the existing norms are shared is a factor that either inhibits or promotes the emergence of the new norm. New norms do not suddenly emerge out of thin air; instead, the normative environment (i.e., compliance or noncompliance with existing norms, movements toward new norms, what existing norms were shared at the time of the dispute, whether they were observed, whether any were missing, etc.) either hinders or facilitates the creation of new norms. This needs to be clarified [Madokoro 2020]. For example, if there is a broad international agreement in a form that is often not complied with, or if existing norms have problems in terms of normative validity and legitimacy, new norms may be created as replacements: high levels of opposition to or noncompliance with existing norms can trigger the emergence of new norms. Conversely, when noncompliance is temporary, international condemnation of noncompliance is high, and the international community shares the existing norm to a high degree, new norms that conflict with it are unlikely to emerge. In addition, when there are situations in which new norms are required, those norms may emerge depending on the combination of existing norms that are sufficiently shared. Therefore, when analyzing the content of what new norms were shared, the analysis of what was or was not shared in those new norms will be more objective if the normative environment is clarified (e.g., compliance levels with existing norms, international reactions to norm violations) [Adachi 2015: 29-33; Bjola and Kornprobst 2014; S. Schmidt 2014].

In the context of the UN Declaration on the Right to Peace, it is necessary to clarify the normative environment of existing international norms in the early 2000s, when NGOs proposed to codify the Declaration. We will thus discuss the normative environment since

the collapse of the Cold War, especially around the time of the 9/11 terrorist attacks in the United States (2001) and the Iraq War (2003), and examine to what extent the United Nations and individual states were complying with international norms, the international reaction to these norms, and whether new norms were likely to emerge.

The following is an overview of the international normative environment in security and human rights at the beginning of the 21st century when the Human Rights Council began deliberations on the right to peace. "Norms" here are used in the broad sense of international agreements in general and include not only international law but also UN agreements as well as international conferences and institutions that are not legal instruments per se. We also cover the norm formation trends, such as which actors became involved in forming international norms.

- (1) Since the 9/11 attacks in 2001, there have been calls for a "war on terrorism" as a response to terrorism, and the United States' unilateralism and accompanying relative decline in human rights norms (such as the resurgence of torture at Guantanamo and elsewhere) have gained prominence [Normand and Zaidi 2008: 332]. The Iraq War (2003), a typical example of unilateralism with disregard for the UN Charter, led to the abuse of the requirements of Security Council consent and the right of self-defense (Article 51), as well as actions in violation of the principle of the prohibition of the use of force (Article 2, para. 4).
- (2) In the area of weapons and arms, including weapons of mass destruction and the arms trade, the Biological Weapons Convention (entered into force in 1975) was followed by the Chemical Weapons Convention (entered into force in 1997). Regarding nuclear weapons, the Nuclear Non-Proliferation Treaty (adopted in 1963 and entered into force in 1970) separated nuclear weapon states from non-nuclear weapon states; subsequently, nuclear proliferation outside the treaty (India, Pakistan, Israel) and withdrawal from the treaty itself (North Korea in 2003) have progressed, leaving the treaty's implementation status at a standstill. Although the nuclear weapon states are obliged to negotiate reductions in their nuclear arsenals, and there were negotiations between the United States and the Soviet Union (its successor, Russia), no significant reductions in nuclear weapons have been achieved.

Arms trade restrictions have been raised since the 1990s, and the United Nations began discussions on the small arms trade in 2001. The Arms Trade Treaty began negotiations at the UN in 2006 and was passed in April 2013.
- (3) On the other hand, international norms recognizing exceptions to the absoluteness of state sovereignty and the principle of non-interference between sovereign states emerged from a shift in security perspective and humanitarian aspects, represented

by the UN's advocacy for human security (1994), NATO's humanitarian intervention in Kosovo (1999), and military intervention in Libya (2011) on the grounds of responsibility to protect.

- (4) In international human rights, the 1993 Vienna Universal Conference on Human Rights considered the relationship between peace and human rights inseparable, and the Beijing World Conference on Women in 1995 proposed the need for women's participation in decision-making to promote peace.
- (5) Regarding the institutional framework for international human rights, establishing the Office of the United Nations High Commissioner for Human Rights in 1993 and creating the United Nations Human Rights Council in 2006 marked a movement to change the dysfunctional, politicized nature of the previous Human Rights Commission. In 1998, the Rome Statute of the International Criminal Court was adopted, and in 2010, the Kampala Accord on the Crime of Aggression was reached, which began to bring about criminal responsibility for war crimes in the 1990s.
- (6) On the other hand, in norms such as the UN Declaration on the Right to Development (1986), where developed and developing countries were in conflict, the conflict between the two camps was so intense that it was difficult to reach a consensus. Although a majority vote adopted the Declaration, the implementation process has been complex.
- (7) At the 2005 UN World Summit Conference, it was emphasized that peace and security, development, and human rights are the three pillars of the United Nations and are interrelated.
- (8) Since the 1990s, NGOs have become involved in shaping international norms in the field of armaments and military affairs, including the passage of the Anti-Personnel Mine Ban Treaty (1997), the Statute of the International Criminal Court (1998), the Convention on Cluster Munitions (2008), and the Arms Trade Treaty (2013).

Thus, in the 2000s, after the end of the Cold War, the 9/11 terrorist attacks, and the Iraq War, the international community saw both a unilateralist movement that disregarded international legal norms and the development of militarization (e.g., the war on terror), and a norm-strengthening movement that sought to limit military action by sovereign states through international norms. The following section discusses these trends in more detail.

(C-1) Great Powers Unilateral Actions

In terms of peace and security, the end of the Cold War led the relationship between the forces of the East and the West to no longer be in direct confrontation, and the United Nations Security Council (from now on referred to as the "Security Council"),

which is expected to play a central role in international peace, is recovering its functions as more Security Council resolutions are being passed without the use of veto power. From 1945 to 1988, there were only 626 Security Council resolutions, but in the 30 years since then, 1,773 Security Council resolutions have been passed.

However, during the George W. Bush administration, the United States began to appeal to the international community for a war on terrorism after the 9/11 attacks, and it proceeded to intervene militarily in Iraq without the consent of the UN Security Council. The United States also withdrew from the Rome Statute of the International Criminal Court (ICC) and the Kyoto Protocol on global warming, showing a disregard for the multilateralism of the UN and a marked tendency to act unilaterally.

This situation severely tested the UN's collective security principles and resilience. On September 23, 2003, after the Iraq War, UN Secretary-General Kofi Annan, in his speech to the 58th Session of the UN General Assembly, referenced the disregard of some states toward UN approval: "Rather than wait for that to happen, they argue, States have the right and obligation to use force preemptively. ~~(omitted)~~ According to this argument, states are not obligated to wait until the Security Council agrees but are entitled to act alone or form ad hoc coalitions. This logic is a fundamental challenge to the principles that have been the basis, albeit imperfectly, for maintaining world peace and stability for the past 58 years," he said, sounding the alarm over the critical status of the UN Charter. This statement was a criticism of the "war on terror" represented by the wars in Afghanistan and Iraq, which deviated from the UN's principle of collective security and the requirement of the right of self-defense (Article 51)—itself limited to the occurrence of an armed attack. The statement also warned that the use of force beyond that permitted under the UN Charter was taking place.

In addition, since the 1990s, the United Nations and major powers have taken military action against internal and ethnic conflicts in Yugoslavia, Rwanda, Libya, Syria, Yemen, and other countries on the grounds of humanitarian intervention, responsibility to protect, and the use of weapons of mass destruction. These the use of force and collective security actions were not provided for in the UN Charter or excessive UN coercive action.

This use of military force gave rise to public calls for the strengthening of the rule of law, heightened opposition to major powers' disregard for the United Nations, and demands to strengthen international legal restrictions on weapons of mass destruction.

The international campaign for the international codification of the right to peace by the SSIHRL, an NGO, also began with the demand for legal restrictions on the use of military force in Iraq and other conflicts.

(C-2) Weapons of Mass Destruction and Arms Trade

The end of the Cold War raised questions about the need to possess and transfer large numbers of weapons and increased the international momentum for arms reduction.

In 1996, the International Court of Justice issued an advisory opinion that the use or threat of nuclear weapons use generally violates humanitarian law, which was partly a result of international NGO activities. In 2007, the governments of Costa Rica and Malaysia introduced the draft for the ban of nuclear weapons to the NPT (Treaty on the Non-Proliferation of Nuclear Weapons) Review Conference, and in 2011, the UN General Assembly adopted a resolution to begin negotiations toward a Nuclear Weapons Convention; this series of developments led to the subsequent adoption of the Nuclear Weapons Convention in 2017. The significant role played by NGOs in the process of passing the Anti-Personnel Mine Ban Treaty (enacted in 1997) was also a factor in the emergence of these movements to regulate nuclear weapons.

The United Nations has been discussing arms control since the end of the Cold War when the former Eastern powers downsized their armaments, which resulted in a massive flow of surplus weapons to other parts of the world and the use of large quantities of weapons in civil wars in Rwanda and the former Yugoslavia. The report stated that small arms are de facto weapons of mass destruction, killing more than 500,000 people each year. Subsequently, the Arms Trade Treaty began negotiations at the UN in 2006. The regulation of arms required negotiations not only from the perspective of controlling and regulating imports and exports but from a variety of other viewpoints, including the need to regulate exports in the event of humanitarian law violations within the importing country and the need to regulate the involvement of exporting countries in impeding social development and fostering corruption. The plethora of perspectives meant that deliberations took time: after seven years of negotiations, the treaty was enacted in April 2013.

These international treaties on arms control represented a trend toward attempts to limit the right of states to military affairs by international law, and such a shift shared a common motivation with the movement to create the right to peace.

(C-3) Shifting Security Perspectives and the Responsibility to Protect

There has been a change in how we think about security since the end of the Cold War. As mentioned in Chapter 1, this change entailed a shift from a view of national security to a view of human security: a change in security that prompted the formation of specific international norms.

During the Cold War, the prevailing view of "national security" was that the major powers maintained a balance among themselves through confrontation between military blocs and that each nation protected the security of its citizens by aligning itself with either the Eastern or Western bloc. After the Cold War, however, the "human security" view, which holds that ensuring the security of individual people occurs at the day-to-day level and, as such, is endangered by poverty, hunger, HIV/AIDS, and environmental degradation, has come to attract attention.

Human security, raised in 1994 by the UN Human Development Report, is the UN's statement of action to the international community. This concept of human security has been adopted by consensus by all member states in the UN General Assembly; it was adopted in 2005 in the outcome document of the UN World Summit Conference (A/RES/60/1) and by consensus in a UN General Assembly resolution (A/RES/64/291) in 2010. The UN Declaration on the Right to Peace shares a common orientation with human security: it aims to spare human beings from fear and want. This shift in security perspective and the expectation of achieving human-oriented security were among the motivations behind promoting the right to peace and the desire to codify the right to peace into an international code. The Human Rights Council Advisory Committee's draft [2012] of the right to peace includes the right to human security in the form of "everyone has the right to human security, which includes freedom from fear and from want" [Article 2, para. 1].

At the same time, however, the concept of human security evolved in a different direction. The responsibility to protect was formulated at the 2005 United Nations World Summit Conference and defines the international community's responsibility to address serious human rights violations and humanitarian problems, such as serious mass killings, war crimes, and ethnic massacres within countries. It consists of three principles: (1) each state has a responsibility to protect its people; (2) when a state fails to fulfill its responsibility to protect, the international community will assist it; and (3) when a state fails to fulfill its responsibility to protect, the international community has a responsibility to protect. This third principle includes military intervention by the international community.

The responsibility to protect changes the traditional concept of human rights, in which human rights issues have been considered domestic issues, and seeks to create the exception to the absoluteness of state sovereignty, with noninterference at its core, to the universality of human rights. This responsibility can be regarded as a step forward in universalizing the concept of human rights. In the deliberations of the Human Rights Council on the right to peace, the Advisory Committee Draft [2012] also

incorporated the right to be protected from genocide and other forms of violence, stating that "Everyone has the right to be protected against genocide, war crimes, the use of force in violation of international law, and crimes against humanity. If a state fails to prevent the occurrence of these crimes in its territory, it may call upon its member states and the United Nations to fulfill their responsibilities. If States are unable to prevent these crimes from occurring within their jurisdiction, If States are unable to prevent these crimes from occurring within their jurisdiction, they should call on Member States and the United Nations to fulfill that responsibility" [Article 2, para. 3].

However, there is a problem concerning the principle prohibiting the use of force and the pros and cons of the responsibility to protect. For instance, there are many opposing views regarding the 2011 military intervention in Libya—a military action based on the responsibility to protect that was used to overthrow the Gaddafi regime—so there is no unanimous view among the international community or within the United Nations. Even concerning human security, the UN General Assembly in 2012 adopted a resolution excluding the responsibility to protect from the consensus human security concept, saying that human security "does not include the concept of responsibility to protect, does not include military means, and does not replace state security" [A/RES/66/290]. This statement indicates that military intervention in other countries is problematic with the principle of prohibition of the use of force.

Thus, the background to promoting the UN Declaration on the Right to Peace reflects the changing security perspective and human-rights concepts of human security and the responsibility to protect.

(C-4) Development of UN Human Rights Norms

In 2006, the UN Commission on Human Rights was upgraded to the Human Rights Council, a subsidiary body of the General Assembly, and the functions of the UN human rights machinery were strengthened to include the establishment of the Universal Periodic Review, in which member states monitor each other's human rights implementation. In terms of the creation of new human rights, the 2000s saw the emergence of rights such as the UN Declaration of the Rights of Indigenous Peoples (2007), although the development of new international rights has occurred since the 1960s, following the UN Universal Declaration of Human Rights in 1948. The UN Declaration of Rights was meant to confirm the existence of rights based on the international community's consensus. Some Declarations of Rights went on to develop into international human rights treaties: two international human rights covenants followed the Universal Declaration of Human Rights (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural, and

Social Rights, both adopted in 1966); these were followed by the Convention against Torture (1984), which itself stemmed from the Declaration of Protection from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975); the Convention on the Rights of the Child (1989), which followed the Declaration of the Rights of the Child (1959); and the Convention on Enforced Disappearances (2006), which followed the Declaration for the Protection of Enforced Disappeared Persons (1992). Such are examples of international conventions established following the adoption of the declaration of rights by the United Nations.

In addition, other types of UN declarations have been adopted by the UN General Assembly, including the Declaration on the Right to Development (1986), the Declaration on the Rights of Indigenous Peoples (2007), and the Declaration on Farmers' Rights (2018). Developing countries and NGOs have taken the initiative in creating these new rights, indicating that the UN now reflects various opinions that are not exclusively biased toward large or developed countries.

These new human rights were created around 2008 when the UN Human Rights Council passed the first resolution for the UN Declaration on the Right to Peace (a right that was part of the 1984 Declaration on the Right of Peoples to Peace). Moves to create the right to peace have occurred in other parts of the world, with the African Charter on Human and Peoples' Rights (1981) and the ASEAN Human Rights Declaration (2012) also incorporating the right to peace. The Advisory Committee's draft progress report [2011, A/HRC/AC/6/CRP.3] notes these developments as regional. Article 23 of the African Charter on Human and Peoples' Rights recognizes the right to peace and security, stating that "all peoples have the right to national and international peace and security"; the ASEAN Human Rights Declaration (2012) states in Article 38 that "every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realized." The Declaration establishes the right to the enjoyment of peace as "the right of the peoples of ASEAN to the security, stability, neutrality and freedom of the region. The phrase "right to enjoy peace" was later adopted as the wording in Article 1 of the 2016 UN Declaration on the Right to Peace.

(C-5) Other legal normative developments related to war and human rights

Other normative developments related to security and human rights included the 1993 Vienna Declaration and Programme of Action, the UN General Assembly resolution 48/141 establishing the Office of the UN High Commissioner for Human Rights (1993), the creation of the UN Human Rights Council in 2006, and a move to change the

dysfunctionality of the Human Rights Commission due to politicization. In 1998, the Statute of the International Criminal Court (the Rome Statute) was adopted, followed by the Kampala Accords on Crimes of Aggression in 2010. Since the 1990s, there has been a trend toward holding war and military actions criminally responsible for war crimes, crimes against humanity, and violations of international humanitarian law, among others.

In order to achieve the UN Charter's objective of maintaining international peace, there has been a growing international trend toward maintaining human rights and peace—not only as stipulated in the Charter but also in establishing other international norms in a superimposed manner.

(C-6) Resistance to new rights

Three Declarations of Rights—the Declaration of the Right to Development, the Declaration of the Rights of Indigenous Peoples, and the Declaration of the Rights of Peasants—have not yet been made into treaties. Let us look at the deliberations over the Declaration of the Right to Development (1986), which has been under discussion since adopting the Declaration.

The pro and con distribution of the Declaration of the Right to Development was split between developing and developed countries. Developing countries that led the charge for the right to development and countries that gained independence from colonies have followed established norms such as the Declaration of Independence of the Colonies (1960) and the UN Declaration of the New Economic Order (1974) in the 1980s, they asserted the legitimacy of the right in the emergence of third-generation human-rights concepts (e.g., development, peace, environment).

In contrast, the Western countries opposed the developing countries' assertion of the right to development as a state right, saying that the subject of the right is only the individual and the state is merely an obligor. The developed countries' substantive reason for opposing this right is that if developing countries are granted the right to development as states, and the developed countries are obligated to respond, it would legalize the provision of funds to the developing countries. Such developed countries' obligations would call into question the neoliberal economy promoted by the developed countries, and developed countries feared that their superior position would be undermined. Developed countries also criticized totalitarian states in developing countries for using new rights as a cover to hide the violation of individual rights by the state [Normand and Zaidi 2008: 303].

In response, the developing countries argued that the developed countries' claim that new rights were being used as a cover was a smokescreen for the developed countries, who were merely trying to avoid state obligations, and countered that it was rather the

Western developed countries that had supported repressive corruption and anti-communist regimes. Developing countries also argued that collective rights are recognized under the UN Charter as the right of peoples' self-determination and sovereign equality and that collective rights are essential to guaranteeing individual rights [Normand and Zaidi 2008: 304].

The differences of opinion over things such as the legal nature of the right to development have not been easily reconciled; since the Declaration's adoption, the right to development has yet to be transformed into an international treaty. The United States withdrew from the Working Group on the Right to Development in 1987, claiming that its discussions went into economic policy and exceeded the Working Group's mandate [Normand and Zaidi 2008: 449]. In 2000, the UN Millennium Declaration was adopted as an international agreement in the development field, followed by the Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs), which set development goals but did not address the right to development per se in their targets.

Deliberations on the right to peace had similar elements of disagreement between developed and developing countries, making it difficult to reach a consensus agreement. (C-7) Emphasis on interrelationships among peace and security, development, and human rights

One characteristic of the changing international norms within the peace and security field is that attention to the relationship between poverty and the environment, which can be a cause of conflict, has increased since the 2000s. The United Nations has seen a rise in these sorts of cross-sectoral deliberations.

In the 1997 Report of Secretary-General Kofi Annan on the UN Reform Programme (A/RES/51/950), human rights were identified as an issue that influenced peace and security questions, economic and social concerns, development cooperation, and humanitarian elements. Subsequently, the UN Millennium Declaration in 2000 and the outcome document of the 2005 UN World Summit Conference emphasized the three UN pillars—peace and security, development, and human rights—as well as their interrelationship [A/RES/60/1]. Thus, there is a growing awareness of the connections between human rights and many other concerns that were not visible from the national security perspective.

Similarly, the three pillars of the UN system were emphasized in Human Rights Council resolutions on the right to peace (UN Human Rights Council resolutions 8/9, 11/4, 14/3, 17/16). Article 1 of the 2016 UN Declaration on the Right to Peace states,

“Everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.”

International human rights treaties have also highlighted the close link between peace and human rights. This connection is mentioned in the draft progress report of the Advisory Committee on the Right to Peace [2011, A/HRC/AC/6/CRP.3, p6, 2011]. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD, adopted in 1965) states in its preamble that discrimination is an obstacle to friendly and peaceful relations between nations and may disturb peace and security among peoples. The International Covenant on Civil and Political Rights (ICCPR, adopted in 1966) noted in its Preamble that human rights are the basis of world peace, and the Human Rights Committee of the Covenant, in its General Comment No. 6 (1981), made clear the relationships between the right to life, prevention of war and prohibition of propaganda for war, including the proliferation of nuclear weapons. General Comment No. 14 (1984) on Nuclear Weapons and the Right to Life demonstrated the link between the prohibition of war and the right to life, and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, adopted 1979) states that peace requires the maximum participation of women. Finally, The Convention on the Rights of the Child (CRC, adopted 1989) includes an Optional Protocol on the involvement of children in armed conflict.

These works reflect the mainstream perceptions within the international community that peace, human rights, and development cannot be discussed in isolation—a perception reflected in Article 1 of the 2016 United Nations Declaration on the Right to Peace.

(C-8) Participation of NGOs as Subjects of International Norm Formation

In 1992, after the end of the Cold War, Secretary-General Boutros Boutros-Ghali referred to the strengthening role of NGOs in "The Challenge of Peace." Later, Secretary-General Kofi Annan addressed the vital role of civil society in "Rebuilding the United Nations" (1997) and "We the People: The Role of the United Nations in the 21st Century" (2000). In 2001, the UN Secretary-General's report on armed conflict prevention called for an international conference of NGOs, focusing on their ability to shape public opinion and respond on the ground; the report also urged the formation of the Global Partnership for the Prevention of Armed Conflict (GPPAC), an international network of NGOs for the prevention of armed conflict. In 2003, UN Secretary-General Annan's note to the Cardoso Report, "We the People: Civil Society, the United Nations, and Global Governance," called for greater participation of NGOs in intergovernmental organizations, among other things. Within international

organization studies, NGOs have come to be regarded as a third UN entity after national governments and UN agencies [Weiss et al. 2009].

Since the 1990s, there has been a movement to regulate military force and weapons use by establishing international norms with NGO involvement. These include the Rome Statute of the International Criminal Court (passed in 1998), which provides for the prosecution of war crimes and crimes against humanity; the Convention on the Prohibition of Anti-Personnel Mines (passed in 1997); and the Convention on Cluster Munitions (passed in 2008), which regulates weapons. What characterizes these treaties is the movement to seek legal restrictions from a humanitarian perspective when the use of military force or weapons causes significant human rights violations. In addition, the 1996 International Court of Justice advisory opinion upholding the illegality of the use of nuclear weapons was influenced by international NGO activities.

It has been noted that similar international NGO campaigning took place in creating the UN Declaration on the Right to Peace [Van Boven 2012: 143]. Van Boven [2012] attributes this involvement to the fact that NGOs have successfully influenced international norms since the 1990s.

Other evidence of international NGOs influencing norms within civil society include NGO drafts and charter movements such as the Asian Charter on Human and Peoples' Rights, created over three years in 1998, and the 1999 Hague Appeal Agenda. Article 4 of the Asian Human Rights Charter states, "All persons have the right to live in peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence." The UN Human Rights Council's Advisory Committee also took note of these NGO movements and used them as guides in drafting the proposal [2011 Advisory Committee Progress Report A/HRC/17/39, p. 38].

The activities of these NGOs, which have come to influence international norms in various ways, were a feature of the 2000s backdrop.

After the 9/11 terrorist attacks, the military became more unilateral—but even as the military response to terrorism progressed, activities by NGOs and institutions generated momentum to create international norms in response. During this time, the violation of international norms increased momentum for creating new international norms.

In light of the state mentioned above of compliance with international norms, the state of normative development, and the political situation, how these factors influenced the deliberation of the UN Declaration on the Right to Peace should be considered in this analysis.

(2) Deliberations in the UN Human Rights Council

Table 1: Timeline of Deliberations at the United Nations Human Rights Council up to the Advisory Committee's Draft

| |
|--|
| 1978: UN General Assembly resolution, "Declaration on the Preparation of Societies for Life in Peace" |
| 1984: UN General Assembly resolution, "Declaration on the Right of Peoples to Peace" |
| 1999: NATO bombing of Kosovo |
| 2003: Iraq War |
| 2004: SSIHRL Law begins national campaign in Spain. |
| March 2006: Establishment of the UN Human Rights Council |
| October 2006: NGOs issue Luarca Declaration |
| 2007: SSIHRL launches international campaign for the right to peace |
| 2008-2015: UN Human Rights Council resolution promoting international codification of the Right to Peace |
| December 2009: UN High Commissioner for Human Rights holds expert workshop |
| June 2010: UN Human Rights Council Resolution 14/3 requests the Advisory Committee to draft |
| December 2010: Adoption of the Santiago Declaration in NGO draft form |
| April 2012: Drafting by the Advisory Committee (detailed, consisting of 14 articles) |
| February 2013: Human Rights Council Intergovernmental Working Group I |
| July 2014: Second session of the Intergovernmental Working Group of the Human Rights Council |
| April 2015: Third session of the Intergovernmental Working Group of the Human Rights Council |
| July 2016: UN Human Rights Council adopts draft UN Declaration on the Right to Peace |
| December 19, 2016: UN General Assembly adopts the UN Declaration on the Right to Peace, consisting of a preamble and five articles |

Note. Author's table.

(A) NGO strategies for international codification and deliberations involvement

The transnational NGOs that have been involved in shaping the norms of the UN Declaration on the Right to Peace comprise SSIHRL, which first launched the international campaign after the national campaign, and more than 500 NGOs that have endorsed the international campaign.

The NGO movement has developed through drafting within civil society, proposing NGO drafts to the UN, and participating in deliberations, apart from the Cuban government-led movement to elaborate the Declaration on the Right of Peoples to Peace of 1984. Such NGOs can be seen as normative entrepreneurs because of their involvement in the deliberations, in which they initially designated the Declaration on the Right to Peace as a human right.

The words and actions of the transnational NGO SSIHRL and others are analyzed using the criteria of Rosert's (2019) norm entrepreneurs in Chapter 3, 2(3) to evaluate their work: (1) problem adoption, (2) issue creation, (3) candidate norm creation, and (4) norm creation at each stage of the norm-making process.

1) Problem Adoption: At this stage, *"a normatively undesirable condition becomes a problem on the agenda of norm entrepreneur."*

Carlos Villán Durán, president of the SSIHRL, pointed out that the global crisis caused by the September 11, 2001, terrorist attacks in the United States and the US-led "War on Terror" had several undesirable effects from a legal perspective. The first is the attempt by the major powers to unilaterally interpret Article 51 of the UN Charter to justify a war of aggression that was unilaterally declared without the approval of the Security Council as an exercise of the right of self-defense. The second is the significant retreat of internationally recognized standards for protecting human rights since 1945, particularly the rights to life, physical, mental, and moral integrity, liberty, and physical security. The third is rearmament: the arms race, nuclear proliferation, and the multiple armed conflicts and terrorist attacks by the Al Qaeda network. The fourth is the increasing impoverishment of the Third and Fourth Worlds in parallel with the intensification of neoliberal economic and financial globalization inspired by the "Washington Consensus"; we are moving away from the "Millennium Development Goals" of 2000 proclaimed at the Summit of the Heads of State and Government. Fifth, the integration and legal application of the "right to solidarity" of individuals and peoples has stalled due to a lack of political will on the part of states; in particular, the "human right to peace" is notably stagnant. Sixth, Spain was the site of demonstrations against terrorism on March 11,

2004, when al-Qaeda-affiliated Islamic fundamentalists attacked Madrid [Villán Durán 2008: 2].

Regarding the conflict with the UN Charter in particular, the United States and NATO, without the consent of the Security Council, used force in Kosovo for purportedly humanitarian reasons and in Iraq to prevent the use of weapons of mass destruction, seriously undermining international peace and security. These developments called into question the effectiveness of the principle of prohibition of the use of force and the principle of non-intervention as stipulated in Article 2 of the UN Charter. Villán Durán pointed out that in order to realize the UN Charter's ideal of peace, peace as a human right must be codified as a legal norm binding states [Villán Durán 2006: 103].

These were the normative circumstances when the campaign for the right to peace began in the early 2000s, as perceived by the SSIHRL.

In its Spanish international campaign, SSIHRL set the challenge of moving peace from its place in the moral order to a legal category of human rights in response to the undesirable status quo of a contradiction between reality and norms [Villán Durán and Falch Pérez 2010: 35]. In the process of norm formation, the SSIHRL presented this challenge as a norm entrepreneur by pointing to the existing status quo, which was undesirable from a normative perspective, and proposing a new norm: the international normalization of peace as a human right. This SSIHRL activity indicates a successful "Problem Adoption" in the first stage of Rosert's (2019) analytical framework.

2) Issue Creation: In this stage *"normative entrepreneurs create issues to engender public mobilization, which should leverage their influence on the norm addressees."*

(1) NGO activities within civil society

The SSIHRL, founded in 2004, promoted national and international campaigns against those events in which the principle of the prohibition of the use of force (Article 2, para. 4) of the UN Charter had been disregarded while appealing for restrictions on the use of force by establishing the right to peace as a human right. Furthermore, by establishing peace as a human right, it aimed to link the national security areas left to sovereign states to the development of international human rights. [Villán Durán and Falch Pérez 2013: 34].

Since 2005, the SSIHRL has held expert meetings in Spain—sponsored by local administrative organizations and universities—with many NGOs, and in October 2006, it prepared the first NGO draft, the Declaration of Luarca on the Right to Peace as a Human Right (hereafter simply the "Luarca Declaration"). In addition, SSIHRL and the other NGOs launched an international campaign with the strategy of (1) disseminating

the Luarca Declaration to gain a large number of supporters and (2) getting the right to peace on the agenda of the Human Rights Council [Fernández Puyana 2010: 61-62].

A committee of 15 legal experts drafted the Luarca Declaration; it consists of a preamble and 19 articles (see Annex for the full text of the Luarca Declaration). Article 1 of the Luarca Declaration defines the right holders of the right to peace as individuals, groups, and peoples. In this case, "group" means an aggregate of individuals and "peoples" means states. The individual and the group are added to the peoples as the state, which was the subject of rights in the UN Declaration of 1984. In this respect, the draft expresses the new concept of "peace as a human right."

Article 3 incorporates the "right to human security." Human security is a policy concept taken up by the United Nations in 1994, as mentioned in Chapter 1, and the Luarca Declaration is an attempt to make it a legal right. The content of the right to human security in the Luarca Declaration is the right to food, clothing, shelter, and education; it includes securing the physical means and the rights necessary for survival, such as employment, trade union rights, and the right to equal treatment. Freedom from fear is not included here and is left to other provisions.

The rights related to freedom from fear are the right to civil disobedience and conscientious objection to military service for the sake of peace (Article 5), the right to resist atrocities (Article 6), and the right to disarmament (Article 11). The right to disarmament is embodied further and consists of three parts: the right of individuals and peoples not to be regarded as enemies, the right to transparent disarmament, and the right to the allocation of resources freed by disarmament for economic and social development; which is a central part of the content of the right to peace that corresponds to freedom from fear.

Other rights essential to the right to peace include the right to a healthy environment (Article 4), the right to protection as a refugee (Article 7), the right to migrate (Article 8), freedom of belief and conscience (Article 9), the right to a remedy (Article 10), the right to development (Article 12), the right to the natural environment (Article 13), the right of the weak (Article 14), and the right to truth (Article 15); these rights are taken up as constituents to the right to peace.

The Luarca Declaration presents an obligation to realize the right to peace as a basic responsibility of states and the United Nations, in particular, to maintain the peace and realize the right to peace (Article 16, paras. 1 and 2). States' unilateral military action without Security Council approval is not permitted, as it is a violation of the purposes and principles of the UN Charter and conflicts with the right to peace (Article 16, para. 5). The Luarca Declaration also proposes the establishment of an independent working

group for the implementation and monitoring of the right to peace (Articles 17-18), which is quite novel, including the establishment of an institution—with the members of this working group to be elected by the UN General Assembly in their individual capacity, the location to be in New York, and the secretariat to be under the UN Secretary-General.

The international dissemination of the Luarca Declaration was carried out by holding international NGO expert meetings in dozens of locations⁹ around the world to add and deepen the Luarca Declaration's national and regional characteristics. Civil activists, UN agencies such as ILO, UNESCO, and UNHCR, and experts such as researchers, university professors, legislators, judges, and lawyers promoted the NGOs' international campaign [Fernández Puyana 2010: 63].

Throughout the international campaign after 2007, the NGO draft was updated in the form of the Bilbao Declaration (February 2010) and the Barcelona Declaration (June 2010), with input from the 2009 UN workshop. Finally, in December 2010, the final version of the NGO declaration, the Santiago Declaration on the Right to Peace as a Human Right, was adopted at the NGO Conference in Santiago de Compostela, Spain (see Annex for the full text of the Santiago Declaration).

The Santiago Declaration is divided into a rights section and an obligations section. The Declaration enumerates the right to freedom of thought and conscience (Article 8), the right to protection as a refugee (Article 9), the right to emigrate (Article 10), the right of victims (Article 11), and the right of the weak (Article 12). The section on obligations presents the realization of the right to peace (Article 13) as an obligation of states and international organizations. It even recommends the establishment of a working group for implementation and monitoring (Articles 14-15), like the Luarca Declaration [Villán Durán and Falch Pérez 2013: 441-460]. Additionally, the "International Monitoring Statute on the Right to Peace as a Human Right" was prepared simultaneously for international monitoring of the Santiago Declaration's implementation [Villán Durán and Falch Pérez 2013: 481-490].

At the NGO meeting in Santiago de Compostela, José Luis Gómez del Prado, President of the Human Rights Council Working Group on the Use of Mercenaries, gave a verbatim explanation of the Santiago Declaration, evaluating it as the only answer to prevent the extinction of humanity from the world [Villán Durán and Falch Pérez 2013: 65]. Professor Theo van Boven of the Netherlands also spoke about the

⁹ The city names are detailed in Fernández Puyana [2010], pages 64-66.

importance of conscientious objection to military service, the right to resist oppression, and the right to disarmament [Villán Durán and Falch Pérez 2013: 67].

Campaigns were conducted worldwide to promote the Santiago Declaration; these included a public event in Geneva in September 2011 featuring musicians, artists, and actors and press conferences with government representatives from Spain and Costa Rica. Rallies were held in Japan (December 2011) on the theme of the right to peace and the Japanese Constitution, which stipulates the non-retention of armed forces, and in Costa Rica (February 2012) and the Costa Rican Constitution, which stipulates the renunciation of standing armies. The Santiago Declaration was also promoted in the media; during the December 2011 campaign in Japan, Villán Durán spoke on the slogan, "If we had the right to peace, we could have stopped the war!" He held rallies in several locations in Japan and promoted the international campaign for the right to peace." Villán Durán increased support for the UN Declaration on the Right to Peace by addressing the masses with these easy-to-understand phrases. In this way, SSIHRL and other NGOs deepened the draft declaration and disseminated it throughout civil society.

(2) NGO activities in the UN

NGOs worked to have the issue incorporated as a meeting agenda item in the UN Human Rights Council while advancing the campaign outside the UN. At the UN, NGOs with consultative status on the UN Economic and Social Council have the right to participate in meetings and express their views orally or in writing, and the Human Rights Council in Geneva holds sessions three times a year, every March, June, and September. The SSIHRL has presented opinions on behalf of NGOs at every session since the fourth session in March 2007, appealing to governments for the existence and content of the Luarca Declaration and emphasizing the importance of the right to peace for realizing all human rights [Fernández Puyana 2010: 67-70]. As an NGO, the SSIHRL also participated in the 2009 UN Experts Workshop, which we describe later.

In order to put the human right to peace on the formal agenda of the UN Human Rights Council, the SSIHRL and other NGOs worked to establish connections with government representatives, and in 2007 they were involved in establishing the Group of Friend States,¹⁰ five countries in favor of the declaration. During Human Rights Council sessions, NGOs are allowed to hold side events, so the SSIHRL and other NGOs held expert meetings. On the UN's International Day of Peace on September 21, 2012, they

¹⁰ Senegal, Djibouti, Bolivia, Ecuador, and Malaysia.

organized an event with over 100 participants, inviting government representatives, UN agencies, and NGOs to promote the agencies to disseminate the Santiago Declaration.

Thus, it can be said that the SSIHRL and other NGOs succeeded in moving a UN Declaration on the Right to Peace a public one, both inside and outside the UN, through the media—"creating issues" as norm entrepreneurs. The next stage is the creation of a draft norm—a draft UN Declaration—which will be analyzed again after the analysis of the deliberations at the UN Human Rights Council, since it also concerns the content of the deliberations at the UN.

(B) Deliberations of the UN Human Rights Council

Table 2: Deliberations of the UN Human Rights Council

| | February | March | April | June | July | August | September | December |
|-------------|-------------------------------------|-------|------------------------------|---|------|--|-----------|--------------------|
| 2008 | | HRC7 | | HRC8: Resolution to Promote the Right to Peace | | AC1 | HRC9 | |
| 2009 | AC2 | HRC10 | | HRC11: Resolution to Promote the Right to Peace | | AC3 | HRC12 | Expert Workshop |
| 2010 | AC4 | HRC13 | | HRC14: Resolution to Promote the Right to Peace; HRC requests AC to issue a progress report | | AC5: Establish a drafting committee for draft declaration | HRC15 | |
| 2011 | AC6: Draft Progress Report | HRC16 | AC: Advisory Committee | HRC17: Request to submit a draft to the Advisory Committee | | AC7: Advisory Committee | HRC18 | |

| | February | March | April | June | July | August | September | December |
|-------------|-----------------------------|-------|---|--|-------|-----------------------|------------------------------------|--|
| | Discussed | | prepares progress report | | | Discussed First Draft | | |
| 2012 | AC8: Final Discussion by AC | HRC19 | AC: Advisory Committee Draft Submitted to HRC | HRC20: Resolution to establish an inter-governmental working group | | AC9 | HRC21 | |
| 2013 | AC IGWG1 | HRC22 | | HRC23 | | AC | HRC24 | |
| 2014 | AC10 | HRC25 | | HRC26 | IGWG2 | AC11 | HRC27: to hold 3rd session of IGWG | |
| 2015 | AC12 | HRC28 | IGWG3 April 20-24 | HRC29 | | AC13 | HRC30 | |
| 2016 | AC-14 | HRC31 | | HRC32: Human Rights Council adopted the draft UN Declaration | | | | Adopted by the UN General Assembly in December |

Note. AC = Advisory Committee; HRC = Human Rights Council; IGWG = Inter-governmental Working Group. Numbers represent session numbers. Author's table.

(C) 2009 UN Expert Workshop

The UN Human Rights Council was established in 2006, succeeding its predecessor, the Commission on Human Rights. The bodies and meetings involved in the deliberation of the UN Declaration on the Right to Peace all include the Human

Rights Council, in which the 47 member states have voting rights; the Advisory Committee, which is responsible for making the draft; and the Intergovernmental Working Group, in which government representatives negotiate and finalize a draft declaration.

The Human Rights Council has adopted resolutions (8/9, 11/4, 14/3) promoting the international codification of the right to peace every year since 2008 with a majority vote. 14 countries, including Cuba proposed Human Rights Council Resolution 8/9 of June 2008.¹¹ While affirming the 1984 Declaration on the Right of Peoples to Peace, the resolution called for the United Nations High Commissioner for Human Rights (UNHCHR) to hold an expert workshop to clarify the content and scope of the right to peace. Thirteen countries proposed the subsequent Human Rights Council Resolution 11/4 (June 2009),¹² including Cuba, and contained almost the same content. The emphases in Human Rights Council Resolutions 8/9 and 11/4 were as follows:

- To follow the past resolutions of the UN General Assembly and the Commission on Human Rights.
- To take note of the 1984 Declaration and UN Millennium Declaration.
- To affirm international cooperation to promote human rights (UN Charter Article 1.3).
- To declare that the UN World Summit Conference (2005) confirmed the inseparability of the three pillars of the UN (peace and security, development, and human rights).
- To confirm entitlement to the social and international order (Universal Declaration of Human Rights [1948], Article 28).
- To highlight the Declaration of Principles of Friendly Relationship (1970).
- To confirm that peace is an indispensable precondition for guaranteeing all other human rights.

Resolutions 8/9 and 11/4 reaffirmed the UN Charter and past international agreements on peace and security. They emphasized international human rights law rather than the relationship between states with an eye to deliberations at the Human

¹¹ These countries were Algeria, Angola, Belarus, Bolivia, China, Cuba, Honduras, Kenya, Nicaragua, Nigeria, Panama, Sudan, Uruguay, and Venezuela.

¹² Algeria, Belarus, Bolivia, China, Cuba, Honduras, Nicaragua, Nigeria, Panama, Sri Lanka, Uruguay, Venezuela, Viet Nam.

Rights Council, unlike the 1984 Declaration [Guillermet and Fernández 2017: 126-127]. They incorporate many elements of individual human rights, such as the emphasis on Article 1.3 of the UN Charter, which aims at international cooperation to promote human rights and states that peace is an essential precondition for guaranteeing all other human rights. However, the human rights mentioned in these resolutions are general human rights other than the right to peace, and they do not go so far as to make peace the content of human rights. Villán Durán of the SSIHRL presented during the deliberation of Human Rights Council Resolution 8/9 in 2008, emphasizing the individual aspect of the right to peace, but the resolution proponents rejected it. However, the subsequent resolution 11/4 in 2009 emphasized the individual aspect, introduced in paragraphs 15, 17, and 19 of the exact resolution, among others [Villán Durán 2010].

Based on Human Rights Council Resolutions 8/9 and 11/4, a workshop was held at the UN Human Rights Council on December 15 and 16, 2009, where experts gave their opinions on the content and scope of the right to peace.¹³ The following paragraphs outline the prominent opinions featured in the UN Office of the High Commissioner for Human Rights' [2010] "Report of the Office of the High Commissioner on the Outcome of the Expert Workshop on the Right of Peoples to Peace" (A/HRC/14/38).

Vera Gowlland-Debbas, professor of international development, said that the right to peace is not yet in the human rights framework, but the development of the right to peace depends on how we think about the link between human rights and humanitarian law on the one hand, and the Charter and the law on the use of force, disarmament, and arms control on the other [A/HRC/14/38, para. 9]. However, Gowlland-Debbas said, the meaning of "peoples" as the subjects of the right to

¹³ A list of experts participating in the workshop include Antônio Augusto Cançado Trindade, Judge, International Court of Justice; Fatimata-Binta Victoire Dah, Chairperson, Committee on the Elimination of Racial Discrimination; Laurent Goetschel, Director, Swisspeace; Vera Gowlland-Debbas, honorary professor, Graduate Institute of International and Development Studies; Jarmo Sareva, Deputy Secretary-General, Conference on Disarmament; William Schabas, Director, Irish Centre for Human Rights, National University of Ireland, Galway; Thierry Tardy, faculty member, Geneva Centre for Security Policy; Luis Tiburcio, United Nations Educational, Scientific and Cultural Organization representative in Geneva; Mario Yutzis, former Chairperson of the Committee on the Elimination of Racial Discrimination; and Alfred de Zayas, professor, Geneva School of Diplomacy and International Relations.

peace is not yet clear, and it is not clear whether the subjects of the obligation are also states, collective states through the UN, or the international community as a whole [A/HRC/14/38, para. 10]. The relationship between peace and human rights is recognized as interrelated, as seen in the Preamble to the Covenant on Civil and Political Rights and the Principles of Friendship and Cooperation among States. Although the right to peace has not yet been recognized as a right of a plaintiff with regard to judicial decision compatibility and remedies, the International Court of Justice has addressed the issue of armed conflict in terms of the rights and obligations of states as well as the rights of individuals [A/HRC/14/38, para. 13].

Jarmo Sareva, Deputy Executive Director of the UN Conference on Disarmament Affairs, noted that the right to peace is unclear or does not conflict with a state's right to self-defense, may become inconsistent with the right to self-defense, and is not consistent with military action under Chapter 7 of the Security Council [A/HRC/14/38, para. 22]. However, clarifying the right to peace and promoting and realizing it may create opportunities for disarmament. For example, states are responsible for protecting people and civilians, even during armed conflict, and arms restrictions are increasingly applied to civilians and combatants alike, becoming customary international law and international humanitarian law [A/HRC/14/38, para. 23]. It is necessary, Sareva stated, to clarify the content and scope of the right to peace from the perspective of disarmament and to consider the content and scope of the incompatible rights of peace, self-defense, and collective security obligations [A/HRC/14/38, para. 24].

Mario Yutzis, former Chairperson of the Committee on the Elimination of Racial Discrimination, said that the close relationship between the right to solidarity and human rights had been recognized in the Universal Declaration of Human Rights and the Inter-American Declaration of Human Rights. The Vienna Declaration and Programme of Action also recognized the right to development. The close relationship between peace and the value of life is recognized in the existence of the right to peace of peoples and individuals. The Commission on Human Rights also recognizes the right to life, the prevention of war, and the prohibition of incitement to war. Yutzis stated that peace is inalienable; it is both a collective right of peoples and nations and an individual right affecting each person [A/HRC/14/38, paras. 26-29].

Judge Antônio Cançado Trindade of the International Court of Justice said that the foundations supporting the Right of Peoples to Peace are expressed in the Declaration on the Right to Development (1986). In the discussions during the

process of preparing UNESCO's Declaration on the Right to Peace as a Human Right (1997), the right to peace was divided into three categories: a human right, a moral right, and an aspirational right—but the right of peoples to peace has not yet achieved the same significant results as seen with the Declaration on the Right to Development. The preamble to the UN Charter, which states that peoples are determined to save themselves from the scourge of war and to live in peace with each other for that purpose, already reads in the right of peoples. Cançado Trindade questioned “why it took so long?” for the Right of Peoples to Peace (1984) to be taken up by the Human Rights Council. It took so long because the emphasis has been on viewing restrictions against war in terms of interstate relations, while overlooking domestic peace and non-state actors. The Inter-American Court of Human Rights has recognized the rights of peoples as the right of indigenous communities to their ancestral lands and as the right to redress damage caused by genocide against whole communities. The right of peoples to live in peace has also been asserted and recognized by the International Court of Justice, which has advocated for further consideration of the relationship between the right of peoples to peace and other peoples' rights [A/HRC/14/38, paras. 31-38].

William Schabas, Director of the Irish Center for Human Rights, said that although the right to peace is not explicitly mentioned in international instruments, the preamble to the Universal Declaration of Human Rights provides for four freedoms, and one of them—“freedom from fear”—is an expression of the Right of Peoples to Peace. The International Court of Justice's advisory opinion on the use of nuclear weapons says that international human rights apply during armed conflict, and the European Court of Human Rights also uses human rights norms during armed conflict. International human rights, however, do not only apply during armed conflict; they relate to the causes of armed conflict and whether the use of force is lawful. The Commission on Human Rights also mentions the relationship between the prohibition of war and the right to life in its General Comments No. 6 and No. 14 [A/HRC/14/38, paras. 39-43]. Moreover, Schabas said now is the time to clarify the legal character of the right to peace as a human right, and academic research from a human rights perspective will help the Human Rights Council find the proper place for the right to peace within international law [A/HRC/14/38, para. 52].

Fatimata-Binta Victoire Dah, chair of the Committee on the Elimination of Racial Discrimination, said Latin American countries were pursuing the concept of

people's right in the context of the African Charter on Human and Peoples' Rights and the Declaration of the Rights of Indigenous Peoples [A/HRC/14/38, para. 46].

Experts raised several important points during the workshop:

- The right to peace is already read in the UN Charter.
- The international community is gradually recognizing the right to peace as a human right, and we are currently in a transitional period.
- The right of states to self-defense and UN military action are inconsistent with the right to peace, and the content and scope of the right to peace must be defined.
- The right to peace as an individual human right has already been emphasized, but its legal nature and content have not yet been defined.

Subsequent deliberations on the right to peace at the Human Rights Council show that these issues were pursued.

(D) Deliberation and Drafting in the Advisory Committee of the Human Rights Council

The mandate of the Advisory Committee, a UN Human Rights Council think tank, is to conduct research and advise the Human Rights Council at the Council's request; it comprises 18 experts in their personal capacities, including legal experts. The Committee meets twice a year. At its 14th session in June 2010, the Human Rights Council adopted a resolution by a majority vote to request the Advisory Committee to prepare a draft UN Declaration on the right of peoples to peace (A/HRC/14/3). The resolution emphasized the following points: the existence of UN General Assembly resolution 53/25 (1998) of the Decade for a Culture of Peace and the Declaration and Programme of Action for a Culture of Peace (1999); the importance of peace for the guarantee of all human rights; the recognition of the role that civil society has played in promoting and codifying the right to peace; and the fact that Article 1, paragraph 3 of the UN Charter emphasizes international cooperation for the promotion of human rights. Table 3 shows an overview of the Advisory Committee's timeline in addressing the Human Rights Council's 2010 resolution.

Table 3: Advisory Committee activities (2010-2012)

| |
|---|
| June 2010: Human Rights Council resolution requests the Advisory Committee to prepare a draft of the UN Declaration on the right of peoples to peace (A/HRC/14/3) |
| December 2010: Advisory Committee submits a draft of the progress report (A/HRC/AC/6/CRP.3) |
| January 2011: Advisory Committee discusses it at the 6th session |
| April 2011: Advisory Committee submits a progress report (A/HRC/17/39), proposing 40 criteria |
| April 17, 2011: Advisory Committee surveys from government and NGOs (A/RES/17/6) |
| June 2011: Human Rights Council reiterates urging responses to questionnaire survey. |
| July 19, 2011: First Draft of Advisory Committee Released |
| August 7, 2011: Workshop between Advisory Committee and NGO |
| August 2011: Discussion on the first draft of Advisory Committee at the 7th session |
| February 2012: Final discussion on the draft of Advisory Committee at its 8th session |
| April 2012: Advisory Committee Draft (A/HRC/20/31) was submitted to the 20th session of the Human Rights Council |

Note. Author's table.

In keeping with this Human Rights Council resolution, the sixth session of the Advisory Committee in January 2011 discussed a draft of the progress report (A/HRC/AC/6/CRP.3, December 22, 2010) that the Committee was scheduled to submit. The drafting committee within the Advisory Committee proposed nine aspects as a framework: (1) peace as a right; (2) disarmament; (3) human security and respect for the environment; (4) resistance to oppression; (5) conscientious objection; (6) private military companies; (7) education; (8) development; and (9) protection of vulnerable groups, and monitoring of state obligations and implementation.

The Advisory Committee's discussion on this progress report draft in January 2011 was open to government representatives of all countries and not just Advisory Committee

members. In the discussion, the US government representative argued that the issue should not be discussed in the Human Rights Council in the first place since other UN bodies, such as the Security Council, are tasked with addressing international peace and security. In contrast, Cuba, the draft's proponent, stated that given the increasing number of wars (e.g., the war on terror), it was necessary to establish a new human rights mechanism to guarantee the right to live in peace and furthermore, the right to peace has two aspects: individual and collective [Villán Durán and Falch Pérez 2013, 219-225].

Following these discussions, the Advisory Committee prepared a progress report [“Progress Report of the Human Rights Council Advisory Committee on the Right of Peoples to Peace, A/HRC/17/39] in April 2011 and submitted it to the Human Rights Council. This progress report proposed standards for each article in preparing the Advisory Committee's draft declaration; initially, the following topics were first proposed as core dimensions, and specific standards followed under topics: A. International Peace and Security, B. Disarmament, C. Human Security, D. Resistance to Oppression, E. Peacekeeping Operations, F. Conscientious Objection to Military Service and Freedom of Religion or Belief, and G. Private Military and Security Companies. These core topics were related to peace and the military, linked to freedom from fear. The standards for other elements not directly linked to freedom from fear were grouped into the following topics: A. Peace Education; B. Development; C. Environment, in particular climate change; and D. victims and vulnerable groups, as well as state obligations, monitoring and enforcement. The draft declaration proposed more than 40 specific standards (see Annex).

The two rights featured in the progress report are individual and peoples' rights [Van Boven 2012: 144-146]. In the general section, the report uses the word “people” in “The peoples of our planet have a human right to peace,” meaning the subject of peoples' rights; at the same time, it uses the phrase “human right to peace,” meaning the individual right to peace as a human right (A/HRC/17/39, “B. Disarmament,” p. 6). However, in the section on the right to disarmament, the phrase “All peoples and individuals” is invoked (A/HRC/17/39, “B. Disarmament,” p. 8), clearly stating that not only peoples but also individuals are the subjects of the right. Although there is inconsistency in the usage of the words, the rights of peoples and individuals are mentioned; it is noteworthy that the content of the NGOs’ Santiago Declaration also contained references to individuals, groups, and peoples as the subject of the right and influenced the standard setting of the Advisory Committee draft.

The Advisory Committee draft also took up Johan Galtung's theory of peace and incorporated the concepts of structural violence and positive peace, which were not

limited to a narrowly defined issue of war. In the Advisory Committee draft, "Article 2: Human Security," these two concepts are referred to in the article's wording.

In addition, the Progress Report [2011, A/HRC/17/39] provided information on the following theoretical issues: the distinction between negative and positive peace; the expert opinions from participants at the 2009 workshop on the relationship between individual and collective rights; the fact that collective rights are recognized in other some collective rights (e.g., right to development, indigenous peoples' rights); the relationship between the right to peace and the right to solidarity; the relationship between the right to peace and human security; UNESCO's cultural concept of peace, and the NGOs' introduction of the Asian Human Rights Charter (1998), which stated that the subject matter of the Charter is "All persons have the right to live in peace" and designated individuals or groups as the right holder.

The Advisory Committee submitted this progress report to the Human Rights Council in April 2011, simultaneously surveying governments and NGOs about the report's content to gather their views. The Human Rights Council's resolution mandating the preparation of a draft declaration included the voices of civil society as well (A/HRC/RES/14/3, para. 15).

At the seventh session of the Advisory Committee in August 2011, their First Draft (A/HRC/AC/7/3), submitted on July 19, 2011, came up for discussion. The drafting committee and rapporteur of the Advisory Committee, Professor Wolfgang S. Heinz, reported on the first draft of the Advisory Committee and said that unlike the 1984 Declaration on the Right of Peoples to Peace, it incorporated not only the rights of the collective aspect but the rights of the individual one as well. The deliberations during this session of the Advisory Committee adopted a unique debate format in which governments and NGOs took turns speaking, and as a result of this format, the NGOs' comments were respected—most of the UN meeting debate order, the government the first, NGO the second.¹⁴

Mr. Heinz explained that the First Draft was an expression of the political will of the Human Rights Council since it was intended to be a draft declaration, not a draft treaty and that it was up to each country to develop the declaration into a treaty. He also stated that the first draft featured the use of the words "right of peoples to peace," "peoples and individual rights," and "individual rights" to emphasize individual rights, which better reflected today's situation compared to that underlying the 1984

¹⁴ The following remarks are based on the minutes of the meeting and the author's transcript and notes.

Declaration. For example, Article 1 of the first draft reads, "Peoples and individuals have a human right to peace." Peoples and individuals are listed together and the phrase "human right" is used; this phrasing was not used in the 1984 Declaration. In Article 2, paragraph 1, "Everyone has the right to human security," and in Article 2, paragraph 2, "All individuals have the right to live in peace. " On the other hand, in Article 3, paragraph 2, the right to disarmament is referred to using the phrase "All peoples and individuals have a right to live in a world free of weapons of mass destruction," so it appears that the rights of individuals and peoples are used differently depending on the content of the right.

Regarding the monitoring mechanism under Article 14 of the First Draft, Mr. Heinz reported on a proposal for a body that would observe the implementation of the right to peace after its approval by the UN General Assembly. Although an Advisory Committee member, Sufi from Pakistan, opposed the establishment of a monitoring mechanism because it would duplicate the authority of the existing Disarmament Conference and the International Atomic Energy Agency, the majority of Advisory Committee members were in favor of some form of monitoring mechanism (either its own monitoring body or one sponsored by the Human Rights Council through the Universal Periodic Review or other special procedures).

There was criticism from the international community about the use of force by governments against peaceful Arab Spring protesters in Egypt and other Arab countries; an Advisory Committee member, Sakamoto from Japan, responded that it was commendable that the First Draft provided for the right of resistance against oppressive governments in Article 7, Paragraph 1. A representative of the Working Group on the Use of Mercenaries attended this meeting and stated an opinion in favor of the clause in Article 6 of Draft 1 prohibiting the outsourcing of military affairs, given the phenomenon of privatization of wars in Afghanistan and Iraq. As for the right of conscientious objection to military service, an Advisory Committee member, Kartashkin from Russia, offered an opinion in favor of the First Draft that this right should be recognized and lead to a reduction in the number of soldiers in the armed forces. The representative of Bolivia emphasized that his country is a peaceful country with a culture of peace, the right to peace, and cooperation with other countries in its Constitution, and suggested that the rights of indigenous peoples should be specified as one of the contents of Article 12 of the First Draft, which established the rights of vulnerable groups.

The US government stated at this conference that it opposed recognizing the right to peace itself and told NGOs that it would be better to achieve peace objectives through existing mechanisms.

The participating NGO, Carlos Villán Durán of SSIHRL, speaking on behalf of 778 civil society organizations, argued that “human rights to peace” was used in Articles 1 and 14 but that “human right to peace” should be used as a whole. Regarding the monitoring mechanism in Article 14 of the First Draft, he argued that the UN General Assembly should establish a working group on the right to peace, as stated in Article 15 of the Santiago Declaration. The Japanese NGO, the Japanese Workers’ Committee for Human Rights, introduced Japanese court decisions recognizing the right to live in peace in 2008 and 2009. The International Association of Democratic Lawyers argued that the gradual abolition of foreign military bases under Article 7, paragraph 1 of the Santiago Declaration should be added to the right to disarmament under Article 3. Cuba suggested that Article 2, paragraph 3, which contains a corresponding right to the responsibility to protect (“Everyone has the right to be protected from genocide and war crimes...”), should be deleted because the responsibility to protect has been used as a basis for military action and because no concrete agreement had been reached on the matter. The Advisory Committee suggested that the clause should be deleted.

The Advisory Committee members and the governments in favor were positive toward the First Draft, with some differences of opinion only over the monitoring mechanism. The government of the United States, an opponent of the proposal, participated in the discussion and moved from talking about the discussion forum issue toward expressing opposition to the proposal's content.

Opinions among governments and NGOs were distributed among those in favor, those opposed, and NGOs, as discussed by the Advisory Committee. The majority of governments were in favor of the proposal, with Latin American countries (especially Cuba), Asia (excluding Japan and South Korea), and Africa in favor; North America (the United States and Canada), Europe (the European Union), Japan, and South Korea were in opposition. Among those in favor, Cuba and Latin American countries were firmly united; the CELAC countries¹⁵ occasionally co-sponsored proposals. Opposing countries, such as the Western European countries (the EU, North America, and Australia) and Japan and South Korea, were military allies with the United States concerning peace and security. Among the permanent members of the Security Council, Russia and China were

¹⁵ CELAC (La Comunidad de Estados Latinoamericanos y Caribeños) is a regional organization of more than two-thirds of the countries of Latin America and the Caribbean.

in favor; they conflicted with these Western European opponents. The structure of these conflicts has been almost the same since the time of the 1978 and 1984 Declarations—but unlike the North-South conflict between developed and developing countries in the UN Declaration on the Right to Development, the difference in the case of the right to peace is that China and Russia are on the side of the countries in favor, since it was the Eastern countries that led the UN declarations in the 1970s and 1980s.

Following these deliberations, the Advisory Committee prepared a draft (A/HRC/20/31) in April 2012. It is a detailed draft consisting of 14 articles covering principles (Article 1), the right to human security (Article 2), the right to disarmament (Article 3), the right to peaceful education (Article 4), the right to conscientious objection to military service (Article 5), restrictions on private military companies (Article 6), the right to resist oppression (Article 7), restrictions on human rights violations in peacekeeping operations (Article 8), the right to development (Article 9), the right to the environment (Article 10), the right of victims for redress (Article 11), the right for refugees and migrants (Article 12), provisions on the implementation of obligations (Article 13), and a final article (Article 14).

At the start of the Intergovernmental Working Group discussion in 2013, the Advisory Committee proposed specific articles from an expert's perspective that would clarify the topics for discussion, and the drafting committee of the Advisory Committee explained its draft during the opening of the first Intergovernmental Working Group meeting. The Advisory Committee had also interacted with NGOs through informal consultations since the drafting stage (e.g., at its August 7, 2011 meeting in Geneva). Although the Advisory Committee is a UN body with a mandate based on a Human Rights Council resolution, it was also an actor that functioned toward establishing the UN Declaration on the Right to Peace.

At the same time, the Advisory Committee served as a coordinating body for disputed views: for instance, the collective rights claimed by countries in favor of following the 1984 Right of Peoples to Peace and the individual rights of Western countries, denying the collective aspect of the right, were addressed together in the draft of the Advisory Committee. Mr. Heinz's aforementioned report that "unlike the 1984 Declaration on the Right of Peoples to Peace, which incorporated not only the collective aspect of rights but also the individual aspect of rights," was likely due in large part to the influence of NGOs, which have been communicating human right to peace since the Santiago Declaration. Heinz also attended the 2010 NGO conference in Santiago de Compostela when the NGO Santiago Declaration was created; there, he stated that "collective rights do not exclude individual rights" [Villán Duran and Falch Pérez 2013: 97]. In the deliberations of

the Intergovernmental Working Group since 2013, there was no agreement on whether or not to recognize the collective right to peace. However, in terms of individual rights, there was no significant conflict between the views of the proponents and opponents. One of the factors that led the opposing countries to agree on the individual rights aspect was that the Advisory Committee was able to play a coordinating role in its Draft by writing both rights together.

On April 16, 2012, the Advisory Committee proposed the draft declaration of the Advisory Committee (A/HRC/20/31) to the Human Rights Council; this draft declaration consisted of 14 articles (see Annex for full text).

(E) Deliberations in the Intergovernmental Working Group of the Human Rights Council

Table 4: Flow of Intergovernmental Working Groups *Note.* Author's table.

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|--|
| April 2012: Draft Declaration by Advisory Committee |
| July 2012: Human Rights Council resolution (20/15) establishing an intergovernmental working group |
| February 2013: First session of the Intergovernmental Working Group of the Human Rights Council |
| July 2014: Second session of the Intergovernmental Working Group of the Human Rights Council |
| April 2015: Third session of the Intergovernmental Working Group of the Human Rights Council |
| July 2016: Human Rights Council adopted the draft UN Declaration on the Right to Peace |
| December 19, 2016: UN General Assembly adopts the UN Declaration on the Right to Peace |

① Deliberation Method of the Intergovernmental Working Group and the Role of the Chairpersons of the Working Group

Based on the Human Rights Council Resolutions 8/9 and 11/4, the Human Rights Council proceeded to hold the 2009 expert workshop. Moreover, according to the Human Rights Council Resolution 14/3, it mandated the Advisory Committee to prepare a draft Declaration. Since these are procedural matters, the Human Rights Council could proceed with these resolutions by majority vote. However, since a UN Declaration is a norm that should be universally applicable to all States, the Council

carefully considered the procedures and methods of deliberation so that as many countries as possible would agree to the final declaration. On July 5, 2012, the Human Rights Council resolved to establish an intergovernmental working group to progressively negotiate a draft UN Declaration on the Right to Peace based on the Advisory Committee's draft, without prejudging relevant past, present, and future views and proposals (A/HRC/RES/20/15, 34 in favor, 1 against [United States], 12 abstentions). The phrase "without prejudging relevant past, present and future views and proposals" in the resolution indicated the Human Rights Council's intention that the Intergovernmental Working Group should deliberate without being bound by past Advisory Committee drafts adopted by majority vote since there was a risk that opposing countries might not participate in deliberations if the majority opinion was pushed through by majority vote within the Intergovernmental Working Group.

The Working Group Chairperson, who facilitated the deliberations, also took care of the method of deliberation: at the beginning of the Working Group's first meeting in February 2013, the Chairperson announced the adoption of a consensus method of deliberation. All participating countries agreed to this method, which aims for consensus instead of majority.

As mentioned in Chapter 4,2(1)(B), the consensus method of deliberation does not make deliberations proceed even when a majority of countries are in favor; because it aims for consensus, opposing countries are incentivized by the opportunity to have their opinions reflected in the content of the agreement. Regarding the depth of discussion, since the consensus method makes it easier to place opinions in the agreement content—which acts like a veto—opposing countries can readily express their opposition without hesitation. Although the US government representatives had opposed deliberations at the Human Rights Council itself and could opt not to participate in the deliberations, this consensus approach led them to participate in the deliberations of the Intergovernmental Working Group and then led them to express their opposition.

At the beginning of the Working Group's first session, there was a procedure to elect the Group's Chairperson: Mr. Christian Guillermet Fernández of Costa Rica was elected by acclamation as the Chairperson and Rapporteur. Since there were no opposing candidates, it can be assumed that both proponents and opposing countries had agreed in advance. As Chairperson, Mr. Guillermet Fernández then presented the deliberation policy, which consisted of four elements: Transparency, Inclusivity, Consensuality, and Objectivity (which he self-described as the TICO Approach). All participating governments agreed upon this policy. Guillermet Fernández then chaired the Working Group through its third session. Since the Working Group was also mandated to report

the results of the Working Group to the Human Rights Council, Mr. Guillermet Fernández's official title was "Chairperson-Rapporteur."

The Working Group Chairperson was in a position to reconcile disputed points as well as to lead the deliberations over the UN Declaration on the Right to Peace, to actively negotiate a draft of the UN Declaration based on the Advisory Committee's draft but without being bound by past views, and actively help achieve consensus by proposing a draft of his own.

② Proposal of the Chairperson of the Working Group and Comments For and Against the Chairperson's Proposal

Table 5: Three Proposals Proposed by Working Group Chairperson

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|---|--|
| ① | Working Group Session 1 Advisory Committee Draft |
| ② | Working Group Session 2 Working Group Chairperson's Draft 1 |
| ③ | Working Group Session 3 Working Group Chairperson's Draft 2 |

Note. Author's table.

The Chairperson of the Working Group sought consensus agreement by submitting to the Working Group the Advisory Committee Draft and a draft prepared by the Chairperson during the three sessions of the Working Group from 2013 to 2015. During the first session of the Working Group, the Council deliberated based on the Advisory Committee Draft following Human Rights Council resolution A/HRC/RES/20/15. Since the Advisory Committee draft covered a number of specific rights, the opposing countries needed to be more aggressive in arguing their reasons for opposition within the major orientation of the deliberations. At the second session of the Working Group, the Chairperson proposed Chairperson's Draft 1, which was based on the wording of the extant Article 6 of the International Covenant on Civil and Political Rights—"right to life"—instead of using the "right to peace" phrasing used in Article 1 of the Advisory Committee's draft that defined the nature of rights. Unlike the draft discussed in the Working Group's first session, the Chairperson's Draft 1 intended to make Right to Peace proponents actively advocate that the right to peace should be established. At the third session of the Intergovernmental Working Group, the Chairperson's Draft 2 proposed replacing the word "right" with the words "be entitled" from Article 1, and incorporating the phrase "enjoy peace" from the phrase used in the

ASEAN Human Rights Declaration (2012). Proponents and opponents alike could barely agree on this intermediate proposal.

In addition, outside of the Working Group sessions, the Chairperson also held informal intergovernmental consultations and consultations with NGOs to coordinate their views.

The Chairperson of the Working Group focused the discussion within group sessions and proceeded to deliberate proposals that were difficult for opposing countries to agree to or insufficient for supporting countries; from time to time, the Chairperson also led considerations of the contents of their proposals after observing the situation through informal consultations and other means. This method is consistent with the constructivist view that national interests are intersubjective and not fixed. In practice, the Chairperson also explored the trends of government representatives who changed their national interests and positions based on the discussions of participating countries.

③ Working Group Chairperson and NGOs

The Chairperson established a forum for consultations with governments and NGOs, and held consultations with NGOs during the Working Group's second session (July 2, 2014). At the consultations with NGOs, the Chairperson explained his view on the Chairperson's Draft 1 and expressed the wish for NGOs dissatisfied with the draft to make their views known: "I hope that NGOs will speak up to the end as NGOs even though the opposing country's position may not change."¹⁶

④ The outcome of the deliberation due to conflicting opinions

The Chairperson of the Intergovernmental Working Group aimed for a consensus agreement on the content of the Declaration, so he coordinated opinions to reach a consensus by offering the Advisory Committee proposal close to those in favor; the Chairperson's Draft 1 that appealed to the opposed countries, and the intermediate Chairperson's Draft 2. The controversy over Article 1, the subject of much dispute, was tabled to avoid a decisive breakdown, and priority was given to identifying points on which there was agreement. The Working Group avoided in-depth discussions of contentious issues (e.g., the right to seek protection and conscientious objection to military service) to not devote too much time to them. In the Working Group's third session, significant time was allocated to the discussion of the preamble in order to

¹⁶ According to the author's notes from his participation.

devote more attention to reaffirming existing norms. Ultimately, no consensus was reached on the recognition of the right to peace, and although the Working Group did not reach a consensus on the content of Article 1 as a right, the Chairperson's draft report to the Human Rights Council included the "right to peace" as an individual right. His action was a positive proposal in terms of the Human Rights Council's mandate to negotiate progressively.

The draft UN Declaration adopted by the Human Rights Council in July 2016 was reduced from 14 articles in the original Advisory Committee draft to just five articles after the Intergovernmental Working Group discussions. The Declaration on the Right to Peace adopted afterward by the UN General Assembly had almost the same text as the declaration adopted by the Human Rights Council; the only difference between the two is that the phrase "security is maintained" in Article 1 was deleted from the latter.

After receiving the Working Group Chairperson's report to the Human Rights Council, the Cuban government, the lead proponent of the declaration, proposed that the Human Rights Council adopt it by vote without waiting for the Working Group's fourth session. In Cuba's judgment, reaching a consensus with the opposing governments was impossible after four or more sessions of the Working Group; they probably decided that they had exhausted their arguments. This move avoided engaging widely conflicting issues, such as the right to peace as a collective right, the right to disarmament, and the right to conscientious objection to military service and left an article as abstract as possible for adoption by the Human Rights Council—one with the possibility of consensus. In the following sections, the deliberations of the Working Group at each session are analyzed in terms of the content of the right to peace.

(F) Working Group I (February 18-21, 2013)

The main disagreement in this session's deliberation was over whether participating representatives recognized the creation of a new right, the right to peace. In the first session of the Working Group, the Advisory Committee Draft was proposed as the basis for discussion. In response, opposing countries (North America, Europe, Japan, and South Korea) argued for the deletion of the word "right" and expressed opposition to the Advisory Committee Draft itself, claiming that current international law does not allow the creation of such a right. The following is a discussion of Article 1 and its related articles and preamble, which were the subject of much controversy.

According to the UN report of the first session (A/HRC/WC.13/1/2), the main issues at the first session were as follows (You can see the full text in the Annex):

A) General Opinion.

At the beginning of the deliberations, government representatives and NGOs expressed general comments on the Advisory Committee draft. There, they observed a number of contentious points:

- ① Is the right to peace widely agreed upon by the 1984 Declaration?
- ② Is there an agreement to negotiate the UN Declaration itself?
- ③ Is the right to peace recognized under international law?
- ④ Is peace a human right or a goal to be achieved by realizing existing human rights?
- ⑤ Is dealing with terrorism an essential element of the right to peace?
- ⑥ Is the right to peace an individual or collective right?
- ⑦ Should it be in line with Article 51 of the UN Charter?
- ⑧ Should the Working Group address the issues that are not currently unanimous or are vague, such as the responsibility to protect human security and refusal to serve in the military?
- ⑨ Should the Working Group discuss “the right to live in a world free of weapons of mass destruction,” “the right to comprehensive peace and human rights education,” or “the right to a safe, clean and peaceful environment,” which lack clarity?
- ⑩ Should the Working Group address the principles and rights already addressed in other existing systems and legal processes (the negotiations at the Conference on Disarmament and the Arms Trade Treaty, the Working Group on the Right to Development, UNESCO, UN High Commissioner for Refugees, UN Framework Convention on Climate Change, etc.)?
- ⑪ Does the Working Group recognize the importance of positive and negative peace, cultures of peace, and peace education?

B) Preamble.

Many participants appreciated the Advisory Committee’s preamble, but some stated that the Working Group should reaffirm the Right of Peoples to Peace, and some asserted freedom from terrorism. Not much over the preamble was discussed in the first session. Most participants were interested in the operation part.

C) Principles (Article 1).

- ① Should national sovereignty, territorial sovereignty, and non-intervention principles be clearly stated?

- ② Should the right to peace be extended to an individual right, or is it ambiguous if it is extended?
- ③ Are states and international organizations also subject to rights?
- ④ Is the right to peace one established human right or merely a reflection of other rights?
- ⑤ Is the Security Council responsible for security and peacekeeping?
- ⑥ Wouldn't the right to peace reduce the value of the Charter, which legally allows the use of force under certain conditions?

D) Human Security (Article 2).

- ① There is no universal definition of human security.
- ② Paragraphs 1 (human security), 2 (right to live in peace), and 7 (abolition of structural violence) are recognized.
- ③ The impact of terrorism on the right to peace and human security should be considered.
- ④ The fight against terrorism and the legitimate exceptions to Article 51 of the Charter should be mentioned.
- ⑤ Emphasize the importance of sovereignty and state integrity
- ⑥ Emphasize the civil character of peacekeeping operations
- ⑦ Emphasize the nonviolent nature of the right of resistance
- ⑧ Both individuals and peoples have the right to peace, but Article 2 focuses on the individual aspect.

E) The Right to Disarmament (Article 3).

- ① The Human Rights Council is not the appropriate forum for discussing disarmament issues.
- ② Should the right to peace be discussed in other UN bodies? (See US statement below.)

During the first session of the Working Group, the US government, in its deliberations on Article 3 of the Advisory Committee Draft on the Right to Disarmament, took the time to make the following coherent comments on general disarmament issues.

I would like to make a statement here on Article 3, even though it extends a little further than Article 3. I would like to make some general observations contained in

the articles on disarmament, peacekeeping operations, use of force, and weapons of mass destruction in the draft declaration of the Advisory Council. Article 3 is an appropriate place to make these observations, but the observations are much broader. In addition to elaborating, I will state that these issues are not suitable for discussion by the Human Rights Council and that the draft declaration is wrong in many respects.

First, with regard to disarmament and the proliferation of weapons of mass destruction, the United States has taken this issue extremely seriously. We have continually opposed the mass production and proliferation of weapons over the past several decades. We have negotiated and signed several arms reduction treaties and have committed ourselves to strict safeguards provisions to prevent the spread of these weapons to any country in the world. Thus, we understand that these weapons pose a threat to international peace and security and that it is appropriate that the United States address this issue. However, as we noted in the previous issue of the Draft Declaration, the Human Rights Council is not the appropriate forum for disarmament discussions.

This is similar to a point made by my colleague before my remarks. There are at least six UN or UN-affiliated agencies or offices dealing with disarmament issues. There is the Conference on Disarmament in Geneva, the IAEA in Vienna, the First Committee of the General Assembly in New York, the UN Disarmament Committee, the UN Office for Disarmament Affairs, and of course, the Security Council. There is also the Organization for the Prohibition of Chemical Weapons, which deals with chemical weapons for a comprehensive solution.

All of these organizations and offices are tasked with controlling the production, proliferation, and use of these weapons. The Conference on Disarmament, for example, is the only multilateral body that negotiates disarmament treaties. Moreover, the draft declaration not only appears to stop these tasks, but also seems to contemplate the possibility of creating a new international body. For example, Article 3.2 includes comprehensive and effective monitoring. Such an approach is all the more dangerous because it would confuse the issue and undermine efforts to develop it through an effective bilateral approach.

In addition, the Draft Declaration calls for states to be proactive in establishing strict and transparent regulations for the arms trade and regulating the illegal arms trade. As all of you are aware, and as several of you have remarked in this room, there is currently an intense debate to establish a high degree of common regulation of international trade in conventional arms. These discussions must be facilitated unless

this Human Rights Council disrupts by self-serving arguments for creating new, ill-defined human rights.

We fully support the vision of a world free of the threat of mass weapons, but we call for the negotiation of a strong and effective Arms Trade Treaty. Many other organizations are working on this and should continue to lead international efforts focused on that objective.

Additionally, the draft declaration proposes to address the issue of peacekeeping operations protecting the rights of civilians. This is a matter of Article 2. And the peacekeeping members as a whole are responsible for any human rights violations they commit. These are issues that are under consideration and are continually being addressed by the UN Peacekeeping Division and the Security Council, which mandates peacekeeping missions. It is not appropriate for the Human Rights Council to take up these issues, as it would duplicate the work being done in New York. In fact, the Working Group should not be able to dictate to states or the Security Council what peacekeeping missions may or may not incorporate, as Article 2, paragraph 4 states.

In addition to this issue, many other issues have been adequately addressed elsewhere. The draft declaration is inaccurate on several subjects. The use of environmentally damaging weapons, especially weapons of mass destruction and radioactive weapons, is contrary to international humanitarian law. However, this is not an accurate statement of international law. We are aware that there are many treaties in place to minimize or eliminate the risk of using such weapons, and that steps should be taken to minimize unnecessary damage to the environment.

Similarly, Article 1 of the draft paraphrases the UN Charter, but in an inaccurate manner. And it fails to acknowledge, as many countries said yesterday and today, that there are circumstances when force may lawfully be used, which Article 51 of the UN Charter recognizes and reflects as an inherent right of self-defense for a state.

To conclude this issue, the draft Declaration states that “all peoples are entitled to have the resources freed from disarmament allocated to their economic, social and cultural rights.” This appears inconsistent with the fact that human rights are held and exercised by individuals, not by the state. They are not human rights.¹⁷

The US representative's stated opinion was that disarmament and WMD issues should be left to other UN bodies and bilateral negotiations at the UN, such as the Arms

¹⁷ The US statements are based on the author's notes.

Trade Treaty under discussion at the time and adopted in April 2013 (the first session of the Working Group was amid negotiations in February). The US representative's appeal was that a human rights approach, such as the right to peace, would be confusing. Additionally, he was concerned about peacekeeping operations in terms of their relationship to the Security Council's authority to order them. He also emphasized that there should be no obstacle like the right to peace to the legitimate exercise of a state's right to self-defense under Article 51 of the Charter. There were few instances throughout the Intergovernmental Working Groups of coherent statements of this length, and this US statement represents the idea of the opposing country.

During the discussions in the Advisory Committee, the United States had said that the issue of international peace should not be discussed in the Human Rights Council. In comparison, his remarks at the Working Group's first session were quite different in attitude since they addressed the content of the draft: this change in response was, among other things, a result of the consensus method of deliberation (see Chapter 4, 2(1)(B)).

The US government, the party that would assume obligations in the future, went so far as to make a complementary statement at the first stage, even if the right to peace was an abstract norm that had not yet been defined in content nor scope. This phenomenon occurred not only because the Advisory Committee's draft went into specific details like a treaty but also because the discussion was based on the assumption that the draft would turn into a treaty in the future, like other UN declarations on rights (see Chapter 4, 2(1)(A)). The Advisory Committee Draft clearly stipulates that the state is the subject of obligations (Article 1, para. 2); the words of the article, such as the right to human security (Article 2, para. 1), the introduction of a new monitoring system for disarmament (Article 3, para. 2), the right to live in a world free of weapons of mass destruction (Article 3, para. 3), and strict restrictions on the arms trade in general (Article 3, para. 1), are so vague that the scope of the state's new obligations could not be predicted.

As a result, opposing states would be concerned about the scope and content of the range of rights and obligations and would have no choice but to voice their opposition. In addition, they even went so far as to say that recognition of the right to peace would halt existing negotiations within other institutions. It indicates a general acceptance among participants that although the Declaration of Rights is a soft law, its specific discussions take place under the assumption that it will become a treaty in the future.

F) Article 5: Conscientious objection to military service.

- ① Many countries opposed the inclusion of conscientious objection.
- ② The discussion overlapped with other areas addressed by the Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Religion or Belief.
- ③ The question of conscientious objection to military organizations should be subject to the judgment of the national sovereignty of each country.
- ④ Should it be incorporated as a right of civil disobedience (NGO)?

Countries favoring the right to peace opposed this point for the aforementioned reasons, including Cuba, Singapore, Algeria, Egypt, Iran, Peru, Russia, and Venezuela, among others. Costa Rica argued that based on its experience of abolishing its armed forces more than 60 years ago, even if organizing a military force is an exercise of sovereignty, the right to disobedience toward military organizations should also be included for balance.

Many representatives called for deleting any language in Article 5 regarding the right to conscientious objection to military service, as there was no international agreement on the right to conscientious objection. In their opinion, the issue of conscientious objection to military service remained purely in the realm of each state's domestic law; ultimately, the subject was not thought relevant to the work of the Working Group and was eventually excluded from consideration (A/HRC/WC.13/1/2, para. 54).

A couple of delegations expressed that they did not see value in repeating the debate on issues that had already been discussed in other bodies (e.g., the Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Religion and Belief) and that conscientious objection to military service was subject to the sovereign decision of each country (A/HRC/WC.13/1/2, para. 55).

Several NGOs supported the idea of conscientious objection to military service in relation to the right to freedom of thought, conscience, and religion. Additional language on the right to civil disobedience made it into the proposed amendment to this article (A/HRC/WC.13/1/2, para. 56).

G) Establishment of a special procedure for monitoring (Article 13.6).

As noted in the Progress Report, some Advisory Committee members commented that the implementation process is essential and called for establishing a special rapporteur or other institution to monitor it. Many other Committee members said this move was premature.

H) Conclusion.

In conclusion, opposing countries stated that there is no agreement in international law to recognize the existence of the right to peace; that disarmament, refugees, and immigration are not appropriate for discussion in the Working Group because other institutions deal with them; and that while they recognize the relationship between peace and human rights, they do not agree with the notion that peace is a necessary condition for human rights. Proponents, however, stated that the right to peace can be embodied on the basis of the Advisory Committee Draft, and that the nature and essence of the right to peace are stated in Article 28 of the Universal Declaration of Human Rights (1948), as a right to social and international order.

Since the first session of the Working Group was based on the Advisory Committee Draft, which consisted of articles embodying the right to peace, there were many opportunities for opposing countries that rejected the Declaration on the Right to Peace to give reasons for their opposition. Many issues ended up being controversial.

In this section, we can look at what can be said to have shared new meanings in the controversy on each issue.

As for the right to disarmament, the dissenting views on its relationship to the right to self-defense and other UN agencies and systems opposed the creation of the right to peace because it threatened national sovereignty. Proposing countries also had few arguments against the opposing countries' argument. Watching the debate on this point from the second session onward will be necessary.

As for the right to human security, there was little process for learning and sharing the specific meaning of the right to human security because it was vague. There was no learning process within the country within the Working Group in favor of the content of the rights of refugees, immigrants, and the environment, as many participants agreed that these rights should be addressed in other UN entities. The right to conscientious objection to military service was a specific argument, but one with two opposing views: one that held it should be treated as a matter of human rights, and the other that held it violated the right of the state to organize armed forces. Those holding the former opinion suggested that the right to conscientious objection should be deleted from the content of the right to peace. Meanwhile, those latter, including those in favor of the declaration, opposed its inclusion in the right to peace, leaving the right to conscientious objection supported only by NGOs. Since the issue was not discussed in and after the second session, it cannot be said that the right to conscientious objection was shared through the controversy since there was no process by which new meanings were learned.

(G) Working Group Session 2 (June 30-July 4, 2014)

During the first session of the Working Group, a significant number of governments opposed recognizing the right to peace, and the Human Rights Council resolution of June 13, 2013 (A/HRC/RES/23/16) requested the Chairperson of the Working Group to prepare a new proposal in light of the first session's discussions.

Before the second session, the Chairperson of the Working Group distributed a proposal paper to the participants with his preliminary ideas. According to these ideas, which were based on the premise that some governments recognize the existence of the right to peace and others do not, he suggested that (1) The Declaration should be compact and provide something of added value in the area of human rights; (2) The Declaration should be based on international law in accordance with the UN Charter and other human rights; (3) The legal basis of the human rights system should be human dignity; (4) Human rights and freedoms, especially the right to life, are violated on a massive scale in war and armed conflict, where fundamental rights cannot be exercised; (5) cooperation, dialogue, and human rights guarantees are fundamental to war prevention; (6) preventing and protecting human rights violations are contributions to peace; (7) human rights, peace, and development are interdependent and complementary; and (8) many human rights concepts in the Advisory Committee are new and unclear, and the ongoing process could be unproductive and wasteful. Many notions were already being addressed in other, more appropriate I, both within and outside the Human Rights Council.

(1) On Chairperson's Draft 1

At its second session, the Working Group Chairperson submitted a Chairperson's Draft ("Chairperson's Draft 1"; see Annex for full text).

Chairperson's Draft 1 significantly reduced the number of articles from 14 in the Advisory Committee's draft to four; furthermore, it eliminated the word "the right to peace" from Article 1, the fundamental component of the declaration. Instead, Article 1 was revised to use the following phrasing: "Everyone is entitled to the promotion, protection and respect of all human rights and fundamental freedoms, in particular the right to life, in a context in which all human rights, peace and development are fully implemented."

"the 'right to life' is a right already recognized in Article 6 of the UN Covenant on Civil and Political Rights (1966), and the proposed article was intended to be similar to a peace-specific right in the context of the three pillars of the UN—"human rights, peace, and development"—that can be fully realized. This proposal grafted the three pillars of the UN, confirmed by consensus at the 2005 UN World Summit and following meetings,

to the International Covenant on Civil and Political Rights, a norm that many countries could agree on. The phrase "right to peace" was not used in the Chairperson's Draft 1 because the draft was designed to lead to a consensus that included those opposing countries from the first session.

The second session of the Working Group took place over five days, with governments and NGOs exchanging views on the preamble and the text of Draft 1 in two rounds. Below, we will focus on the debate over Article 1, which is the subject of many conflicts among the countries and concerns about whether to recognize the right to peace.

(2) Discussion of Preamble (Round 1)

The discussion of the preamble was less confrontational than those of the articles. The undisputed content is as follows:¹⁸

- ① Purposes and Principles of the UN Charter
- ② Universal Declaration of Human Rights (1948), International Covenants on Human Rights (1966)
- ③ People rallied to the United Nations to live peacefully and avoid the scourge of war.
- ④ Friendly relations between nations should be based on respect for the principles of equality and the right of self-determination of peoples, and on international cooperation to resolve issues related to human rights.
- ⑤ Equal respect among all people for each other is the foundation of freedom, justice, and peace.
- ⑥ To ignore human rights is to invite barbaric acts against human conscience.
- ⑦ The right to the social and international order of the Universal Declaration of Human Rights (1948) is guaranteed.
- ⑧ The Vienna Declaration and Programme of Action (1993) states all human rights are universal and interdependent.
- ⑨ Peace and security, development, and human rights are the three pillars of the UN and the foundation of collective security; the three are mutually reinforcing.
- ⑩ The world has committed to eliminating poverty and growing the economy.
- ⑪ Equal participation of women and men is necessary for national development, welfare, and peace.
- ⑫ It is vital to prevent armed conflict under the Charter, which promotes a culture of prevention.

¹⁸ The following is based on an edited document of the UN's second session deliberations (A/HRC/WG.13/2/CRP.1), *Interjurist*, No. 182, pp. 4-9, and Muto [2015], as well as the author's notes and transcripts.

- ⑬ The Human Rights Council, through dialogue and coordination, prevents human rights violations and responds to emerging human rights.
- ⑭ The culture and education of humanity should be promoted; peace is essential to human dignity and a duty that all nations must help each other to realize.
- ⑮ The United Nations Declaration on Human Rights Education and Training (2011) recognizes that everyone has the right to know all information about human rights and should have access to human rights education.
- ⑯ The Declaration and Plan of Action for a Culture of Peace (1999) recognizes that attitudes, values, and life behaviors based on promoting human rights constitute a culture of peace.
- ⑰ Tolerance, dialogue, cooperation and solidarity are the means to promote world peace and to end war and armed conflict.

One controversial point about the preamble maintained that it should refer to the 1978 and 1984 UN Declarations on the right to peace, which were supported by many countries such as Russia, Egypt, Tunisia, Costa Rica, and Algeria. Tunisia proposed mentioning the right to self-determination of peoples, which Morocco and Pakistan supported. The United States, on the other hand, said that it was important to maintain the framework that had been established up to this point and that the 1978 and 1984 declarations and the new addition of the right of self-determination of peoples were problematic. Japan also stated that there was no need to include the 1984 Declaration, although it declined to say that this was its personal opinion, while NGOs said that it was only natural to include the 1978 and 1984 Declarations, and added that the Nuclear Nonproliferation Treaty (1970) and disarmament negotiations should be mentioned. The Japan Federation of Bar Associations said each country's national constitution, the United Nations, and regional movements should also be mentioned.

There were no other comments on the preamble, but in Paragraph 13, the United States said that it would like to see the words "vigorously reduce war and armed violence" deleted. There were no comments from the favored countries on this, but NGOs said not to accept the US proposal.

(3) Discussion of Articles (Round 1)

The controversial Article 1 states, "Everyone is entitled to the promotion, protection and respect of all human rights and fundamental freedoms, in particular the right to life, in a context in which all human rights, peace and development are fully implemented." The United States said that the previous UN Declarations in 1978 and 1984 lacked consensus but remarked that the Chairperson's Draft 1 was commendable

in that it excluded international agreement without consensus. Australia stated that international law allows the lawful use of force for self-defense, and the right to peace should not be recognized in such a way as to deny the right of self-defense. The EU proposed the phrase "enjoyment of the right to life," and the US expressed interest in that wording. In the end, the opposing countries did not fundamentally oppose Article 1 of the Chairperson's Draft 1 because it did not include the phrase "right to peace."

In response, countries in favor proposed that Article 1 of the Chairperson's Draft 1 was inadequate. Tunisia proposed that the right to live in peace be included in the Chairperson's Draft, and Cuba proposed including the right to peace of individuals, groups, and peoples, which Venezuela also supported. Sri Lanka proposed including the same right of peoples to peace as found in the 1984 Declaration. Costa Rica proposed the inclusion of the right to life in peace, which was in the 1978 Declaration. Pakistan said that the right to peace is recognized as an international legal right; however, that peace is not at the individual level and it should be recognized as a collective right. Algeria said that since the right to peace is central to the Declaration, it should be an added value, not a right that has already been recognized. There was a strong opinion among the NGOs that an article appropriate to creating a new right, the right to peace, was desirable. Alfred de Zayas, an independent expert on the democratic and just international order, pointed out that the opinion that the right to peace does not exist is wrong because it has a legal basis in international law.

The SSIHRL stated that Chairperson's Draft 1 did not seem to be an extension of the movement promoted by NGOs until 2012; it would be necessary to go back to the NGO Declaration, and they proposed that it could be put to a final vote. The Japan Federation of Bar Associations stated that peace is a fundamental right for all human rights, and the International Association of Democratic Lawyers (IADL) stated that the right to peace is already recognized in the UN and has a legal basis in international law.

(4) Content of new norms shared (first round)

Chairperson's Draft 1 avoided using the words "right to peace" in Article 1, which led to significant opposition from the supporting countries and NGOs. Opposing countries attempted to devalue the consensus agreement by fine-tuning the language so that it did not use the words "right to peace." Since the opposing countries raised questions about the core of the right to peace, there were no shared values between the pro and the con countries. There was, however, a situation in which the countries in favor of the new norm of the right to peace were in favor of the new norm of the right to peace based on the objection, as leveraged by the Australian government, that the right to

peace should not be recognized in a way that denies the right to use force as a form of self-defense.

NGOs felt a sense of crisis during the second session of this working group (as will be discussed in Chapter 6) when the right to peace was not included in the articles. They formed an NGO network among the deliberation participants and issued a joint statement at the conference that the UN Declaration would be appropriate for the creation of new rights.

(5) Discussion of the second round

The conflict became even more intense as the second round of discussions commenced.¹⁹

Cuba, Indonesia, Venezuela, and Sri Lanka, among others, were of the opinion that Article 1 should clearly express the right to peace, with Cuba in particular saying that since the Advisory Committee's draft was the basis for the article, they felt that the Article 1 in the Chairperson's first draft could be thrown out entirely. In response, the US, Russia, Australia, and the EU insisted that the Chairperson's Draft 1 remain in place. Mexico was of the opinion that the interim draft would make a few changes to the text proposed by the United States; Uruguay agreed with Mexico's interim draft, although it said, "Considering what NGOs have said, we have the impression that consensus is too costly."

While expressing the same opinion as the United States, Russia reiterated that the 84 Declaration should be included in the chairperson's draft, although its text was outdated. The US said that the 84 Declaration should not be mentioned in the chairperson's draft, which was aiming for consensus—because, as Russia said, the text of the 84 Declaration was old and unsuited for the modern era, and it was adopted not by consensus but only by a specific 55% of countries.

(6) NGO Statement

For their part, NGOs expressed the following opinions based on the views of government representatives.

People's Solidarity for Participatory Democracy (South Korea) wondered whose consensus was needed. They said that considering the number of preparatory declarations of the right to peace at the UN since 2008, the right to peace has legitimacy. It should not be a vague expression but a concrete declaration; otherwise, they will be unable to solve

¹⁹ Details of the following deliberations are from *Interjurist*, No. 182, pp. 4-9. Others details are based on the author's notes and audio tapes.

the problems stemming from military bases and conscientious objection to military service.

The Japan Federation of Bar Associations (JFBA) said that while several governments opposed recognizing the right to peace, the Advisory Committee's draft recognized the right to peace. They stated that the right to live in peace is also found in the Japanese Constitution. Furthermore, the International Covenant on Civil and Political Rights (1966) already recognized the right to life, so the Chairperson's Draft 1 had no new value. The prohibition of the use of force is written in the UN Charter, and although the 1978 Declaration was not a consensus document, there were no opposition votes and only two abstentions. Therefore, recognizing the right to peace is a common understanding in the international community.

The International Association of Democratic Lawyers (IADL) representative said, "I understand the Chairperson's pragmatism, but that does not mean we can create a UN Declaration on the Right to Peace without defining the right to peace. Consensus is important, but it does not mean allowing a veto." In response to the IADL's statement, the Chairperson said, "If there is no consensus, there is no future. Consensus is critical, so we will only see consensus."

Regarding the 1978 Declaration, the Chairperson also stated, "The two abstaining countries did not abstain on the concept of the right to peace, but only on the framework on education' so if the 78 UN declaration is allowed to be considered as a soft law, I think the 78 declaration binds us." Government representatives from Uruguay and other countries also expressed the opinion that the 78 Declaration should be included, citing the comments of the JFBA. In response, the United States expressed the opinion that when editing the text of the deliberations, it should be accurately stated that 'the 78 and 84 Declarations were not adopted by consensus. The JFBA countered that since the 1978 resolution was adopted without opposition, it could be said to be a consensus and that the text should be maintained in its original form.

(7) Chairperson's meeting with NGOs

About 20 NGOs participated in the second session of the Working Group. During the session, the Chairperson stated, "The Right of Peoples to Peace should be seen as a right between states, and it is impossible to include it as a Human Rights Council issue. There has been a misunderstanding among NGOs about this for quite some time. The NGOs want to incorporate the Right of Peoples to Peace as a human right, but this is a misunderstanding," emphasizing that "the current Chairperson's proposal must be realistic; otherwise, Singapore and the United States will not support it." He also mentioned the possibility of removing the words "Right to Peace" from the title. At this

point, the Chairperson highlighted the importance of consensus and was reluctant to include the words "right to peace" in the declaration.

The Chairperson also had informal out-of-session consultations with governments and NGOs in the run-up to the third session.

(H) Working Group Session 3 (April 20-24, 2015)

Following the discussions of the second session of the Working Group, the Human Rights Council resolution of September 25, 2014 (A/HRC/RES/27/17) requested that the third session of the Working Group be held to complete the Declaration and that the Chairperson be consulted informally to prepare a revised draft based on the discussions of the two Working Group sessions.

The Chairperson held informal consultations on January 30 and February 26, 2015, before the start of the third session, where he posed the following questions to the participating government representatives:

1. Which elements of the UN Charter should be incorporated into a future UN Declaration (from sovereignty, territorial integrity, political independence, friendly relations and cooperation among nations)?
2. Is it essential to consider the "victim approach"?
3. In what ways should the Chairperson embody the critical international law principles of freedom from fear and freedom from want, equality and discrimination, justice, and the rule of law?
4. In what context should we refer to implementing these points by states in the future declaration?

The discussions in the first and second sessions of the working group had been contentious, and there had been little compromise between the countries in favor and opposed. Therefore, the Chairperson asked the government representatives these questions to increase the number of possible agreements. (1) Contents of Chairperson's Proposal 2

At the third session of the Working Group, the Chairperson pre-submitted Chairperson's Draft 2 (see Annex for the full text). It consisted of 25 preambles and four articles, the most contentious of which, Article 1, was expressed as "Everyone is entitled to enjoy peace and security, human rights and development."²⁰ According to the materials distributed by the Chairperson at the third session, references were made to Article 2 of the Universal Declaration of Human Rights (1948), Article 38 of the ASEAN

²⁰ According to the materials distributed in advance by the chairperson of the working group.

Human Rights Declaration (2012), and the three pillars of the UN (peace and security, development, and human rights) identified in the 2005 UN World Summit Outcome Document. Article 2 of the Universal Declaration of Human Rights states that all people may share rights and freedoms without discrimination, and Article 38 of the ASEAN Human Rights Declaration states that "Every person and the peoples of ASEAN have the right to enjoy peace": the Chairperson's second draft uses that same phrase, "enjoy peace." Article 1 of Chairperson's Draft 2 incorporated phrases that were already agreed upon within the UN and in a regional Charter regarding the Right to Peace.

The phrase "entitled to enjoy peace and security, human rights, and development" may have been chosen to avoid using the term "right to peace," which would have caused a heated debate with countries opposed to the wording. Furthermore, compared to Article 1 of the UN Declaration ultimately adopted in 2016, the three elements (peace and security, human rights, and development) were placed in the same categorization level rather than elevating peace alone. The Chairperson may have intended Draft 2 to render the words "right to peace" less conspicuous and more acceptable to opposing countries.

The Chairperson made the following opening remarks on the floor, expressing a determination to finalize the draft declaration within the third session.

This working group will be the last session. Although it was impossible to reflect all views in the new draft declaration, we have tried to reflect various opinions. There has been a confusing debate on the right to peace. In particular, the 1984 Declaration on the Right of Peoples to Peace refers to the subject of the right as "the state," while the bearer of the obligation is also "the state," which has caused confusion. The Human Rights Council has given us the task of finalizing the draft declaration and we hope to have it ready for submission to the Human Rights Council.

We have been actively consulting with interested parties prior to this third session of the Working Group. We have consulted with UN agencies, international organizations, civil society, the Islamic Conference, the European Union, the Asia-Pacific Group, the Latin American Group, ASEAN, the Western European Group, the Eastern European Group, and I will have a meeting with the African Group. At this time, the international community and some countries, in particular, are not willing to recognize peace as a human right. There are several groups of countries that absolutely reject the Advisory Committee draft. However, the international community has come to recognize the elements that constitute the right to peace. The following five elements are considered most important: (1) the peaceful settlement of disputes in the UN Charter, (2) the elimination of the threat of war, (3)

the three pillars of the UN, (4) the elimination of poverty and the promotion of development, (5) the promotion of peace education, and (6) the emphasis on a declaration of a culture of peace and an action plan. We would like to create a declaration incorporating these elements.

The word "entitled" in the Chairperson's Draft 2 means that everyone is guaranteed access to the benefits derived from the three pillars of the UN: peace and security, development, and human rights.

I would like to proceed with the discussion with an emphasis on transparency and consensus. This year is the 70th anniversary of the UN, and we want to send a message that we will adopt the Declaration on the Right to Peace by consensus, taking into account the diversity of opinions and the victims of war."

In the Chairperson's opening remarks at the third Intergovernmental Working Group session, he used the word "entitled" for the first time and suggested language as close as possible to the right to peace without using the word "right," indicating a willingness to pursue consensus with the opposing countries.

(2) Discussion on Articles

In the third session, the Chairperson continued the deliberations, which were divided into first and second readings, during which governments and NGOs expressed their views on the Chairperson's second draft.

In the first reading, countries presented their basic stances. The countries opposing recognition of the right to peace agreed with the phrase "be entitled" in Article 1; however, the United States proposed the phrase "should be able to enjoy" instead of the word "entitled." This proposal was a retreat from the Chairperson's "entitled," which means "guaranteed access." However, from exploring the shared meaning in this debate, we pay attention to the fact that the US proposal was based on the framework of the individual dimension, not the collective dimension.

In contrast, those in favor of the right to peace proposed the use of the word "right" to express the right to peace (Costa Rica, Cuba, Brazil, Pakistan, and Venezuela) and the phrases "right to live in peace" (Tunisia) and "right to enjoy peace" (Indonesia). Countries favoring the right to peace and those opposed remained at odds over whether they accepted the word "right."

The Chairperson anticipated to some extent that the opposing state would resist the word "right." When asked to explain the legal difference between "right" and "entitled," the Chairperson explained that in the International Covenant on Economic, Social and Cultural Rights (1966), the concept of "entitled" was used to indicate rights to be

progressively realized. With this explanation, he pursued a consensus among the supporting and opposing countries to ensure that the term “entitled” had substantially the same content as “human rights.” This effort was successful, and the countries favoring the right to peace no longer opposed the Chairperson's Draft 2, which called for “entitled.”

In the second reading, the conflict between the US and Brazilian proposals on Article 1 intensified, and much time was devoted to whether to include principles such as the prohibition of the use of force and the crime of aggression in the article's text. The first proposal referred to respect for and implementation of the principles and objectives of the Charter of the United Nations, while the second focused on the obligation of all states to refrain from the threat or use of force. It was also suggested that the latter proposal include a reference to respect for other states' territorial integrity or political independence.

Participating NGOs recalled that the right to life is recognized in international human rights law and favored including several concepts related to the right of all people to live in peace. On the other hand, the JFBA proposed that the reference to "security" be deleted from the proposed amendment, cautioning that "security" could be used as either human security or state security, and such ambiguous word limits rights. Regarding Chairperson's Draft 2, JFBA emphasized that the right to peace is not a right according to the three pillars of the UN.

Article 2 of the Chairperson's Draft 2 stated, “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.” It defined the right to peace in terms of the state's obligations,²¹ and the article states the obligation to respect human rights as a means to build peace.

There was no sharp confrontation on Article 2, but the United States insisted on deleting the words “respect” and “implement and guarantee” and sought to narrow the scope of state obligations. In contrast, Malaysia, Morocco, and Indonesia insisted on inserting “moderation and tolerance” in addition to the rule of law.

(3) Discussion on the Preamble

There was only a suggestion to modify the wording of the preamble, which would not change its meaning significantly because this discussion confirmed what had already been agreed upon by the United Nations and other organizations. However, one point of conflict arose in the preamble's paragraph 10, which stated that “freedom, justice and peace are prerequisites for the enjoyment of dignity and the inalienable rights by all

²¹ According to the materials distributed in advance by the Chairperson.

members of the human family.” Opposing countries objected to the point that peace is a precondition of human rights, expressing one of the disputed points on the relationship between peace and human rights.

In addition, “Recalling that every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace,” a statement appearing in the para. 24, was based on the 1978 declaration. The United States demanded the deletion of the words “the inherent right to life in peace,” expressing a lack of agreement to the content of the 1978 Declaration.

Concerning terrorism, Middle Eastern countries (Egypt, Algeria, etc.) stressed that terrorism threatens the right to peace and proposed that eradicating terrorism be included in the preamble because its eradication is thus an element of the right to peace. The UN had agreed to eradicate terrorism in the Declaration on Measures to Eradicate International Terrorism (UN General Assembly Resolution 49/60, 1994), but they proposed that eradicating terrorism be incorporated to the right to peace. The terrorism prevention aspect added new meaning to the right to peace—but there were insufficient discussions about how to achieve counter-terrorism measures, and Brazil said there should be restrictions on how to achieve such measures.

(4) Content of the new shared norms

Many of the disputes made at the third session of the Working Group were over the subtle use of language for pursuing a consensus since Article 1 of the Chairperson's second draft was an intermediate proposal between supportive or oppositional stances, more so than those proposals discussed in previous sessions. The points of contention regarding the substantive content remained the same as in the first and second sessions, and there were no major additional points of dispute or contestation.

In the discussion of the preamble, no country squarely disagreed that terrorism violates individual rights, but there was no in-depth discussion of the means to eradicate terrorism. What discussions there were included negative connotations toward a solution by force, which resulted from the experience of the Afghan and Iraq wars.

(I) Proposal by the Chairperson of the Working Group to the Human Rights Council and the Adoption of draft declaration from the Human Rights Council

The Chairperson of the Working Group, Guillerme Fernandez, submitted a report (A/HRC/29/45) to the Human Rights Council dated May 26, 2015, announcing that he would step down after the third working session. In his report, the Chairperson proposed to use “right to enjoy peace” in Article 1, which stated the enjoyment of peace as a “right” more clearly than within the third session’s draft, which used “entitled” (“be entitled to enjoy peace”; see Annex for the full text of the Chairperson's Draft 2). However, the

report noted that the Chairperson's proposal to the Human Rights Council was not discussed at the third session of the Working Group.

Although the final adoption of the word "right" by the Human Rights Council was opposed by certain countries until the very end, the Chairperson remained loyal to the original mandate given to the Working Group to progressively negotiate the draft of a UN Declaration on the Right to Peace [Human Rights Council Resolution A/HRC/RES/20/15]. The Working Group did not achieve the goal of consensus, so the Chairperson adopted the word "right" and proposed it to the Human Rights Council. In subsequent deliberations on the draft declaration, it was left to the Human Rights Council to decide whether to proceed by consensus (at this point, the fourth session of the Working Group was scheduled to take place).

Subsequently, the proposing country, Cuba, proposed that the resolution be adopted by a majority vote of the Human Rights Council without further pursuit of consensus. They deleted the words "security is maintained" from the Chairperson's proposal for Article 1, but respected his proposal language otherwise. Article 1 was amended to read "right to enjoy peace," which was submitted to the Human Rights Council as a draft of a resolution on the declaration (A/HRC/32/L.18). The resolution was adopted on July 1, 2016, by a majority vote of 34 in favor, 9 against, and 4 abstentions (see Annex for full text).

(J) Adoption by the UN General Assembly

After the deliberations of the Intergovernmental Working Group and the Plenary of the Human Rights Council, the Cuban government and others who had been working on the codification of the right to peace submitted a draft declaration to the UN General Assembly with the same content as that adopted by the Human Rights Council. The UN General Assembly adopted the draft declaration on December 19, 2016, with 131 countries in favor, 34 against, and 19 abstentions (see Annex for full text).

Although there was no lessening of opinions from those in favor and those opposed, the conflicting views on Article 1 eventually converged in the form of a majority vote by ballot.

Table 6: Outline of the UN Declaration on the Right to Peace

| |
|---|
| <p>UN Declaration on the Right to Peace (adopted by the UN General Assembly on December 19, 2016) (A/RES/71/189)</p> <p>Article 1: The right to enjoy peace</p> <p>Article 2: The guarantee of freedom from fear and want by the state</p> <p>Article 3: The implementation of this right by UN, UNESCO, and civil society</p> <p>Article 4: The promotion of peace education by UN University for Peace</p> <p>Article 5: The Declaration's interpretation according to the UN Charter</p> |
|---|

Note. Author's table.

(3) The Role of NGOs in Norm Formation

Since the international campaign of NGOs before the UN Human Rights Council deliberations is analyzed in Chapter 4, 2(2)A, this section analyzes the specific role NGOs played after the Human Rights Council deliberations began in 2008.

(A) UN Workshops, 2009

During the deliberations over the Human Rights Council resolution that called for the UN's 2009 Expert Workshop, Carlos Villán Durán of SSIHRL argued in favor of the individual rights element of the right to peace. However, it was not incorporated in the resolution, and in subsequent 2009 resolutions, individual rights aspects were referred to in its 15th, 17th, and 19th paragraphs [Villán Durán 2010]. Disseminating the individual rights aspect within the Human Rights Council was not easy at first.

(B) The Role of NGOs in the Deliberations of the Advisory Committee

Here, we will analyze the NGOs' role using Rosert's [2019] third and fourth criteria to determine the success or failure of an agenda dissemination strategy by norm entrepreneurs: (3) candidate norm creation and (4) norm creation.

(3) Candidate norm creation, according to Rosert occurs *"through ongoing processes of problem definition and ideational change essential to a policy consensus and creating the willingness to negotiate."* [Rosert 2019: 1109]

At its 14th session in June 2010, the Human Rights Council adopted by majority vote a resolution entrusting the Advisory Committee with drafting a draft UN declaration (A/HRC/14/3), which recognizes the role of NGOs and other civil society organizations in accomplishing a draft NGO declaration—the 2006 Luarca Declaration. Since the release of the NGO Santiago Declaration in December 2010, the SSIHRL and other NGOs have been active in issuing joint NGO statements and

lobbying with governments, advisory members, and the Working Group Chairperson in the deliberations of the Human Rights Council.

The SSIHRL submitted the NGO Santiago Declaration to the Advisory Committee in January 2011 and to the Human Rights Council in March 2011 [Villán Durán and Falch Pérez 2013: 55]. The Advisory Committee's progress report of March 28, 2011 (A/HRC/17/39) mentioned that the SSIHRL and other NGOs had compiled the Santiago Declaration, and it was noted that this Declaration was used as a reference to develop a set of criteria for the Advisory Committee's draft. Although the Advisory Committee was composed of legal experts, it was not easy to draft everything from scratch quickly, so the Advisory Committee found it helpful to refer to the Santiago Declaration, which was already well organized into a single code.

Subsequently, on April 17, 2011, the Advisory Committee surveyed the government and NGOs to obtain opinions from a wide range of people on this progress report and what elements should be incorporated into the final draft. The SSIHRL responded to the survey by saying that the subject of the right to peace (i.e., who is a right holder and who is an obligor) should be clearly stated in the draft. He then quoted the Santiago Declaration and proposed that the individual, the group, and the people are the subject of the right of peoples, and the state is the primary obligor. In this way, NGOs worked to bring the Santiago Declaration into the Advisory Committee's drafting. In addition, a Japanese NGO, the Japan Lawyers International Solidarity Association, responded that the right to abolish foreign military bases and the right to live in peace, also mentioned in the Santiago Declaration, should be introduced in the draft.

During the Advisory Committee sessions, NGOs holding consultative status with the UN ECOSOC could express their opinions and submit written comments, just like Committee and country representatives could. The Advisory Committee usually meets in February and August of each year, and the SSIHRL presented written statements at the sixth session in January 2011, the seventh session in August 2011, and the eighth session in February 2012. Due to the work of the SSIHRL and other NGOs, the Santiago Declaration and other NGO opinions influenced the content of the 2012 Advisory Committee draft, which incorporated 85% of the Santiago Declaration's content [Villán Durán and Falch Pérez 2013: 34, Van Boven 2012: 145, Guillermet and Fernández 2017: 133].

The Advisory Committee prepared a draft that embodied the right to peace. In this respect, the Advisory Committee was a UN body that worked toward the passage of the UN Declaration on the Right to Peace, in contradiction to the intentions of dissenting states and in accordance with those of the majority of affirmative states in the Human

Rights Council. Since the task of drafting was mandated by a resolution of the Human Rights Council, the Advisory Committee cannot be said to be an entity that voluntarily promoted norm-making (norm entrepreneurs). However, it had a particular functionality because it could submit a formal UN draft within the scope of its mandate. NGOs approached the Advisory Committee with this function in mind and in collaboration with the Committee, engaged substantively in the drafting process. On August 7, 2011, they invited the Committee's members to a workshop near Geneva to exchange views during the first discussion of the Advisory Committee draft.

In another effort to reach out to governments, on November 26 and 27, 2012, NGOs invited government representatives to Caux in Montreux, Switzerland, for an exchange of views before the start of the Intergovernmental Working Group. Hence, NGOs were very active outside of the UN meetings, communicating the content of the Santiago Declaration and their intentions to the Advisory Committee and government representatives.

At the time of the Santiago Declaration in December 2010, the number of NGOs that endorsed the international campaign initiated by the SSIHRL reached about 800; then, the number of endorsing NGOs increased to 1,116 in February 2012 and rose to 1,790 later that year (September) [Villán Durán and Falch Pérez 2013: 40, 330, 431]. In total, nearly 50 NGOs attended Human Rights Council meetings.²² These NGOs' activities resulted in collaboration over and influence in the draft proposed by the Advisory Committee, which was then discussed by the Intergovernmental Working Group and eventually led to the UN Declaration.

By engaging with multiple actors, the NGOs were able to reflect their views in the Advisory Committee's draft and influence the deliberations of the UN Human Rights Council, thus achieving the "creation of candidate norm (Advisory Committee's draft)" stage of the Analytical Framework (3).

(4) In Rosert's framework, norm creation means *"norm entrepreneurs work toward a formal adoption of the norm. The stage begins when a candidate norm diffuses from the institutional-deliberative into the decision-making agenda."* *"Inside the negotiations, funneling – narrowing the discursive space by including certain*

²² The main NGOs include the International Association of Democratic Lawyers (IADL), Papageiovanni 23 (Italy), Japan Federation of Bar Associations, Soka Gakkai International (Japan), Young Builders, and legal researchers, in addition to the SSIHRL.

problem definitions and solutions," "communication process has to allow for equal and fair communications. [Rosert 2019: 1110] "

When the Intergovernmental Working Groups began in February 2013, the Human Rights Council did not discuss the UN Declaration on the Right to Peace content in its forums; the Council only took up procedural matters, such as when the next working group would meet. The deliberations on the right to peace were held solely in the Intergovernmental Working Group, which centralized the discussion and narrowed the discursive space for debate. However, the Intergovernmental Working Groups were open-ended, and all government representatives—not just those of the 47 member states—could participate, thus ensuring a forum for open and fair communication. Therefore, the draft UN Declaration on the Right to Peace taken up in the final stages of the Human Rights Council's deliberations was itself discussed through focused, open, and fair deliberations.

Concerning the role played by NGOs, those NGOs that participated in the 2013 Intergovernmental Working Group are mentioned in paragraph 10 of the report from the Working Group's first session ("Report of the Open-Ended Intergovernmental

Working Group,” A/HRC/WG.13/1/2).²³ For several reasons, a new NGO network was formed during the Working Group’s second session, which included the SSIHRL. First and foremost was the urgent need for NGOs to present their opinions: they believed that deleting the term "right to peace" from the Chairperson's Draft 1 reduced the value of the right to peace. Another significant reason was that the number of NGOs and the SSIHRL attending the Human Rights Council increased after the working group began. The newly formed NGO network had an opportunity to exchange views with the Working Group Chairperson on July 2, 2014, during the second session, and informal consultations were held outside of the session, as mentioned previously.

In the subsequent second and third sessions of the Working Group, the NGO network issued a joint statement. In some cases, NGO statements influenced the governments of other countries; for instance, statements made by the Japan Federation of Bar Associations (JFBA) influenced Uruguay.

NGOs contributed to the Human Rights Council’s adoption of the UN Declaration on the Right to Peace through their active participation and voice in the

²³ NGOs present at the first session of the Working Group: African Commission of Health and Human Rights Promoters; American Association of Jurists; Association "Comunità Papa Giovanni XXIII"; Association of World Citizens; Bangwe et Dialogue; Association Points-Coeur; Centre Europe—Tiers Monde; CIVICUS—World Alliance for Citizen Participation; Congregation of Our Lady of Charity of the Good Shepherd; Franciscans International Initiatives of Change International; Institute for Planetary Synthesis; Institute of Global Education; International Association of Democratic Lawyers; International Association of Peace Messenger Cities (on behalf of 1,619 civil society organizations and cities); International Fellowship of Reconciliation; International Volunteerism Organization for Women, Education and Development; International Youth and Student Movement for the United Nations; Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco; Japan Federation of Bar Associations; Japanese Workers' Committee for Human Rights; Make Mothers Matter International; Nonviolent Peaceforce; North-South XXI; Rencontre Africaine pour la defense des Soka Gakkai International United Network of Young Peacebuilders; United Nations Watch; United Religions Initiative; United States Federation for Middle East Peace; Vivat International; Women's World Summit Foundation; Worldwide Organization for Women; and Zonta International.

Intergovernmental Working Group. This successful action embodies the fourth phase of Rosert's [2019] analytical framework, "Norm Creation."

(C) The Role of NGOs in the Formation of the UN Declaration on the Right to Peace

Through the Complete Analytical Framework, Stages 1 through 4.

As mentioned above, the subject matter of the right to peace was discussed at the 2009 workshop and in the draft of the Advisory Committee, with the Right of Peoples to Peace as the starting point; later, the SSIHRL and other NGOs argued for the individual right to peace and the human right to peace as well. The NGOs, including the SSIHRL, then advocated for the right to peace as a human right. Under the influence of these NGOs, the Advisory Committee, after the 2011 Progress report, began to refer to both the traditional right of peoples to peace and the individual right to peace as the subject matter of the right. In the deliberations of the Intergovernmental Working Group, the original Advisory Committee draft discussed people's rights and individual rights in parallel, but there was persistent opposition to people's rights in the Working Group from opposing countries; in the end, the Declaration was finally adopted in the form of individual right to peace, as we have mentioned.

A couple of factors contributed to the adoption of the Declaration as an individual right to peace: for one thing, the NGOs emphasized individual rights while opposing countries had consistently argued since the discussion over the 1984 Declaration that rights as a group were not recognized. People's rights were not expected to reach a consensus. The chairperson of the Working Group had also stated during the group's session that people's rights were state rights and not human rights.

Due in part to these factors, Cuba, a key proponent of the UN Declaration on the Right to Peace, also insisted on the right of peoples to peace as a group at the beginning of the Human Rights Council deliberations, but in the UN discussions of the 2000s and the Intergovernmental Working Group, the right of peoples to peace grew less emphasized. The Advisory Committee draft text included the individual right and peoples right as beforementioned, but eventually, the Cuban-led proposal was removed from the Human Rights Council and the UN General Assembly when they adopted it.

During the deliberations of the Intergovernmental Working Group, NGOs, supporting countries, and the group's Chairperson focused on the rights of individuals with little criticism, even from opposing countries. Approximately two-thirds of the countries that voted in favor of adoption agreed that the right to peace was an individual right.

In this context, the activities of SSIHRL and other NGOs were essential to the establishment of the Declaration, consistently setting as a strategic goal the enactment

of the UN Declaration on the Right to Peace and its adoption as a human right, while influencing the draft of the Advisory Committee and the governments of the favoring countries to enact the Declaration. In this regard, the activities of NGOs were a major factor in the adoption of the UN Declaration on the Right to Peace as an individual right. In this context, the activities of SSIHRL and other NGOs were essential to the establishment of the Declaration, consistently setting as a strategic goal the enactment of the UN Declaration on the Right to Peace and its adoption as a human right while influencing the draft of the Advisory Committee and the governments of the favoring countries to enact the Declaration. In this regard, the activities of NGOs were a significant factor in the adoption of the UN Declaration on the Right to Peace as an individual right.

Chapter 5: Considerations: Shared Meaning of the Right to Peace and Significance of the Right to Peace in Security Studies

1 The Meaning of New Shared Norms

In the Intergovernmental Working Group deliberations, there was no unanimity of opinion between proponents and opponents on whether the right to peace should be recognized. According to the text of the adopted Declaration, it appears that the parties only shared the very abstract right to enjoy peace.

However, as this thesis presented in Chapter 3.3, we can use an analytical framework to clarify what was shared in the deliberations, even if there was disagreement on adopting the right to peace. There are cases in which the contestation itself recognizes the meaning of the right to peace as commonly assumed by both proponents and opponents; in these cases, we can say that the meaning of the new norm (i.e., the right to peace) is shared, at least among the two-thirds majority of countries that voted in favor of it. We can say that the norm was adopted with that shared meaning; the degree to which the meaning was shared depends on the disputed points of contention. That is why, for each disputed point of contention, we will consider the meaning of the norms in the adopted wording shared among the countries.

(1) Whether to recognize collective rights

The subject of the right to peace in the 1984 UN Declaration was “peoples”; a peoples’ right means a collective right. The peoples’ right did not merely refer to a group of individuals; it was also envisioned as one of developing countries or militarily weak countries to defend themselves from aggression by developed countries or military powers, but the definition of the peoples’ right was unclear. For example, in the deliberation at the UN Commission of Human Rights in 2001, Belgium, on behalf of the EU, clearly stated that peoples’ rights are state rights, opposing the peoples’ rights as a right of the state against the state. The Commission, they stated, should address the state versus human rights relationship.

The term’s ambiguity was discussed at the 2009 expert workshop as well: Vera Goland Debas pointed out that the meaning of the term “peoples” as the subject of the right to peace was still unclear, and it was not defined whether the subject of the obligation was each country, a collective state through the UN, or the international community as a whole. Likewise, Judge Antonio Cançado Trindade raised further consideration of the

relationship between the right of peoples to peace and other peoples' rights, and between human right to peace and peoples' rights. At the time of the workshop, there was not a clear definition of whether it was just a group right or a state right.

In the dialogue with NGOs during the second session of the Working Group, the Chairperson of the Working Group explained that the peoples' right in the Declaration of 1984 were the rights of the state, and said that peoples' rights were the rights of the state in his opening comments at the third session of the Working Group. Since there was no clear objection to this from the countries in favor, the peoples' right as a right of state was removed at least since the second session as a subject for consensus building. When the Human Rights Council began deliberations in 2008, the right to peace was initially discussed under the name of Right of Peoples to Peace, but as discussed in Chapter 4, 2(2)D, the Advisory Committee combined people's and individual rights in the Advisory Committee Draft. Many of the countries in favor, such as Cuba, not only insisted on the rights of peoples but also accepted the aspect of individual rights. And in the draft of the UN Declaration that the Human Rights Council finally adopted, the supporting countries also deleted the peoples' rights from their proposals, so it cannot be said that some new meaning was shared among the supporting countries regarding the right to peace as a peoples' right.

On the contrary, Cuba dared to withdraw the right of peoples and focus on individual right in the aforementioned draft of the UN Declaration adopted by the Human Rights Council and the finally adopted UN Declaration on the Right to Peace by the General Assembly in 2018. The opposing countries disagreed with creating a new right but agreed on the aspect of individuals, not peoples, much like they agreed with the words "be entitled to enjoy peace" in Article 1 of the Chairperson's Draft 2. The United States further proposed the words "should be able to enjoy peace" and devalued the draft's content, assuming that the entitled right is an individual right. Certainly, there was a wide divergence between the supporting and opposing countries on whether to recognize the right to peace as an emerging right, but the opposing countries assumed the individual as the right's subject.

In terms of peace and security, the adopted right to peace took the form of an individual right, not a state right; thus, the right to peace has allowed for the incorporation of human-centered interests and perspectives in the security field as different from state defense and security interests, at least among the countries in favor. Thus, the meaning and text of the right to peace were shared as an individual right among the countries in favor.

It should be noted that although the conflict between developed and developing countries was intense during the adoption of the 1986 UN Declaration on the Right to Development, the final outcome was that a right to development was formed as an individual right and peoples right. It included individual and peoples rights, but the Declaration was said to introduce a person-centered perspective in the international development field [Normand and Zaidi 2008: 311].

(2) Relationship with the right of self-defense

When discussing the meaning of the right to peace in relation to a state's right of self-defense in the 1984 Declaration, Ireland argued that it was unclear whether the right to peace was consistent with established principles and institutions or whether it was compatible with the right of self-defense under the UN Charter (see Chapter 4, 1[2]). Years later, in the 2009 UN experts' workshop, Jarmo Sareva, Deputy Executive Director of the UN Conference on Disarmament Affairs, pointed out that it was unclear whether the right to peace would not conflict with the state's right of self-defense and that it might not be consistent with the right of self-defense and the military action of the Security Council under Chapter VII (see Chapter 4, 2(2)C).

During the first session of the Intergovernmental Working Group, the US government criticized the Advisory Committee Draft by stating, "Article 1 of the Advisory Committee Draft fails to recognize that there are circumstances when force may lawfully be used, which Article 51 of the UN Charter recognizes and reflects as an inherent right of self-defense for a state." A contrary interpretation of this statement by the US government would mean that even when the right of self-defense is legal under the UN Charter, there may be cases in which a state's exercise of the right of self-defense may be limited if the right to peace is recognized. At the second session of the Working Group, the Australian government also expressed its opposition regarding the right of self-defense and the compulsory actions of the Security Council, saying that "the relationship between the right to peace and the right of self-defense recognized under the UN Charter or the compulsory actions of the Security Council is not clear."

These opposing countries' opinions show that the relationship between the right of self-defense and the right to peace has been continuously presented as a primary reason for opposition since the 1984 Declaration discussions. Given that the debate over whether to recognize the right to peace was premised on these objections, it is clear that the right's proponents dared to support the creation of the right to peace even though they understood the reasons for these objections. Certainly, the discussion did not go as far as how to specifically coordinate the right to peace with the right of the state to self-defense to determine its scope and content, but in the abstract, it was agreed upon with the

understanding that the right of the state to self-defense is not unconstrained and the human right to peace may prevail in some cases.

Article 51 of the UN Charter on the Right of Self-Defense permits the exercise of the right of individual and collective self-defense in the event of an armed attack against a member state until the Security Council takes the necessary measures. This right of states to self-defense is considered legitimate under the UN Charter. Article 42 of the UN Charter also authorizes states to take military coercive action to maintain the security of international peace. According to these articles, the use of military force by a state or the UN is considered legitimate if it meets the requirements stated in the articles. However, the fact that there are statements by opposing states invoking these articles in the deliberation means that if the right to peace is recognized, some restrictions may be imposed on the right of self-defense and UN military actions, narrowing the scope of their legality. For example, if the exercise of the right of self-defense resulted in the indiscriminate killing of civilians in a non-aggressor country, not only would there be a violation of international humanitarian law, but the exercise of the right of self-defense could also be limited by the violation of the right of citizens to peace.

If the right to peace is not taken into account, states would need no further justification for self-defense once it is given legality by the UN Charter. However, once the right to peace as an individual right is created, a question arises as to whether the use of force violates not only the requirements of the UN Charter but also the human right to peace. The UN Charter—the law under which governments owe obligations to other parties and to the UN—and Human Rights—the law under which governments owe obligations to individuals—are norms of different dimensions, and therefore both laws can be legally compatible.

Shigeki Sakamoto, a former member of the Human Rights Council Advisory Committee, has said that "if we assume that individuals and peoples have the right to peace, international law will be faced with the fundamental question of whether the exercise of the right of self-defense, which is permitted for states under the UN Charter and the invocation of coercive measures under Chapter VII of the Charter, violate the right to peace held by individuals and peoples." This statement suggests that problems may arise regarding whether exercising the state's right to self-defense would violate the right to peace [S. Sakamoto 2014: 88].

SSIHRL recognized that the right to peace is the right to step into the security sector under the control of a sovereign state [Durán and Pérez 2013: 34]. Motivated by a crisis of the rule of law caused by the United States' disregard for the UN Charter and its unilateralism during the 2003 Iraq war, SSIHRL launched an international campaign for

the right to peace. NGOs proposed the international codification of the right to peace to the Human Rights Council, starting from an awareness of whether the abusive use of force could be curbed. Reactions such as those of the United States and Australia mentioned previously were partly because the NGOs informed the opposing countries that the right of self-defense might be restricted.

(3) Discussion of the right to disarmament: Should it be left to intergovernmental negotiations and disarmament conferences?

At the time the United Nations Declaration on the Right to Peace was adopted in 2016, the Treaty on the Prohibition of Nuclear Weapons had not yet been adopted (signed in 2017), and nuclear weapons reduction negotiations were being conducted under the nonproliferation regime fostered by the Nuclear Nonproliferation Treaty and through negotiations between the United States and Russia. In reality, however, the effects of nuclear nonproliferation have not been strictly adhered to, as seen by the possession of nuclear weapons by non-signatory states—India, Pakistan, and Israel—and North Korea's withdrawal from the Nuclear Nonproliferation Treaty. In addition, despite reductions in the arsenals of nuclear weapon states, there are still 12,705 nuclear warheads (SIPRI, as of January 2022). The reasons behind this lackluster disarmament may include a nuclear nonproliferation regime that can legalize the possession of nuclear weapons, the noncompliance of nuclear weapon states with their disarmament obligations, and the limitations of negotiations between major powers trying to maintain their military hegemony. In the 1980s, international politics professor Yoshikazu Sakamoto wrote that "the lack of any visible results from more than 30 years of postwar nuclear disarmament negotiations was partly due to "above all, the fact that the parties to the negotiations are governments with vested interests in the development, production, and possession of nuclear weapons systems." This is true even today, as nuclear weapons have not been reduced through negotiations between governments. That is why "nuclear disarmament is a right of citizens" [Y. Sakamoto 1981: 26-28]. Furthermore, the UN Conference on Disarmament can make decisions only by consensus—a mechanism that allows for disarmament only within the scope determined by major powers.

Under such circumstances, recognizing the right to disarmament (Article 3 of the Advisory Committee Draft) as an individual right to peace would bring a new perspective to the normative situation concerning international disarmament. In particular, if we interpret the right to disarmament as a right of individuals to demand that national governments abolish weapons of mass destruction, the content of state obligation will be judged from a human-centered perspective, which is different from negotiations based on power balances or state deterrence. Even in a situation where international conferences

and bilateral negotiations aimed at nuclear abolition fail to reach an agreement or a treaty on nuclear abolition is not ratified, if the right to disarmament is recognized, restrictions on weapons restrictions will be placed from a human rights perspective. In addition, if this issue becomes a human rights agenda, it will be on a UN Human Rights Council agenda. If a right to disarmament is incorporated into each country's domestic law, whether a right to disarmament or a human right to peace is being violated will be raised within domestic courts and national policy.

Whether to leave power over the use of military force and armaments to the United Nations and national governments also relates to whether peace is a goal or a right. If everything is left to governments, there is no need to create a right to peace that requires governments to realize peace. The US government stated at the first session of the Working Group in 2013 that "peace is not a human right, but a goal that can be achieved by implementing existing human rights." Although setting peace as a goal has a positive dimension, maintaining international peace is already enshrined in the Preamble and Article 1 of the UN Charter, and this US statement is merely aimed at maintaining current international norms. It leaves no room for individuals to get involved in peace and security issues, and maintaining peace is entirely up to governments.

Meanwhile, if peace and security issue grows into an individual right in addition to a goal or policy target, then the UN and states cannot deprive individuals of that right by majority vote: from the government's perspective, the right to peace becomes a stumbling block to its policy implementation [S. Sakamoto 2013: 123]. The question "Is peace a goal or a right?" is essential to creating a right to peace, requiring a deep consideration of the significance inherent to the right to peace.

If the issue of disarmament is left to the government and out of the direct reach of citizens, the fundamental interests of the state will prevail over human rights guarantees. During the deliberations of the first session of the Working Group, the United States, concerning the right to disarmament, stated in opposition to the right to peace that disarmament issues should be left to UN agencies and intergovernmental negotiations (Chapter 4, 2(2)F). However, this statement indicates the possibility that the right to peace can be restricted or otherwise involved in the militaries over which states and governments have authority.

Opinions among the pro and con countries did not reach an agreement over the right to disarmament until the end of the Working Group. The contestation itself demonstrated a recognition among the two-thirds majority of countries that the right to disarmament, as a right to peace, could—depending on its content and scope—conflict with or constrain the

existing UN disarmament-related organs and the existing system of disarmament negotiations among the major powers.

(4) Retention of military forces by the state

The right of conscientious objection to military service is guaranteed as the right to object to military service, derived from the freedom of thought, conscience, and religion mentioned in Article 18 of the International Covenant on Civil and Political Rights (1966), according to the UN Committee on Civil and Political Rights.

However, during the deliberations of the first session of the Working Group on the Right of Conscientious Objection (Article 5) of the Advisory Committee Draft, almost all governments, including those in favor of the right to peace, opposed this article. Only the government of Costa Rica, which had abolished its armed forces, and the NGOs participating in the meeting voiced support for it. A South Korean NGO, where conscientious objection to conscripted military service is an ongoing problem, stated that conscientious objection should be recognized as one of the rights to peace. Alfredo de Zayas, the UN independent expert on the promotion of a democratic and equitable international order, also issued a document stating that conscientious objection should be incorporated into the right to peace because it is a right approved by the International Covenant on Civil and Political Rights and its Committee.

Countries opposed to making conscientious objection an aspect of the right to peace argued that if the right of conscientious objection to military service was recognized as a right to peace, it would restrict the state's right to constitute an army and defend itself. It became clear through the contestation that conscientious objection to military service could conflict with the state's interest in self-defense through maintaining an armed force.

The reason why most governments opposed the incorporation of this conscientious objection right into the list of the right to peace was probably motivated by the desire to avoid restrictions on the retention of military force (from the perspective of large countries likely to use said force) and to avoid restrictions on self-defense by way of military force retention (from the perspective of smaller countries).

Thus, a common understanding was that conscientious objection to military service could constrain a state's right to maintain its armed forces. However, since the two-thirds majority expressed disapproval of the right to conscientious objection, it cannot be said that there was a shared understanding of the meaning of the new norm. Moreover, the Chairperson of the Working Group expressed during the second session that issues that were being discussed elsewhere in the UN, such as conscientious objection, would not be discussed to avoid duplicating debate. Thus, conscientious objection was not discussed after the second session, and it can be said that no new meaning was shared then as well.

(5) Consideration: The Meaning of the Shared Norm

Through the above analysis, the meaning of the right to peace as a new norm that was shared through the contestation among the countries in favor of the right to peace can be summarized as follows, and it can be said that the norm of the UN Declaration on the Right to Peace was established with such shared meaning.

1. In terms of individual rights, the UN Declaration on the Right to Peace, adopted by the UN General Assembly, has created a shared meaning for the new norm in that the right to peace is an individual right and that in the area of security, it is a human-centered right.
2. In terms of the exercise of the state's right to self-defense, the controversy with the opposition's view that the right to peace had the potential to constrain the exercise of the state's right to self-defense led to a shared understanding of the meaning of the right to peace as a right that could potentially constrain the state's exercise of its right to self-defense.
3. During the deliberations on the right to disarmament, it was argued that the right to peace is a right that could conflict with the role of other existing UN disarmament-related institutions and with existing negotiations on nuclear disarmament among the major powers. We can evaluate that during these deliberations, the new meaning of the right to peace as a potential constraint on existing institutions and disarmament negotiations was shared as the meaning of the right.

2 Significance of the Right to Peace in Security Studies

By raising issues from critical human security studies, as seen in Chapter 1 (Newman 2010), what can we learn from the UN deliberations on the right to peace and practical examples in countries where the right to peace is already incorporated? We discuss the following three points as proposed in the Introduction Chapter: (1) What does the right to peace mean as an individual right? (2) Does the right to peace encompass rights to structure? (3) Can the right to peace prevail over the security of the state?

(1) What does the right to peace mean as an individual right?

The right to peace expresses the relationship between the individual and the state regarding security through the legal concept of right. Conventional theories of human security have been ambiguous in how they view the relationship between the individual and the state. However, from the perspective of critical security theory, which aims to realize human emancipation, creating the individual right to peace can be seen as a concrete institutionalization of human security.

Amartya Sen said that human security and human rights complement each other [Sen 2006: 40-42]. Rendering the various aspects and problems that comprise human security into legal rights means they can be realized. The main object (addressee) of rights is the state; establishing the legality of human rights means that if the state fails to realize human security, individuals can demand that the state take specific actions (or inactions) as a legal right.

This implication is even more applicable to the relationship between human security and the right to peace. In the case of human rights in general (e.g., the right to life, freedom of expression, etc.), it is not necessarily the state's military action that inhibits them—whereas it is primarily the military or military-related actions of the state that prevents the realization of the right to peace. Furthermore, obstacles to realizing human security, particularly freedom from fear, can also be military or military-related acts of state. The right to peace regulates the relationship between the state and the individual as it relates to the state's military conduct through the legal relationship of rights, and imposes obligations on the state. In this way, it directly contributes more to realizing human security and freedom from fear than general human rights. Hayden [2004: 41] identified the human right to peace as the foundation for justifying and actualizing human security. Therefore, the right to peace is one of the instruments necessary for realizing human security.

By "becoming rights," we mean that as with general human rights, the content of the rights will eventually be adjudicated by the human rights bodies of the United Nations and the judiciary of each country and also be taken into account in policy-making to bring the content of the rights closer to realization. At the 2009 UN expert workshop, William Schabas said that international human rights not only function in armed conflict but also relate to the causes of armed conflict and whether the use of force is lawful, and rights realization affects not only the judicial arena but also the policy-making of the political sector.

The meaning of the right to peace as an individual right is - in the UN Human Rights Council, people's rights were regarded as state-to-state rights - and the right to peace is different from that, in an individual-to-state right; the state directly owes obligations to the individual. In the UN discussion, this point has many informative points if we focus on the content of the rights and obligations, although in the discussion at the time of the 1984 Declaration, the character of the rights was based on the assumption that they are collective people's rights.

As seen in Chapter 4.1(2), the opinions of the countries in favor of the Declaration at the time of the 1984 Declaration pointed out, first of all, in terms of the content of rights, the right to live in peace and fight for peace, the right to actively build peace (Mongolia), the

right to freedom, social progress and justice (Vietnam), the right to demand the use of nuclear weapons and to strengthen international peace (Hungary), the right to live in peace which individuals, nations and all human beings have (Poland). In terms of state obligations, states are obligated to eliminate the threat of nuclear war, renounce the use of force, and settle international disputes in a peaceful manner (USSR); states are required to have legal guarantees for peace in situations of disarmament and the use of force (East Germany); the non-use or threat of force, peaceful settlement of disputes (Bulgaria); the state has the joint obligation to protect generations from the scourge of war (Bulgaria); to guarantee the right to live in peace, the state has the obligation to remove the threat of nuclear weapons, promote disarmament and cease the use of force (Belarus); the right to peace means that the state is obligated to avoid the danger of nuclear war and to allow the peoples to live in peace (India).

A legal relationship in which the individual is the subject of rights and the state is the subject of obligations means, in an abstract sense, that the state is responsible for the obligations it assumes under the UN Charter and other treaties as described above in the relationship between the individual and the state. The principle of prohibition of the use of force, which is typical of state-to-state rights and obligations in the UN Charter, means that it will be an issue not only in relations between states but also between individuals.

In this sense, the right to peace is a step forward in the institutionalization of human security in that the perpetrating state is responsible to the individual for the realization of the elimination of human insecurity and freedom from fear that human security enumerates.

(2) Does the right to peace encompass rights to structure?

As a challenge for critical human security theory, it was pointed out that "conventional human security research tends only to reveal insecurity and does not adequately analyze the structural causes underlying it" (see Chapter 1, 2). This tendency leads to a paradox in which the concept of human security reinforces norms and institutions that produce human insecurity.

Traditionally, individuals were not directly involved in wars or military actions, but the right to peace paves the way for individual involvement in response to the state and its supporting norms and institutions that constitute the existing national security regime. This right allows individuals to not only point out the human insecurity caused by war, civil war, and the politics of fear but also to institutionally engage with the norms and institutions that generate these threats to human security.

The Advisory Committee's draft specified the right to eliminate structural violence (Article 2.7, "Institutions shall be developed and strengthened to eliminate the inequalities,

exclusion, and poverty that give rise to structural violence”) as the content of the right to peace. Although there is a distance to specify and make it a legal right due to the broad concept of structural violence, in terms of the right to institution for eliminating structural violence, it is possible to make it a legal right. The right to peace inherently includes the right to access such structures through institutions. The right to peace includes the right to prohibit the illegal arms trade (Article 3, para. 1) and the right to the equitable redistribution of resources freed by disarmament (Article 3, para. 5), which are rights to access international and domestic norms and institutions, and these were also considered as part of the content of the right to peace in the Advisory Committee's draft. The 2009 expert workshop and the Intergovernmental Working Group also expressed several opinions that the right to peace is one of the rights to the social and international order under Article 28 of the Universal Declaration of Human Rights (1948), and the right to peace is counted as one of the rights to social order.

In the deliberation of the UN, the discussion did not reach the right to structure that Newman proposed. However, the right to peace was found to be a right to object and demand against existing norms and institutions

At the first session of the Intergovernmental Working Group, the United States opposed the right to disarmament because it stated that disarmament issues should be addressed in UN disarmament-related conferences and US-Russia bilateral negotiations; it argued that the right to peace would hinder these discussions (see Chapter 4, 2, F). Existing UN bodies and bilateral negotiations are international institutions and frameworks acceptable to the current major powers, but these norms and institutions are difficult to reach from individuals. UN disarmament conferences are also voted on by consensus, so disarmament can only be achieved to the extent acceptable to major powers. The statements of opposing countries showed that they believed the right to peace of individuals is one that allows objections to existing norms and institutions.

The UN Conference on Disarmament was an existing norm or institution that did not go so far as to ban anti-personnel mines, as the Anti-Personnel Mine Ban Treaty (signed in 1997) did; similarly, the Nuclear Non-Proliferation Treaty (signed in 1968) was a norm or institution that allowed existing nuclear powers to possess nuclear weapons, unlike the Treaty for the Prohibition of Nuclear Weapons (signed in 2017). The new treaties—the Anti-Personnel Mine Ban Treaty and the Treaty for the Prohibition of Nuclear Weapons—created new values against those existing norms and institutions. Taking this process a step further, the right to peace changes those existing norms and institutions regarding anti-personnel mines and nuclear weapons by framing them from an individual rights perspective.

Article 3.3 of the Advisory Committee's draft stipulates the right to live in a world free of weapons of mass destruction as one of the rights to disarmament. If this right becomes a legal right, it would mean that individuals would have the right to demand the elimination of the possession and use of nuclear weapons and anti-personnel landmines, even to the extent that the Anti-Personnel Mine Ban Treaty, Nuclear Non-Proliferation Treaty, and the Treaty for the Prohibition of Nuclear Weapons are ineffective because of non-compliance or non-ratification to the treaties. The right to peace, in this sense, is also a right that has the potential to change the actual reality of the spread of weapons of mass destruction.

(3) Can the right to peace prevail over national security?

According to the view of the Commission on Human Security, human security and national security are complementary and interdependent [Commission on Human Security Report 2003, p. 13], but the phrase "complementary and interdependent" here is ambiguous and can be seen as a minimum, as connoting a harmonious perspective between human security and national security. This ambiguity reflects the tendency for traditional human security studies to avoid critical analysis and evaluation of global structural and historical institutions.

Newman describes the relationship between the state and the individual in human security: "In human security, the state is the provider of individual security, but the state also poses threats to individual security" [Newman 2010: 87-90]. If the state provides for the security of the individual (e.g., through budget allocations) and this is sufficient for the individual (e.g., through defense spending in appropriate amounts), then the individual and the state have a complementary relationship. Nor would the interests of the state and the individual conflict if the rights of the state in the security context do not conflict with the interests of the individual: for instance, if the state's exercise of the right of self-defense serves to eliminate the threat of an enemy state's unilateral aggression, resulting in few victims.

However, the interests of the state and the individual in security are not always in harmony. The security interests of the state, which seek to protect the national interest and the survival of the state, and the security interests of human beings, which seek to protect human safety, sometimes conflict.

In such cases, the right to peace establishes the relationship between the state and the individual as a relationship of legal rights and obligations. When both interests are in conflict, the right to peace imposes on the state a duty of action or inaction for the

realization of an individual right. Since the right to peace is a human right, there is inherently no limit to the scope of its application.

In the deliberations in the UN Human Rights Council, countries opposed to the right to peace made statements in the UN Commission on Human Rights and later in the Intergovernmental Working Group Commission on Human Rights that Article 51 of the Charter makes the right of states to self-defense legitimate. However, the existence of the right to peace would prevent the exercise of self-defense. This statement assumes that the right to peace may obligate the state to assume certain obligations when the state's interest in self-defense and the individual's interest are in conflict. We can assume conflicts will arise in cases in which the exercise of the right of self-defense meets Article 51's requirements but kills or maims more civilians than necessary or when the conscription of troops results in the refusal of some to serve in the armed forces. In addition, as long as the authority to determine the legality of the exercise of the right of self-defense is left to the state, there is a likelihood that the exercise of the right of self-defense may be interpreted as legal even though it does not meet the requirements for exercising the right per Article 51. For example, even if a country attempts to legalize the exercise of the right of self-defense by loosening its interpretation of "an armed attack occurs," restrictions on exercising that right may be imposed because it infringes the right to peace.

At the 2009 UN experts workshop, Jarmo Sareva, Deputy Executive Director of the UN Conference on Disarmament Affairs, stated that it is necessary to clarify the content of the right to peace from the perspective of disarmament and to consider the scope and content of the incompatible rights to peace and self-defense and the collective security. This statement means that it is necessary to concretize the content and scope of the right to peace on the premise that there are cases in which the state's right of self-defense and the right to peace are in conflict. Thus, the deliberations on the right to peace made it clear that actors believed that restrictions on the use of force might be requested by confronting the individual's right against the state's monopoly regime of military force. Regarding the use of military force, the right to peace represents a modification to what Linklater refers to as the state's "monopoly of the legitimate means of violence in the territory" [as cited in Shigemasa 2015: 353].

Let us take a concrete look at how the right to peace may conflict with national security and in what ways the right to peace may be given priority, with examples of practice from countries that have already adopted the right to peace domestically.²⁴

The following examples of practice in various countries are judicial cases, so they mainly concern situations in which the right to peace is the right to deny interference from the state. However, it should be noted that demanding positive action from a state in the political scene is also an aspect of exercising the right to peace.

In Japan, the preamble of the Constitution stipulates the right to live in peace (right to peaceful existence). This right has been invoked in lawsuits concerning the Self-Defense Forces and US military bases and in the lawsuits against Security Law (2015), which accepted the right of collective self-defense for the first time since the enactment of the Constitution. The right to live in peace is one possible instance of a human right restricting the state's military actions. Several court decisions in Japan have recognized the right to live in peace as a judicial rather than an ideal right.

Article 2.2 of the Advisory Committee's draft also stipulates all individuals have the right to live in peace (so that they can develop fully all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence). Since the right to peace is a human right, "the right to live in peace" can be one representative expression of the right to peace.

In the 1970s, when Self-Defense Forces missiles were deployed at a Self-Defense Forces base in Naganuma-cho, Hokkaido, Japan, residents living near the base filed a lawsuit, claiming that the deployment of the SDF missiles violated their right to live in peace. They claimed that it violated Article 9 of the Constitution, which renounces war and prohibits the retention of armed forces, as well as the right of the residents to live in peace. The Sapporo District Court ruling on September 7, 1973, recognized the right to live in peace as a right not to be attacked by enemy states, and the court found that the residents had standing to be parties to the case. Furthermore, the court found that "the plaintiffs' right to

²⁴ From an international legal perspective, these examples of national practice can be seen as a form of customary international law that is neither soft law nor hard law (treaty). In order for customary international law to be established, there must be a case in which the practice is supported by a legal certainty (*opinio juris*) that the practice is in fact the exercise of a right or the implementation of an obligation. If more countries in the world adopt such practices as those of Japan, South Korea, and Costa Rica, and if they are accompanied by legal certainty that the right to peace is being practiced, the right to peace will acquire the character of customary international law as well.

live in peace is in danger of being violated because the anti-aircraft group facilities and the radar facilities attached to them would be the first targets of an enemy state's attack in the event of an emergency," concluding that the plaintiffs had a legal interest in the lawsuits.

In addition, in a lawsuit against the deployment of the Self-Defense Forces to Iraq during the 2003 Iraq War, Japanese citizens claimed that the deployment was unconstitutional, violating both Article 9 of the Constitution and the right to live in peace. On April 17, 2008, the Nagoya High Court recognized the right to live in peace as a legal right—the right of citizens not to be forced to be involved in acts of war. It ruled that “in addition, in cases where an individual's life or liberty is infringed or threatened with infringement, or where an individual is exposed to actual harm or fear due to war or other acts of the State in violation of Article 9 of the Constitution, by the execution of war, the use of force, or by preparatory acts for war, or where an individual is forced to participate or cooperate in the execution of war or other acts in violation of Article 9 of the Constitution, the individual may seek relief from the court by requesting an injunction or compensation for damages against the unconstitutional act, as an expression of the primarily liberty aspect of the right to live in peace.” Similarly, the February 24, 2009, Okayama District Court decision regarding deploying Self-Defense Forces to Iraq recognized the right to live in peace as a legal right, including the right to refuse conscription, conscientious objection to military service, and the right to refuse military labor.

In South Korea, a court decision recognized the right to live in peace of the residents living near a US military base. When the US military base in Seoul was to be expanded and relocated to Pyeongtaek, 50 km south of Seoul, the residents near the base filed a lawsuit claiming that their right to live in peace was violated. In 2006, the Constitutional Court of South Korea recognized the existence of the right to live in peace, stating as follows:

The claimants argue that the relocation of US military units under the treaties is intended to change the US military presence in Korea from a defensive to an offensive military force, thus violating the right to live in peace recognized from the right to the pursuit of happiness, that is, the right to live in peace without being involved in armed conflict and killing. Today, the right to be free from war, terrorism, and acts of force is a fundamental premise for the realization of human dignity and value and the pursuit of happiness, and if there is no explicit fundamental right to protect this right, it must be protected under the name of the right to live in peace, interpreted from Article 10 (right to pursue happiness) and Article 37, paragraph 1 (provision recognizing unwritten rights) of the Constitution.

The court acknowledged that there was a possibility that the relocation of the we military base would violate the residents' right to live in peace.

In Costa Rica, there was a decision recognizing the right to peace; a case challenged that the country's participation in the Coalition of the Willing during the Iraq War violated the Peace Constitution. The Constitutional Court decision in that case, dated September 8, 2004, recognized the right to peace. In addition, the later Constitutional Court ruling of September 24, 2008, ruled that the decree allowing the extraction of uranium and thorium, the production of nuclear fuel, and the manufacture of nuclear reactors was contrary to the value of peace owing to the possibility of those weapons being linked to acts of war, which conflicted with the right to peace recognized by the United Nations and the domestic 2004 (above) ruling. The decision stated that "the right to peace is recognized in the Costa Rican system not only through the articles of the Constitution [Article 12 of the Constitution, which abolished the standing army], but also through normative recognition derived from the international treaties ratified by our country, jurisprudence derived from the decisions of the Constitutional Court, and, above all, from the Costa Ricans' social recognition based on their feelings and actions". As the decision stated that this norm derived from international treaties, it cited the 1984 UN Declaration on the Right of Peoples to Peace.

The right to conscientious objection to military service by those who refuse to serve in South Korea has also been debated. This right is shown in Article 5 of the Advisory Committee's draft, the right to conscientious objection to military service as a right to peace. The courts have not recognized the right to conscientious objection to military service as a constitutional right²⁵. However, the reason for the Court's denial is that national security and the maintenance of the national defense force take priority (Constitutional Court Decision of August 26, 2004) [Shin 2012]. This 2004 decision implies that the national security interest of maintaining the armed forces for national defense could conflict with the rights of conscientious objectors. Though this court decision is an example that did not recognize the right to conscience objection, it implicates a clear distinction and incompatibility between national security and the right to peace and future possibilities to prevail over national security.

The distinctive feature of these cases in three countries is that they have shown that the right to peace, the right to live in peace, and the right to conscientious objection are rights that could potentially constrain the state's military conduct, although whether the right to peace or the right to live in peace was ultimately recognized and constrained the military conduct of the state varies from case to case.

²⁵ The South Korean Constitutional Court's decision on June 28, 2018 ruled that the failure to provide for an alternative service system for military service violates the freedom of conscience under Article 19 of the Constitution.

By invoking the right to live in peace in the courts against the military, military-related acts, or military force retention (e.g., the installation of missile bases, the overseas dispatch of troops, the relocation and installation of military bases, conscription system, and the production of nuclear fuel, as well as the security policies and their implementation based on national interests and defense), the actions' illegality was judged in terms of human rights of specific human beings, such as residents, citizens and military personnel. These examples show that from the perspective of security theory, the realization of the right to peace may impose restrictions on the security actions of the state.

(4) Conclusion

As explored above, the right to peace is,

- (i) The right to peace regulates the relationship between the state and the individual through legal relations of rights and obligations concerning the military conduct of the state, obliging the state to realize the right to peace and enabling it to realize human security more directly than general human rights. Hayden held that the right to peace is a necessary justificatory basis for embodying human security [Hayden 2004: 41]. Human security is no longer merely an enumeration of human insecurity, and by using the right to peace as a justification basis, the right to peace is now an effective means of realizing human security.
- (ii) With the advent of the right to peace, the way was opened for individuals to become involved in the state and its supporting norms and institutions that create human insecurity. It is now possible not only to point out the insecurity of human beings caused by war, civil war, and the politics of fear but also to engage individuals systematically in the norms and institutions that give rise to such insecurity.
- (iii) Even in cases where the security of the state, which seeks to protect the national interest and all its citizens, conflicts with human security, which seeks to secure individual human beings, the right to peace obliges the state to realize the content of its rights for individuals. From the perspective of security theory, the right to peace restricts the state's military actions based on the idea of national security.

Each of these means that from the perspective of the theory of human security, which seeks to guarantee human security, the right to peace could be a promising means of achieving human security by imposing on the state an obligation to realize individual peace concerning security-related matters of the state.

Final Chapter

1 What this thesis reveals

In this section, the author summarizes what is revealed throughout this thesis and makes some recommendations regarding the embodiment of the right to peace.

While the right to peace is a right that one can approach as an individual against the monopoly of military power and its use by the state, there has been little international political analysis of this right as a security theory. This right concept has not been sufficiently clarified or legally embodied. In order to clarify its meaning as a security theory, this thesis attempts to clarify the meaning of human security and the right to peace in terms of security theory through an analysis of the deliberations on the UN Declaration on the Right to Peace at the United Nations.

In Chapter 1, the author first presented theoretical issues that need to be clarified in terms of security theory regarding human security, which shares a common purpose with the right to peace. In security theory, there are two types of security theory: the state security theory, which focuses on the role of the state, and the critical security theory, which aims at human emancipation. Moreover, among the critical security theories, this chapter examines the critical security theory that seeks to delve deeper into the security concept with the aim of emancipating human beings. The critical security theory of Booth et al. did not limit human security to a policy concept but emphasized conceptual formulation, including how to view the relationship between the state and human beings and critical analysis of the structural and historical institutions that give rise to human insecurity. Newman [2010] further makes human security an independent academic discipline and critically views conventional human security studies. The issues to be clarified in the concept of human security include: (1) clarification of the contradiction between ends and means to achieve security, which is latent in human security; (2) analysis of the structural causes of human insecurity, not just enumeration of insecurity; (3) how to understand the role of individual in achieving human security and the relationship between individual and structures beyond his/her reach; and (4) the need to explain the relationship between state and individual, since state is both a provider and a threat in the security provision arena. This thesis attempted to clarify these issues by analyzing the UN Declaration on the Right to Peace deliberations. In the deliberations at the UN, there was a controversy between opponents of adopting the right to peace, who emphasize the role of the state and the primacy of existing norms and institutions, and proponents, who emphasize the role of human beings and individuals and seek to create the

right to peace as a new norm. However, conflicting values are expressed in the controversy, and the controversy provides an opportunity to learn about one's own and one's opponent's position. Therefore, by analyzing and examining the deliberations of the United Nations, this study attempted to clarify the security significance of the right to peace.

In Chapter 2, as a prerequisite for analyzing the deliberations of the UN on the right to peace, we introduced how the right to peace has been historically discussed in the international community and in what context it emerged. The right to peace did not appear suddenly but emerged amidst the recognition of the vital link between peace and human rights within the international community, especially the United Nations. In the past, the state held all authority over war and peace, and individual human harm caused by war was not incorporated into the system. However, it was not until the Hague Peace Conference of 1898 that the idea of humanity as an individual injury was raised against the right of states to wage war. In 1941, President Roosevelt advocated freedom from fear, and peace was incorporated into the content of freedom. After the scourge of World War II, when the United Nations Charter was enacted, a clause on respect for human rights was incorporated into the Charter, and the Universal Declaration of Human Rights institutionalized specific international human rights. As international human rights developed into treaties after the war, awareness of the interdependence of human rights and peace developed in the form that human rights guarantees are necessary to ensure peace, and peace is necessary to ensure human rights guarantees. In the 1970s, peace came to be discussed as a content of rights, such as the right to live in peaceful conditions, at the United Nations Commission on Human Rights. This chapter shows that the discussion of the right to peace began in the United Nations in the context of these historical developments.

Chapter 3 presents an analytical framework of UN deliberations to clarify the security significance of the right to peace. Since normative studies are concerned with the relationship between norms and actors, most studies take the position of constructivism, in which actors influence each other intersubjectively. This thesis adopts an analytical framework of studies that find positive meaning in contestation. The deliberation of the right to peace was a norm-making process in which opinions and values conflicted, but norms were eventually adopted. As this thesis seeks to find security theory implications in the deliberation process, norms research in which contestation sometimes strengthens norms is a more suitable analytical framework than traditional norms research in which contestation weakens norms. Referring to the norms research of Deitelhoff and Zimmermann, who argue that norms are reinforced by contestation because the process of learning the meaning of norms can be seen in

contestation, the author applied their ideas to the norm-making process, setting as an analytical framework the criterion of whether new normative meaning was shared in the contestation. Moreover, as an analytical framework to identify the involved role of NGOs in Human Rights to Peace, the NGOs, led by the SSIHRL (Spanish Society for International Human Rights Law), played a role as norm entrepreneurs in the UN Human Rights Council deliberations. Hence, the importance of their role is analyzed using the criterion of the extent to which NGOs could incorporate their issues into the agenda of respective deliberation processes.

Chapter 4 analyzes the deliberations of the UN. During the discussion of the 1984 Declaration on the Right of Peoples to Peace, a contestation had already begun between a group of countries in favor of the creation of new rights, mainly socialist and developing countries, and a group of opposed countries, mainly developed Western countries, which were more protective of existing norms and institutions. This contentious situation was carried over into discussions at UNESCO and the UN Commission on Human Rights in the 1990s. There, along with the debate over whether the rights of peoples were the rights of the state or the rights of individuals, the same debate that would later take place at the UN Human Rights Council had already begun: that matters of peace should be handled by the UN General Assembly and the Security Council, not by the UN Commission on Human Rights Committee.

Compared to earlier discussions, the discussions at the Human Rights Council from 2008 were characterized by the uniqueness of the method of deliberation and the fact that much time was also spent on the discussion, reflecting the situation surrounding the norm at the time. Because the draft declaration of the Advisory Committee in Human Rights Council was specific and exhaustive in content with 14 articles, the discussion at the first session of the Intergovernmental Working Group, which took it as its agenda, was specific, despite the soft law discussion as a declaration of right. In particular, opposed countries made specific statements against the Advisory Committee Draft to prevent the establishment of the Declaration, thus clarifying points of contention with countries favoring the Declaration. Since the right to disarmament was the right that best represented the right to peace, the U.S. representative made a coherent statement in the discussion of the right to disarmament (Article 2 of the AC draft). The U.S. said that nuclear disarmament should be left to the existing UN agencies and bilateral negotiations with Russia, that depending on the content of the new right to peace, those functions and efforts would be curtailed, and that there was a danger that the right to peace would not recognize that the right of self-defense of the state was legal under the UN Charter. The author was present at the meeting of this intergovernmental working group and could perceive in real time that this U.S. statement

clarified the contentious points on the right to peace. It was, of course, paid attention to by the states in favor. Although the Western countries are in the minority in numbers, they have tremendous power in international security, so the supportive countries closely observed their comments. The U.S. representative spoke out the most extensive dissenting opinions in this first session. This should have helped the supportive countries to understand the fundamental disputed points on the right to peace.

As to whether the right to peace is a peoples right or an individual right, the Human Rights Council's discussion began with peoples rights at the entry door and individual rights to the exit door. When discussions began at the Human Rights Council, it was unclear how to view "peoples" as the subjects of the right to peace, as pointed out at the 2009 expert workshop. The Advisory Committee draft, then, incorporated the aspect of individual rights and the concept of peoples rights as collective rights. Furthermore, at the end of the intergovernmental working group, they converged on individual rights. As for peoples rights, the discussion proceeded with the definition by the Working Group chairperson that peoples rights are the rights of states. The UN Declaration on the Rights of Indigenous Peoples (2007) was considered a collective right as a group, but peoples right as a collective right in the Right to Peace was considered a state right. As a result of deliberations at the Human Rights Council, the right to peace was seen as a right that established a human perspective in the field of security, and there was a shared recognition among countries in favor of the right as a right that could constrain the exercise of the right of self-defense and existing international institutions. The adopted "right to enjoy peace" was then established with content shared by such contestation.

This section also analyzes the role played by international NGOs in the deliberation process leading to the establishment of the UN Declaration on the Right to Peace according to the following criteria: how successful they are as norm entrepreneurs in each conference to set its agenda at each stage: 1) problem adoption, 2) issue creation, 3) candidate norm creation, and 4) norm creation.

The SSIHRL began working to create the right to peace in the early 2000s, which was after the 9/11 terrorist attacks and the U.S. wars in Afghanistan and Iran under the guise of fighting terrorism. Also, humanitarian intervention, despite this word not being included in the UN Charter, was used in the 1999 NATO bombing of Kosovo. Therefore, the SSIHRL set itself the task of moving peace from the moral order to the legal human rights category. This setting was the first "problem adoption" achieved as a norm entrepreneur. The campaign to disseminate the human right to peace began in 2004 in Spain, with the creation of the Lluçman Declaration, the Bilbao Declaration, the Barcelona Declaration, and the Santiago Declaration with many NGOs and experts, a series of draft NGO declarations on the human right to peace,

which were disseminated internationally. By the time of the Santiago Declaration, as many as 800 NGOs endorsed the campaign. Then, in their capacity as NGOs, they attended meetings of the UN Human Rights Council, issued documents and statements, held events and meetings with government representatives and UN agencies, and worked to gain international recognition for the movement of the right to peace, which led to the successful "issue creation" phase.

The first time international NGOs were involved in international norm-making was the campaign to ban anti-personnel landmines in the 1990s. In the campaign for the right to peace, NGOs also influenced the formation of the UN draft. They also exchanged views with the Advisory Committee members, and ultimately, 85% of the Santiago Declaration was incorporated into the Advisory Committee draft, thus clearing the "candidate norm creation" stage.

In the Intergovernmental Working Group, the last stage of negotiations for the UN Declaration on the Right to Peace, more NGOs participated in the meetings, spoke out, and influenced the decisions of government representatives, contributing to the adoption of the UN Declaration on the Right to Peace by the Human Rights Council and the UN General Assembly, thus also clearing the "norm creation" stage.

It can be said that NGOs were successful in setting the agenda at each of the four stages of norm-making; the Santiago Declaration was not incorporated into the final UN Declaration in its original form. However, by emphasizing the Right to Peace as a Human Right, NGOs also influenced the adoption of the UN Declaration as an individual right in terms of content. In addition, proposing the NGO's notion at the UN stimulated discussion among favored and opposed countries, thereby playing a unique role different from the Cuban government, which took the initiative in the UN government representation.

Chapter 5 first analyzes the shared meaning in the contestation of the deliberation in the Human Rights Council. Regarding whether this is an individual right or a peoples right, in the discussion of the Inter-governmental Working Group, its Chairperson and Western opposed countries affirmed that peoples right was a right of the state, not a right of individuals. As it was in the Human Rights Council, the peoples right was withdrawn. Meanwhile, the discussion focused on individual dimensions. Even the opposed countries claimed the form of individual dimension even though they opposed the right to peace. The favored countries agreed that the subject of the right to peace was every individual, and establishing this right introduced a human-centered perspective into the security field.

Regarding the relationship between the state's right of self-defense and the right to peace, favored countries realized in the contestation that the opposed countries were afraid and

opposed due to the possibility of restriction to the self-defense right. Casting a vote of favor meant that self-defense right could be restricted to some extent by the right to peace.

Regarding the relationship between the right to peace and existing disarmament institutions, in the discussion of the right to disarmament, the opposed countries, the United States, argued that the disarmament matter should be left to negotiations between power countries and existing disarmament conferences. However, though favored countries did not explicitly oppose it, they behaved the right to peace has a possibility to have some restrictions on those existing institutions and bilateral negotiations.

Right to conscience objection was included in the Advisory Committee draft, but it was opposed by most of the state representatives in the Intergovernmental Working Group; it was not discussed anymore. We have to evaluate it was not shared even in the favored countries.

Secondly, the significance of this shared norm is reviewed from the perspective of security theory. With regard to the meaning of an individual right, since the right to peace regulates the relationship between the state and the individual related to the state's military conduct through a legal relation of rights and obligations, it implies that this relationship can be seen as an institution in which the individual has rights, and the state is obligated to realize those rights. Such an institution becomes a promising means of implementing the security of human safety and freedom from fear, and it provided one perspective for the conceptual creation of critical security theory aimed at human emancipation. This outcome could not be achieved in the 1980s, when peoples rights were discussed. Because peoples rights are regarded as a state right against the state, realizing peoples rights does not necessarily mean that a non-state person-centered perspective can be incorporated into security. On the contrary, the definition of an individual right paved the way for the right to peace to be incorporated and specified as a right or a human right to peace in the United Nations or legislative and judicial arenas of various countries.

Specifying in the UN arena refers to taking up the right to peace as one of the agenda items of the Human Rights Council and its embodiment and implementation in the course of investigations and recommendations by the Special Rapporteurs and Working Groups in the Human Rights Council. Furthermore, if it becomes an international human rights treaty in the future, activities aimed at realizing the right to peace could be carried out in each country through individual communications examination by the UN Covenant Committee.

Specifying in the legislative arena in each country could mean establishing the right to peace or specific rights embodying it in the laws or constitutions of each country or directly applying the Declaration on the Right to Peace or treaties in countries where treaties have automatic enforcement power. Specifying in the judicial arena could include direct application

of the UN Declaration on the Right to Peace and the Covenant on the Right to Peace as sources of international law or having a court examine and rule on whether the right to peace, which has become domestic law, has been violated.

These can be illustrated by the example of human rights, which became an international human rights treaty after the UN Declaration on Rights was adopted.

With regard to the right to peace between humans and structure, the right to peace is the right to demand modifications to the norms and institutions, as part of the structure that produce human insecurity. So, the right to peace can overcome the paradox, as traditional human security studies are criticized, that human security reinforces the structures and norms that produce human insecurity. Regarding what exactly can be expected in response to actions, norms and institutions based on national security, the practices of various countries and the contents of drafts such as the Advisory Committee Draft and the NGO Santiago Declaration, which appeared during the UN Declaration deliberations, can be helpful.

Among these drafts are the right of citizens to have their voices reflected in the nonproliferation regime and arms control, including arms trading; the right to access information on military force preparations; and the right to demand that the national budget not be excessively used for military power. The jurisdictions in each country are primarily cases of claiming state inaction, but these rights also include the right to demand positive action against the state, which is a right that has not been addressed in the examples of judicial practices. The right of citizens to have their voices heard in arms transactions could also be further specified to focus on arms transactions, such as the right to prohibit arms exports, the right to demand a ban on the export of deadly weapons, and the right to prohibit the joint production of weapons with other countries. The right to abolish nuclear weapons, one of the rights to disarmament that the United States vehemently opposed in the Intergovernmental Working Group, is recognized in the Santiago Declaration (Article 7.1) and the Advisory Committee Draft (Article 3.3). If it is specified as an individual right, even if no interstate Treaty on the Prohibition of Nuclear Weapons has been ratified, claiming the abolition of nuclear weapons against the states as an individual right would be possible. It would also be a challenge to the "norms", "system" and "structure" that nuclear weapons matters should be left to negotiations among the major powers, the existing UN bodies, and the existing legal system. Concerning the military budget, Article 7.2 of the Santiago Declaration and Article 3.5 of the Advisory Committee Draft stipulate the right to have the military budget obtained through disarmament transferred to the socially vulnerable for economic, social, and cultural development. The right to budget is also a right that makes it possible to modify the "system" of budgetary rights, which had been considered the state's exclusive right. Thus, the significance of the right to peace is that it enables individuals to get involved in norms and

institutions that were previously inaccessible to them through the way of "realization of rights."

In addition, in relation to whether the right to peace prevails over national security, the Commission on Human Security document pointed out that the two are complementary. However, as the right to peace set up the relationship between the individual and the state as a relationship of rights and obligations, it leads to the conclusion that there can be cases of conflict between state security and human security and that state security would not always take priority in such cases. Examples of judicial practices in various countries demonstrate this. In court decisions with U.S. military bases and the right to self-defense (Japan and South Korea), the actual court decisions did not necessarily grant relief of the right to live in peace in the said decisions. However, from the standpoint of one citizen, the right to demand to stop military state actions that lead to war may be specified in the future, even in a scene where the interests of national defense take priority. The right to phase out foreign military bases is provided for in Article 7.1 of the Santiago Declaration, which allows a country to demand the elimination of a foreign military base if its establishment poses a threat to the other country. Thus, it can be said that the significance of the right to peace is that it has paved the way for individuals, who until now could not say anything under the guise of national security or national defense, to become involved there through their rights, thereby changing the conventional concept of security.

In the deliberations of the UN Human Rights Council, the right to conscientious objection to military service could not be evaluated as shared meaning even among countries in favor of the right, but if the right is recognized as one of the Right to Peace in the future, it will give an individual the right to resist or reject conscription or deployment of troops overseas based on a national security policy. The Advisory Committee Draft specifies this right and states that military personnel have the right to disobey orders against wars of aggression and other military actions that violate the UN Charter and international humanitarian law (Article 5.2 of the Advisory Committee Draft). The Santiago Declaration of NGOs further states that the right not to participate in scientific research for the manufacture and development of weapons, the right to refuse to participate in an illegal military action in an expert capacity, and the right to oppose taxation for military expenditures are also part of the right to peace as the right to disobedience (Article 5.5 and 5.6 of the Santiago Declaration). Thus, the right to peace has the potential to be specified as the right to various forms of disobedience to illegal military actions in violation of international law. Given that states do not always observe international law, this can enable individuals to rectify this situation from their standpoint.

2 Significance of this thesis

Finally, this section will summarize the academic significance of this thesis.

Firstly, the Right to Peace as norms research: The UN Declaration on the Right to Peace is soft law and is not as legally binding as international human rights treaties. However, the contestation to create a new right in the field of security occurs between major powers that seek to maintain the status quo of the international sovereign state system and countries and NGOs that seek to change the status quo and bring in new values, so the conflict of values is apparent and the contestation is active. In this respect, the contestation over the right to peace was a topic that often expressed each country's notions of values and perceptions of the status quo. By analyzing the deliberations on the UN Declaration on the Right to Peace from the perspective in preceding studies on norm research that contestation enables the sharing of the meaning of new norms, this thesis clarified that the substantive meaning of the norm was shared in the contestation leading to norm making, and thus provided one case study for norm research that emphasizes the positive role of contestation. By analyzing the actions and words of NGOs in the deliberation process of the UN Declaration on the Right to Peace, this study clarified the essential role of NGOs in the international norm-making process, both in terms of the content of the draft and campaigning. NGOs succeeded in agenda-setting in UN meetings based on their strategy as entrepreneurs. This thesis casts a case study of the NGOs-led norm-making process. However, this study is just one aspect of a soft law case; we should explore further the objective criteria to clarify the meaning of norms in contestation during norms-making.

Secondly, the right to peace as a critical security theory: The right to peace, outlined through shared meaning in the UN contestation, has introduced into the security field a legal relationship that gives rights to individuals and imposes obligations on the state in security matters. This thesis regards this legal relation as one of the ways to achieve human security, which aims at human emancipation. In relation to the relationship between humans and structure, which is the subject of critical security theory and critical human security theory, structure has traditionally been considered an area beyond human reach. However, the creation of the right to peace, which evolved from the right to social and international order in the Universal Declaration of Human Rights, specified a way of approaching the existing order, norms, institutions and structure in terms of the realization of individual rights.

In the deliberations of the United Nations, the right to peace was seen as a shared right with the potential to constrain the right of states to self-defense and to modify existing structures, which was the suggestion of Newman's critical human security theory (Chapter 1, 2(4), (4)), in relation to human beings and the structures beyond their reach. One concrete proposal for this was presented, and utilizing practical examples of the right to peace in

various countries, we were able to provide one concrete image showing the relationship between human beings and structures. Of course, what has been clarified above is only one perspective of the security approach from the human right to peace, and this is by no means an exhaustive list of approaches to human security theory.

Previous publications

Parts of this dissertation appeared in previous publications; they appear in the current study with significant additions and corrections:

Sasamoto, J. (2019) "The Significance and Role of the United Nations in Security and Human Rights: Through Deliberations on the UN Declaration on the Right to Peace," *UN Studies*, No. 20

Sasamoto, J. (2019) "The Possibility of Regulating the Human Rights Approach to the Use of Force," *Peace Research*, No. 51

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Annex

1. UN Declaration on the Preparation of Societies for Life in Peace (UN Doc. A/RES/33/73, 1978)
2. UN Declaration on the Right of Peoples to Peace (A/RES/39/11, 1984)
3. Luarca Declaration on the Human Right to Peace (2006)
4. Report of the Office of the High Commissioner on the outcome of the expert workshop on the right of peoples to peace (A/HRC/14/38, 2010)
5. Santiago Declaration on the Human Right to Peace (2010)
6. Progress Report of the Human Rights Council Advisory Committee on the Right of Peoples to Peace (A/HRC/17/39, 2011)
7. Human Rights Council Advisory Committee draft (A/HRC/20/31, 2012)
8. Intergovernmental Working Group Chairperson's Draft 1 (2014)
9. Intergovernmental Working Group Chairperson's Draft 2 (2015)
10. Intergovernmental Working Group Chairperson's report to the Human Rights Council (A/HRC/29/45, 2015)
11. UN Declaration on the Right to Peace (A/RES/71/189, 2016)

1, UN Declaration on the Preparation of Societies for Life in Peace (UN Doc. A/RES/33/73, 1978)

Resolution adopted by the General Assembly

33/73. Declaration on the Preparation of Societies for Life in Peace

The General Assembly,

Recalling that in the *Charter* the peoples of the United Nations proclaimed their determination to save succeeding generations from the scourge of war and that one of the fundamental purposes of the United Nations is to maintain international peace and security,

Reaffirming that, in accordance with General Assembly *resolution 95 (I)* of 11 December 1946, planning, preparation, initiation or waging of a war of aggression are crimes against peace and that, pursuant to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, of 24 October 1970,¹ and the Definition of Aggression of 14 December 1974,² a war of aggression constitutes a crime against the peace,

Reaffirming the right of individuals, States and all mankind to life in peace,

Aware that, since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed,

Recognizing that peace among nations is mankind's paramount value, held in the highest esteem by all principal political, social and religious movements,

Guided by the lofty goal of preparing societies for and creating conditions of their common existence and co-operation in peace, equality, mutual confidence and understanding,

Recognizing the essential role of Governments, as well as governmental and non-governmental organizations, both national and international, the mass media, educational processes and teaching methods, in promoting the ideals of peace and understanding among nations,

Convinced that, in the era of modern scientific and technological progress, mankind's resources, energy and creative talents should be directed to the peaceful economic, social and cultural development of all countries, should promote the implementation of the new international economic order and should serve the raising of the living standards of all nations,

Stressing with utmost concern that the arms race, in particular in the nuclear field, and the development of new types and systems of weapons, based on modern scientific principles and achievements, threaten world peace,

Recalling that, in the *Final Document of the Tenth Special Session of the General Assembly*,³ the States Members of the United Nations solemnly reaffirmed their determination to make further collective efforts aimed at strengthening peace and international

security and eliminating the threat of war, and agreed that, in order to facilitate the process of disarmament, it was necessary to take measures and pursue policies to strengthen international peace and security and to build confidence among States,

Reaffirming the principles contained in the *Declaration on the Granting of Independence to Colonial Countries and Peoples*, of 14 December 1960,⁴ the *Declaration on the Strengthening of International Security*, of 16 December 1970 ⁵ and the *Declaration on the Deepening and Consolidation of International Detente*, of 19 December 1977,⁶

Recalling the *Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples*, of 7 December 1965,⁷⁷

Further recalling the *Universal Declaration of Human Rights*, of 10 December 1948,⁸ as well as the *International Covenant on Civil and Political Rights*, of 16 December 1966,⁹ and bearing in mind that the latter states, inter alia, that any propaganda for war shall be prohibited by law,

I

Solemnly invites all States to guide themselves in their activities by the recognition of the supreme importance and necessity of establishing, maintaining and strengthening a just and durable peace for present and future generations and, in particular, to observe the following principles:

1. Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace. Respect for that right, as well as for the other human rights, is in the common interest of all mankind and an indispensable condition of advancement of all nations, large and small, in all fields.
2. A war of aggression, its planning, preparation or initiation are crimes against peace and are prohibited by international law.
3. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.
4. Every State, acting in the spirit of friendship and good-neighbourly relations, has the duty to promote all-round, mutually advantageous and equitable political, economic, social and cultural co-operation with other States, notwithstanding their socio- economic systems, with a view to securing their common existence and co-operation in peace, in conditions of mutual understanding of and respect for the identity and diversity of all peoples, and the duty to take up actions conducive to the furtherance of the ideals of peace, humanism and freedom.
5. Every State has the duty to respect the right of all peoples to self-determination, independence, equality, sovereignty, the territorial integrity of States and the inviolability of their frontiers, including the right to determine the road of their development, without interference or intervention in their internal affairs.
6. A basic instrument of the maintenance of peace is the elimination of the threat inherent in the arms race, as well as efforts towards general and complete disarmament, under effective international control, including partial measures with that end in view, in accordance with the principles agreed upon within the United Nations and relevant international agreements.

7. Every State has the duty to discourage all manifestations and practices of colonialism, as well as racism, racial discrimination and apartheid, as contrary to the right of peoples to self-determination and to other human rights and fundamental freedoms.
8. Every State has the duty to discourage advocacy of hatred and prejudice against other peoples as contrary to the principles of peaceful coexistence and friendly co-operation.

II

Calls upon all States, in order to implement the above principles:

- a. To act perseveringly and consistently, with due regard for the constitutional rights and the role of the family, the institutions and the organizations concerned:
 - i. To ensure that their policies relevant to the implementation of the present Declaration, including educational processes and teaching methods as well as media information activities, incorporate contents compatible with the task of the preparation for life in peace of entire societies and, in particular, the young generations;
 - ii. Therefore, to discourage and eliminate incitement to racial hatred, national or other discrimination, injustice or advocacy of violence and war;
- b. To develop various forms of bilateral and multilateral co-operation, also in international, governmental and non-governmental organizations, with a view to enhancing preparation of societies to live in peace and, in particular, exchanging experiences on projects pursued with that end in view;

III

1. Recommends that the governmental and nongovernmental organizations concerned should initiate appropriate action towards the implementation of the present Declaration;
2. States that a full implementation of the principles enshrined in the present Declaration calls for concerted action on the part of Governments, the United Nations and the specialized agencies, in particular the United Nations Educational, Scientific and Cultural Organization, as well as other interested international and national organizations, both governmental and non-governmental;
3. Requests the Secretary-General to follow the progress made in the implementation of the present Declaration and to submit periodic reports thereon to the General Assembly, the first such report to be submitted not later than at its thirty-sixth session.

85th plenary meeting 15 December 1978

Footnotes

- 1/ *Resolution 2625 (XXV), annex.*

2/ *Resolution 3314 (XXIX), annex.*

3/ *Resolution S-10/2.*

4/ *Resolution 1514 (XV).*

5/ *Resolution 2734 (XXV).*

6/ *Resolution 32/155.*

7/ *Resolution 2037 (XX).*

8/ *Resolution 217 A (III).*

9/ *Resolution 2200 A (XXI), annex.*

2, UN Declaration on the Right of Peoples to Peace (A/RES/39/11, 1984)

General Assembly resolution 39/11

Declaration on the Right of Peoples to Peace

12 November 1984

The General Assembly ,

Reaffirming that the principal aim of the United Nations is the maintenance of international peace and security,

Bearing in mind the fundamental principles of international law set forth in the Charter of the United Nations,

Expressing 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,

Convinced 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,

Aware 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,

Recognizing that the maintenance of a peaceful life for peoples is the sacred duty of each State,

1. Solemnly proclaims that the peoples of our planet have a sacred right to peace;

2. Solemnly declares that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State;
3. Emphasizes that ensuring the exercise of the right of peoples to peace demands 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. Appeals to all States and international organizations to do their utmost to assist in implementing the right of peoples to peace through the adoption of appropriate measures at both the national and the international level.

DECLARATION ON THE HUMAN RIGHT TO PEACE

Preamble

The General Assembly,

- (1) Considering that, in accordance with the Preamble to the Charter of the United Nations and the purposes and principles established therein, peace is a universal value, the *raison d'être* of the Organisation and a prerequisite and consequence of the enjoyment of human rights by everyone;
- (2) Recognising the positive concept of peace which goes beyond the strict absence of armed conflict and is linked to the economic, social and cultural development of peoples as a condition for satisfying the basic needs of human beings, to the elimination of all kinds of violence and to the effective respect for all human rights;
- (3) Taking account of the principles and rules enshrined in the main human rights instruments of the United Nations in respect of human rights, in particular the Universal Declaration of Human Rights, the Declaration on the Right to Development, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- (4) Considering that international law constitutes an instrument whose proper and effective

implementation is essential to the attainment of peace, and that such an attainment is the shared responsibility of men and women, peoples, states, international organisations, civil society, corporations and other elements of society and, in general, of the whole international community;

- (5) Recalling that the Charter of the United Nations requires Member States to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, and to 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 and principles of the United Nations;
- (6) Recalling the Istanbul Declaration, adopted by Resolution XIX (1969) of the XXI International Red Cross Conference, which states that human beings have the right to enjoy lasting peace and Resolution 5/XXXII (1976) of the United Nations Commission on Human Rights, which affirms that everyone has the right to live in conditions of peace and international security;
- (7) Recalling also the relevant resolutions of the General Assembly, inter alia resolution 33/73 of 15 December 1978, which adopts the Declaration on the Preparation of Societies for Life in Peace; resolution 39/11 of 12 November 1984, which proclaims the Declaration on the Right of Peoples to Peace; resolution 53/243 of 13 September 1999, which proclaims the Declaration on a Culture of Peace, the Rio Declaration on Environment and Development of 1992; and resolution 55/282 of 7 September 2001, which decided that the International Day of Peace is to be observed on 21 September each year;
- (8) Recognising also that, in accordance with the Preamble to the Constitution of the United Nations Educational, Scientific and Cultural Organization, “since wars begin in the minds of

men, it is in the minds of men that the defences of peace must be constructed”, and that, according to that Organisation, it is necessary to promote a culture of peace, by which is meant a set of values, attitudes, patterns of behaviour and ways of life that reject violence and prevent conflicts by tackling their root causes through dialogue and negotiation among individuals, groups and States;

- (9) Observing that the commitment to peace is a general principle of international law, in accordance with Article 38.1.c) of the Statute of the International Court of Justice, as was recognised by the International Consultation of experts, representing 117 States, on the Human Right to Peace, held in Paris in 1998;
- (10) Considering that the international community requires the codification and progressive development of the human right to peace, as a right with its own entity, with universal vocation and intergenerational character, since it applies to both present and future generations;
- (11) Recalling that human rights are inalienable, universal, indivisible and interdependent and that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women;
- (12) Conscious of the vulnerability and dependence of human beings, of the right and need of individuals and groups to live in peace and to have a national and international social order established, in which peace has absolute priority, so that the rights and freedoms proclaimed in the Universal Declaration of Human Rights can be fully realised;
- (13) Considering that the promotion of a culture of peace, the world-wide redistribution of resources and the achievement of social justice must contribute to the establishment of a new international economic order which will facilitate the fulfilment of the proposals of this Declaration, by eliminating the inequality, exclusion and poverty which generate structural

violence incompatible with peace on the national and international levels;

- (14) Bearing in mind that peace must be based on justice, concerned for the fate of victims of human rights violations and breaches of international humanitarian law, and recalling their right to justice, to the truth and to effective remedy which includes the restitution of their honour, the rehabilitation of their memory and the adoption of measures to prevent a repetition of those acts, thus contributing to reconciliation and the establishment of lasting peace;
- (15) Conscious that the end of impunity as an instrument of peace requires every military or security institution to be fully subordinate to the rule of law, to the fulfilment of obligations arising under international law, to the observance of human rights and of international humanitarian law, and to the attainment of peace, and that, therefore, military discipline and compliance with orders from superiors must be subordinate to the achievement of those objectives;
- (16) Conscious also that forced mass exoduses and migratory flows take place, usually as a response to dangers, threats or the breakdown of peace, and may, as a consequence endanger peace in the countries of destination, and that, accordingly, the international community must establish as a matter of urgency an international migration regime which recognises the right of every person to emigrate and settle peacefully in the territory of a State, in the circumstances provided for in this Declaration;
- (17) Affirming that the effectiveness of the right to peace will not be achieved without the realisation of equal rights for men and women and the respect for their difference, without respect for the various cultural values and religious beliefs compatible with human rights, and without the eradication of racism, xenophobia and the contemporary forms of racial discrimination;

- (18) Recognising the particular suffering of women in armed conflicts, and under- lying the importance of their full participation in peace-building processes, as recognised by the United Nations Security Council in its resolution 1325 (2000);
- (19) Concerned because arms manufacture, the arms race and the excessive and uncontrolled traffic of all kinds of arms jeopardise peace and security, and constitute an obstacle to the realisation of the right to development;
- (20) Persuaded that the attainment of peace is intrinsically linked to envi- ronmental protection, and to an economic, social and cultural development of all peoples environmentally and humanly sustainable;
- (21) Persuaded also that peace has been and continues to be the constant aspiration of all civilisations throughout the history of mankind, and therefore we must all join our efforts to its effective realization.

Proclaims the following Declaration:

PART I ELEMENTS OF THE HUMAN RIGHT TO PEACE SECTION

SECTION A. RIGHTS

Article 1 Holders

Individuals, groups and peoples have the inalienable right to a just, sustain- able and lasting peace. By virtue of that right, they are holders of the rights proclaimed in this Declaration.

Article 2 Right to education on peace and human rights

Every person has the right to receive peace and human rights education, the basis of every educational system, which will help to generate social processes based on trust, solidarity and mutual respect, promote the peaceful settlement of conflicts and lead to a new way of approaching human relationships.

Article 3 Right to human security

Everyone has the right to human security, which shall include inter alia:

- a) The right to have the material instruments, means and resources which enable him/her to fully enjoy a life worthy of human dignity and, to that end, the right to have essential food and drinking water, primary health care, basic clothing and housing and a basic education;
- b) The right to enjoy fair conditions of employment and trade union participation, and the right to the protection of the social services, on equal terms for persons having the same occupation or providing the same service.

Article 4 Right to live in safe and healthy environment

Human beings and peoples have the right to live in a private and public environment which is safe and healthy, and to receive protection against acts of unlawful violence, irrespective of whether they are perpetrated by state or non-state actors;

Article 5 Right to disobedience and conscientious objection

Everyone, individually or in a group, has the right to civil disobedience and conscientious objection for peace, which consists in:

- a) The right to civil disobedience in respect of activities which involve threats against peace,

including peaceful protest and peaceful non-compliance with laws which offend the conscience;

b) The right of the members of any military or security institution to disobey criminal or unjust orders during armed conflicts and to refrain from participating in armed operations, whether international or national, which violate the principles and norms of international human rights law or international humanitarian law;

c) The right to refrain from participating in and to denounce publicly scientific research for the manufacture or development of arms of any kind;

d) The right to acquire the status of conscientious objector in respect of military obligations;

e) The right to object to paying taxes allocated to military expenditure and to object to taking part, in a working or professional capacity, in operations which support armed conflicts or which are contrary to international human rights law or international humanitarian law;

Article 6 Right to resist and oppose barbarity

1. All individuals and peoples have the right to resist and even to rebel against serious, mass or systematic violations of human rights and of the right of peoples to self-determination, in accordance with international law.

2. Individuals and peoples have the right to oppose war, war crimes, crimes against humanity, violations of human rights, crimes of genocide and aggression, any propaganda in favour of war or inciting violence, and violations of the human right to peace, as defined in this Declaration.

Article 7 Right to refugee status

1. Everyone has the right to seek and obtain refugee status in any country, without discrimination, in the following circumstances:

- a) If the person is persecuted for activities supporting peace, opposing war or promoting human rights;
- b) If the person has a justified fear of persecution by state or non-state agents, on grounds of race, sex, religion, nationality, membership of a particular social group or political opinion;
- c) If the person is the victim of enforced displacement, international or internal, occasioned by any kind of armed conflict or environmental disaster.

2. Refugee status shall include:

- a) The right to integration into society and employment;
- b) The right to effective remedy, in accordance with this Declaration, for violations of human rights and fundamental freedoms;
- c) The right to return to the country of origin with proper guarantees, once the causes of persecution have been removed and, depending on the circumstances, the armed conflict has ended.

Article 8 Right to emigrate, to settle peaceably and to participate

1. Everyone has the right to emigrate and to settle peaceably, and also to return to his/her country of origin. No foreigner may be expelled without the proper guarantees provided for in international law and in accordance with the principle of non-refoulement.
2. In particular, everyone has the right to emigrate if his/her right to human security or his/her right to live in a secure and healthy environment, as provided for in Articles 3 a) and 4 of this Declaration, are in danger or under serious threat.
3. Everyone has the right to participate, individually or in a group, in the public affairs of the country in which he/she has his/her habitual residence.
4. Every person or group has the right to the establishment of specific mechanisms and

institutions for participation which ensure the free and public expression of his/her/their individual and collective concerns and claims.

Article 9 Exercise of the freedom of thought, conscience and religion

Everyone has the right to express publicly his/her freedom of thought, conscience and religion; and to obtain respect for his/her right to have, adopt and express, individually or in a group, the beliefs and convictions of his/her choice, as established in international human rights law.

Article 10 Right to an effective remedy

1. Everyone has the right to an effective remedy to protect him/her against violations of his/her human rights.
2. Everyone has the imprescriptible and unrenounceable right to obtain justice in respect of violations of his/her human rights, which shall include the investigation and establishment of the facts, as well as the identification and punishment of those responsible.
3. The victims of violations of human rights, the members of their families and society in general have the right to know the truth.
4. Every victim of a violation of human rights has the right to restitution of his/her rights and to obtain reparation in accordance with international law, including the right to compensation and measures of satisfaction, as well as guarantees of non-repetition.

Article 11 Right to disarmament

Individuals and peoples have the right:

- a) Not to be regarded as enemies by any State;
- b) To the general and transparent disarmament of all States, together and in

a coordinated manner, within a reasonable time and under efficient and comprehensive international supervision;

c) To the allocation of the resources freed by disarmament to the economic, social and cultural development of peoples and the fair redistribution of such resources, responding especially to the needs of the poorest countries and to vulnerable groups, in such a way as to put an end to inequality, social exclusion and poverty.

Article 12 Right to development

1. All individuals and all peoples have the inalienable right to participate in an economic, social, cultural and political development in which all the human rights and fundamental freedoms shall be fully realised, and to contribute to and to enjoy such development.

2. All individuals and all peoples have the right to the elimination of obstacles to the realisation of the right to development, such as service of the foreign debt or maintenance of an unjust international economic order which generates poverty and social exclusion.

Article 13 Right to a sustainable natural environment

All individuals and all peoples have the right to live in a sustainable natural environment, as a basis for the peace and survival of mankind.

Article 14 Vulnerable groups

1. All persons belonging to vulnerable groups have the right to an examination of the specific effects on enjoyment of their rights of the different forms of violence to which they are subject, and to the adoption of measures in that respect, including recognition of their right to participate in the adoption of those measures.

2. In particular, the specific contribution of women to the peaceful settlement of disputes shall be promoted.

Article 15 Requirements of peace and truthful information

Individuals and peoples have the right to demand that peace effectively be achieved, and they shall therefore:

- a) Urge States to engage in the effective implementation of the collective security system established in the Charter of the United Nations, and the friendly settlement of disputes, in full compliance also with the rules of international human rights law and international humanitarian law;
- b) Denounce any act which threatens or violates the human right to peace and, to that end, receive objective information related to conflicts;
- c) Participate freely and by any peaceful means in political and social activities and initiatives to protect and promote the human right to peace, without abusive interference from the public authorities at local, national and international level.

SECTION B. OBLIGATIONS

Article 16 Obligations for the realisation of the human right to peace

- 1. The effective and practical realization of the human right to peace necessarily involves duties and obligations for States, international organizations, civil society, peoples, men and women, corporations and other elements of society and, in general, the whole international community.
- 2. Under the current international order the fundamental responsibility for preserving peace and

protecting the human right to peace lies with the States and also with the United Nations Organisation as a centre which harmonises the concerted efforts of all nations to fulfil the purposes and principles proclaimed in the Charter of the United Nations.

3. States have the obligation to protect human rights, to prevent and cooperate in the prevention of catastrophes, to respond to catastrophes when they occur and to repair the damage caused.

They are also required to adopt measures to build and consolidate peace.

4. The United Nations Organization should be further enabled to prevent violations and protect human rights and human dignity, including the human right to peace, in cases of serious or systematic violations. In particular, it is for the Security Council, the General Assembly, the Human Rights Council or any other competent body to take effective measures to protect human rights from violations which may constitute a danger or threat to international peace and security.

5. Any unilateral military intervention by one or more States, without the preceptive authorisation of the Security Council pursuant to the Charter of the United Nations, is unacceptable, constitutes a serious infringement of the purposes and principles of the Charter and is contrary to the human right to peace.

6. The composition and procedures of the Security Council shall be reviewed so as to ensure the proper representation of the current international community and the establishment of transparent working methods which allow the participation of civil society and other international actors.

7. The United Nations system must be fully and effectively involved, through the Peacebuilding Commission, in the preparation of integral strategies for peacebuilding and the reconstruction of countries concerned once the armed conflicts have ended, ensuring stable sources of financing and effective coordination within the system.

PART II

IMPLEMENTATION OF THE DECLARATION

Article 17 Establishment of the Working Group on the Human Right to Peace

1. A Working Group on the Human Right to Peace (hereinafter called “the Working Group”) will be established. It will be composed of ten members who will carry out the functions set forth in Article 18.
2. The members of the Working Group will be nationals from the Member States of the United Nations who will carry out their duties with complete independence and in their personal capacity.
3. The following criteria will be taken into account for their election:
 - a) The experts shall be of high moral standing, impartiality and integrity, and show evidence of long and appropriate experience in any of the spheres stated in Part I of this Declaration;
 - b) Equitable geographical distribution and representation of the different forms of civilisation and of the main legal systems of the world;
 - c) There shall be a balanced gender representation; and
 - d) There may not be two experts from the same State.
4. The members of the Working Group will be elected by secret ballot at a session of the United Nations General Assembly from a list of candidates proposed by the Member States. The ten candidates who obtain the highest number of votes and a two thirds majority of the States present and voting will be elected. The initial election will take place at the latest three months after the date of adoption of this Declaration.

5. The experts will be elected for four years and may be re-elected only once.

6. Half of the Working Group will be renewed every two years.

Article 18 Functions of the Working Group

1. The main function of the Working Group is to promote the observance and implementation of this Declaration. In the exercise of its mandate it has the following competences:

a) To promote worldwide observance and awareness of the human right to peace, acting with discretion, objectivity and independence and adopting an integral approach which takes account of the universality, interdependence and indivisibility of human rights and the overriding need to achieve international social justice;

b) To gather, analyse and respond effectively to any relevant information from States, international organisations and their bodies, civil society organisations, concerned individuals and any other reliable source;

c) Whenever appropriate, to address recommendations and appeals to Member States of the United Nations to adopt appropriate measures for the effective realisation of the human right to peace, in accordance with Part I of this Declaration. States shall give due consideration to those recommendations and appeals;

d) To draw up, on its own initiative or at the request of the General Assembly, the Security Council or the Human Rights Council, the reports it deems necessary in case of an imminent threat to or serious violation of the human right to peace, as defined in Part I of this Declaration;

e) To submit an annual report of its activities to the General Assembly, Security Council and Human Rights Council, in which it will include the recommendations and conclusions it considers necessary to the effective promotion and protection of the human right to peace, paying special attention to armed conflicts;

f) To prepare, to the attention of the General Assembly, a draft international convention which shall include the human right to peace, as well as a mechanism for supervising and monitoring its effective implementation. Both the mechanism to be established in the convention and the Working Group will coordinate their mandates and avoid duplicating their activities;

g) To bring to the attention of the Prosecutor of the International Criminal Court or other competent international criminal court or tribunal, reliable information about any situation in which it appears that crimes falling within the jurisdiction of the Court or any other international criminal tribunal have been committed;

h) To approve by majority of its members the working methods for the ordinary functioning of the Working Group, which shall include, inter alia, rules governing the appointment of the Bureau and the adoption of decisions and recommendations.

2. The Working Group will have its seat in New York and will hold three ordinary sessions per year, as well as any extraordinary session to be determined in accordance with its working methods. The Working Group will have a permanent Secretariat which will be provided by the Secretary General of the United Nations.

FINAL PROVISIONS

1. No provision of this Declaration may be interpreted as meaning that it confers on any State, group or individual any right to undertake or develop any activity or carry out any act contrary to the purposes and principles of the United Nations, or likely to negate or infringe any of the provisions of this Declaration, the International Bill of Human Rights or the international humanitarian law.

2. The provisions of this Declaration shall apply without prejudice to any provisions that are

more conducive to the effective realization of the human right to peace formulated in accordance with the legislation of the Member States or stemming from applicable international law.

3. All States must implement the provisions of this Declaration by adopting the relevant legislative, judicial, administrative, educational or other measures necessary to promote its effective realization.

4, Report of the Office of the High Commissioner on the outcome of the expert workshop on the right of peoples to peace (A/HRC/14/38, 2010)

**Report of the Office of the High Commissioner on the outcome of the
expert workshop on the right of peoples to peace**

I. Introduction

1. In its resolution 11/4 on promotion of the rights of peoples to peace, the Human Rights Council requested the United Nations High Commissioner for Human Rights to convene, before February 2010, and taking into account previous practices, a workshop on the right of peoples to peace, with the participation of experts from all regions of the world, in order to: (a) further clarify the content and scope of this right; (b) propose measures that raise awareness of the importance of realizing this right; and (c) suggest concrete actions to mobilize States, intergovernmental and non-governmental organizations in the promotion of the right of peoples to peace. The Council further requested the High Commissioner to report on the outcome of the workshop to the Council at its fourteenth session. The present report is submitted in accordance with that request and provides a summary of the discussion by the experts. The draft was circulated to the experts for their comments.

2. The expert consultation was announced on the website of the Office of the High Commissioner for Human Rights (OHCHR). On 3 December 2009, notes verbales were sent to all permanent missions in Geneva. The expert workshop was held in Geneva on 15 and 16 December 2009. Representatives from 21 Member States of the United Nations: Argentina, Armenia, Bahrain, Belgium, Bolivia (Plurinational State of), Brazil, Cuba, Egypt, Finland, Greece, Jordan, Philippines, Russian Federation, Senegal, Singapore, Slovenia, South Africa, Sri Lanka, Sweden, Venezuela (Bolivarian Republic of) and Viet Nam, as well as a representative from the Holy See and representatives from civil society organizations, attended the workshop.

3. The United Nations Deputy High Commissioner for Human Rights opened the expert workshop. She recalled that peace and human rights were intricately related. She also recalled that the Charter of the United Nations provided that strengthening universal peace and promoting and encouraging respect for human rights without discrimination were among the main purposes of the organization. During the past few decades, the United Nations had

worked, with the support of Member States and civil society organizations, towards creating a peaceful environment in which all persons could fully enjoy their fundamental human rights. The existence of armed conflict and other situations of violence had claimed millions of innocent lives and displaced tens of millions of people.

4. The Deputy High Commissioner recalled that the preamble to the Universal Declaration of Human Rights as well as a number of human rights treaties stated that respect for human rights and recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family served as the foundation of freedom, justice and peace. In 1984 the General Assembly, through resolution 39/11, had adopted the Declaration on the Right of Peoples to Peace, which stated that life without war served as the 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. The Declaration solemnly proclaimed that peoples had a sacred right to peace and declared that the preservation of the right of peoples to peace and the promotion of its implementation constituted a fundamental obligation of each State. It also stressed the importance of peace for the promotion and protection of all human rights for all. The Commission on Human Rights and the Human Rights Council had further reaffirmed the idea that the preservation of the right of peoples to peace and the promotion of its implementation constituted a fundamental obligation of all States.

5. The Deputy High Commissioner pointed out that human rights treaties also contained references to the importance of peace as a precondition for the full enjoyment of fundamental human rights, as well as to the impact of respect for human rights on the creation of a peaceful society. She recalled that the International Convention on the Elimination of All Forms of Racial Discrimination stated in its preamble that discrimination between human beings on the grounds of race, colour or ethnic origin was an obstacle to friendly and peaceful relations among nations and was capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State. She also noted that the Convention on the Elimination of All Forms of Discrimination against Women provided that the full and complete development of a country, the welfare of the world and the cause of peace required the maximum participation of women on equal terms with men in all fields. The Convention on the Rights of Persons with Disabilities also reaffirmed the crucial role that human rights in general played in creating fair and equal societies founded upon freedom, justice, development and peace.

6. The Deputy High Commissioner recalled that in the 2005 World Summit Outcome the General Assembly had acknowledged that, among others, peace and security, development and human rights were the foundations for collective security and well-being. Moreover, peace and respect for human rights, along with the right to the rule of law and gender equality, among

others, were interlinked and mutually reinforcing. Furthermore, the General Assembly had reaffirmed that the promotion and protection of the full enjoyment of all human rights and fundamental freedoms for all were essential to advance development and peace and security.

7. Concerning the issue of the diverse dimensions of the right of peoples to peace, the Deputy High Commissioner indicated that the notion of the right of peoples to peace should be understood in a wider context, including through the experiences of United Nations organs' practice concerning peace and security, disarmament and peacekeeping. All those different aspects had a bearing on the effective enjoyment of human rights, including through the recognition of the effects of armed conflict and other forms of violence on fundamental human rights.

8. The Deputy High Commissioner concluded by recalling that respect for human rights was often more critical in times of conflict, noting that many of the worst human rights violations, including genocide, crimes against humanity and war crimes, occurred in situations of armed conflict and other forms of violent situations. Accountability for gross human rights violations was a crucial component of human rights and could often be conducive to peace. She noted that the protection of human rights and, therefore, the creation of a stable and peaceful environment, were significantly advanced when individuals were held to account for their acts. The challenge was to reflect on more effective ways to ensure that the conditions for all individuals to enjoy their individual human rights were created in all situations.

II. Session 1: Different dimensions of the right of peoples to peace

9. The first panel started with a presentation by Vera Gowlland-Debbas, an honorary professor at the Graduate Institute of International and Development Studies, who recalled that the expansion and increasing complexity of international law had led to a greater need for overarching principles to sustain the unity of the system as a whole. The development of a right to peace, for instance, was not contained in the framework of human rights but was dependent on the links which were being forged between human rights and humanitarian law on the one hand, and between the Charter of the United Nations, the normative framework on the use of force, disarmament or arms control, development and the regime of international peace and security on the other. She noted that the right to peace had never been formalized into a treaty. No international human rights instrument as such mentioned the right to peace in its operative provisions, except for the African Charter on Human and Peoples' Rights. In recent years, however, there had been a proliferation of soft instruments proclaiming the right to peace as a human right. The core pronouncement could be found in General Assembly resolution 39/11, which solemnly proclaimed that the peoples of our planet have a sacred right to peace. That proclamation was reaffirmed in subsequent General Assembly resolutions, in particular

resolutions 53/243, 57/216, 60/163 and 63/189. The right to peace had also been included in Commission on Human Rights resolution 2002/71 and Human Rights Council resolutions 8/9 and 11/4. In addition, civil society organizations such as the Spanish Society for International Human Rights Law and the International Association of Democratic Lawyers had reaffirmed a conviction of the existence of a right of peoples to peace.

10. The expert indicated that the meaning given to the term “peoples” for the purposes of peoples’ right to peace still remained unclear, leading to an uncertainty as to the rights holders. The term “peoples” might have different meanings for the purposes of different rights of peoples. Concerning the duty bearers, she recalled that the 1984 Declaration provided that the preservation of the right of peoples to peace and the promotion of its implementation constituted a fundamental obligation of each State. That obligation had been reaffirmed by the General Assembly in subsequent resolutions and reiterated by the Human Rights Commission and the Human Rights Council. The question was whether the duty bearers were individual States, States acting collectively through the United Nations, or the international community as a whole.

11. Ms. Gowlland-Debbas recalled that there was an intimate linkage between human rights and peace. According to the Universal Declaration of Human Rights, peace appeared to be a prerequisite to all human rights in the sense that without peace the exercise of all human rights was illusory. Similarly, the General Assembly, in its resolution 60/163, stressed that peace was a vital requirement for the promotion and protection of all human rights for all. On the other hand, the Charter of the United Nations included the promotion of human rights and fundamental freedoms as instrumental to peace. The preamble to the International Covenant on Civil and Political Rights stated that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family was the foundation of freedom, justice and peace in the world, showing again human rights as a stepping stone to peace. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations stressed the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights. Therefore, there was a circular relationship between peace and human rights, each serving as the foundation for the other.

12. The expert indicated that there had also been an evolution in the functions of the Security Council. In its practice, the Security Council had determined under chapter VII that conduct in violation of norms which served to protect the individual, such as genocide and other serious breaches of human rights, including the right to self-determination, and grave breaches of humanitarian law, even if emanating from intra-State conflicts, constituted threats to international peace and security. The Security Council had increasingly focused on the

protection of populations from human rights and humanitarian law violations.

13. Concerning the justiciability of the right to peace and the question of effective remedies, Ms. Gowlland-Debbas recalled that efforts had been made to bring claims before judicial and quasi-judicial bodies, linking weapons of mass destruction and human rights. To date, all such cases had been declared inadmissible on the grounds that the petitioners had failed to demonstrate standing to sue because they could not prove that they had suffered or faced any imminent damage or injury. The International Court of Justice had in recent years become involved in armed conflicts not only from the perspective of the rights and duties of States, but also from the perspective of the rights of individuals, addressing human rights in armed conflict situations, the relationship between State and individual responsibility, as well as questions of restitution and compensation to individual persons.

14. The expert concluded by indicating that the right to peace had not yet crystallized as a human right within the context of human rights law. Nevertheless, the distinct linkages which were being forged between human rights law and peace and security and disarmament needed further analysis and might be useful in situating and further understanding an emerging right to peace.

15. The second speaker, Alfred de Zayas, a professor at the Geneva School of Diplomacy and International Relations, indicated that many rights were both collective and individual. There was a tendency to perceive the right to peace primarily from the perspective of collective rights. Yet, peace was also a personal right, prior to and indispensable to other rights. In that respect, Mr. de Zayas indicated that it was necessary to abandon the paradigm of first, second and third generation rights, because that paradigm had inherent fallacies and biases. He indicated that peace must be seen as an enabling right that empowered individuals to enjoy civil, political, economic, social and cultural rights. Moreover, one should not be limited to considering peace as the absence of war. Humanity needed to ensure positive peace in the form of social justice. He stated that the right to peace must be understood and implemented in a holistic manner through, among other things, respect for civil and political rights, and must include a focus on the obligations that peace imposed both on States and on individuals.

16. Mr. de Zayas indicated that there was consensus that the responsibility to promote and protect human rights belonged to the territorial State. He indicated that the questions arose when the violations of human rights were so grave and unbearable that it became the responsibility of the international community to intervene. The United Nations had not been established to make war or to engage in military interventions into the domestic affairs of States. He observed that there were situations where international action might have been necessary, and yet it had not been forthcoming. There were other cases where observers had argued that the threshold of violence in the countries concerned had not been reached and yet there had been international

action, without the approval of the Security Council.

17. The expert recalled that in July 2009, the General Assembly had started revisiting the doctrine of responsibility to protect. The President of the General Assembly had identified four benchmark questions that should determine whether and when the system of collective security could implement the responsibility to protect doctrine, namely:

- (a) Do the rules apply in principle, and is it likely that they will be applied in practice equally to all States, or, in the nature of things, is it more likely that the principle would be applied only by the strong against the weak?
- (b) Will the adoption of the responsibility to protect principle in the practice of collective security more likely enhance or undermine respect for international law?
- (c) Is the doctrine of responsibility to protect necessary and, conversely, does it guarantee that States will intervene to prevent another situation like in Rwanda?
- (d) Does the international community have the capacity to enforce accountability upon those who might abuse the right that the responsibility to protect principle would give States to resort to the use of force against other States?

18. Mr. de Zayas concluded by indicating that the Charter of the United Nations imposed certain erga omnes obligations on States. One of those obligations was to condemn the illegal use of force and to deny recognition of the territorial changes arising from the illegal use of force. He noted that while there was a responsibility to protect, there was first and foremost a responsibility to protect humanity from the scourge of war, and most importantly to protect humanity from weapons of mass destruction, including nuclear weapons.

19. Thierry Tardy, a faculty member at the Geneva Centre for Security Policy, stated that in the context of contemporary peace operations, the notion of peace could be seen from different perspectives. The nature of contemporary peace operations was that they were aimed at transforming a situation of negative peace into a situation of positive peace. He indicated that they did so by transforming the society in which they intervened, through programmes relating to security sector reform, democratization, power-sharing, rule of law and others.

20. Concerning the link between the concepts of peace and human security, the expert observed that the activities of a peace operation took place at both the State and individual levels. At the State level, contemporary peace operations aimed at recreating a Weberian State that had the monopoly of the legitimate use of violence, that embodied a good governance model, and that had running State institutions, including police and armed forces. Mr. Tardy noted, however, that peace operations were also centred on the individual, aimed at ensuring the security of people. He also noted that human security was understood as complementing State security, because it enhanced human rights and strengthened human development. It sought to

protect people against a broad range of threats to individuals and communities and to empower them to act on their own behalf. As a consequence, positive peace was dependent upon security at the individual level. That human security dimension was being translated in the mandates of peace operations through different types of activities that targeted people, the most important one being the protection of civilians in post-conflict environments. Protection of civilians was about physical security, which was a key component of human security.

21. Mr. Tardy concluded by recalling that there had been debates on the nature of the peace that the international community was trying to establish through peace operations. One criticism had been that peacebuilding was about replicating a liberal, Western-style model in countries that were not necessarily ready to absorb it. Peacebuilding, however, was articulated around two pillars: the establishment of a democratic system and of a market economy. The problem was that the processes of political and economic liberalization had proved to be destabilizing, mainly because those processes were inherently conflict-ridden. They required a certain ability of the recipient society to absorb the changes. Yet, in many cases those societies had proved to be unprepared for those drastic evolutions. They lacked the institutional structures that would allow them to manage the types of competition that were induced by political and economic liberalization. As a result, in some cases peacebuilding processes had become counterproductive. That had raised the issue of the legitimacy of an external presence, as well as of the degree of local ownership that recipient societies enjoyed. On those two fronts, the expert noted, it seemed that even if peace were provided in a consent-based manner, in reality, it was by and large a peace that was imported, and rarely home-grown.

III. Session 2: Content of the right of peoples to peace

22. Jarmo Sareva, Deputy Secretary-General of the Conference on Disarmament, recalled that, as declared in article 1 of the Charter of the United Nations, one of the purposes of the United Nations was to maintain international peace and security. However, there was no explicit reference to the right to peace in the Charter. The drafters had delegated to Member States the task of determining the nature and scope of that right, which was outlined in the Universal Declaration of Human Rights and other documents. He noted that the right to peace was underdeveloped and had not yet been incorporated in the body of international law. It was moreover unclear how that right could impinge on the right of States to self-defence and on their duty to maintain international peace and security. Therefore, if the right to peace were to be determined in absolute terms, it might not be consistent with the right to self-defence or military steps which might be taken by the Security Council under chapter VII.

23. Mr. Sareva indicated that there was an important disarmament dimension in realizing,

promoting and clarifying the right to peace. There was a distinct connection between national security and the right to life. Even during armed conflict, States had the responsibility to protect their peoples, especially civilians. Over centuries, prohibitions had been made on certain kinds of weapons which did not distinguish between civilians and combatants, and severe restrictions had been laid on Governments in the use and development of weaponry. That had become part of international customary law and international humanitarian law. For example, with regard to weapons of mass destruction, concerns about the right to life had found their way into many multilateral treaties governing such weapons. Bans had been instituted on chemical weapons and biological weapons in international treaties that were close to being universally ratified.

24. Mr. Sareva concluded that there remained serious challenges in clarifying the content and scope of the right to peace, in particular from the disarmament perspective, in which national security concerns were of paramount importance to States. Given the complex relationship between the right to peace and the right to self-defence and the obligations to collective security, it would be necessary to take into consideration those potentially conflicting rights in clarifying the scope and content of the right to peace.

25. Mario Yutzis, former Chairperson of the Committee on the Elimination of Racial Discrimination, indicated that the right of peoples to peace, traditionally claimed by both the General Assembly and the Commission on Human Rights in previous decades, had garnered new interest which might considerably enrich its content. Since the cold war, States had accepted that peace and security, development and human rights were the pillars of the United Nations system and the foundations of collective security and welfare. In parallel, the progressive development of international human rights law had favoured the emergence of solidarity rights. Among them, the States had codified the human right to development. For its part, in recent years civil society had also exhibited interest and had worked to develop the human right to peace.

26. Mr. Yutzis recalled that there was an inextricable relationship between solidarity rights and the human rights which were recognized 61 years ago in the Universal Declaration of Human Rights and in the American Declaration of the Rights and Duties of Man. They include a set of rights that the Vienna Declaration and Programme of Action characterized as universal, indivisible and interdependent, including the right to development.

27. Based on the developments and interest in recent years, Mr. Yutzis stated that it was possible to say that the right of peoples to peace had at least five new dimensions. First, it claimed the defence of the value of life, which was the most fundamental of human rights. That close relationship between the values of peace and life led to the assertion that there was a human right to peace, which both peoples and individuals held. In terms of positive law, the Human Rights Committee had affirmed the relationship between the right to life, prevention of

war and the prohibition of propaganda for war, including the proliferation of nuclear weapons. Second, it involved the recognition of others, acknowledging the oneness of humankind overcoming all forms of prejudice, whether due to race, class, colour, nation, gender, degree of civilization or anything else that served in arguments to support and impose the superiority of people and/or social groups. Third, it was a valuable resource against violence arising from armed conflict and structural violence, because conflict was incubated in discrimination and undue restrictions on human rights. All forms of violence impeded the consolidation of peace. Fourth, other instruments of universal scope explained the basis on which peace rested as a right with individual and collective application. Thus, Mr. Yutzis noted, through its dual character — individual and collective — the right to peace made it possible to assert the broader notion of the human right to peace. Fifth, the right to peace had a definite individual dimension, which was assessed through the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

28. Mr. Yutzis recalled that specialized agencies of the United Nations also pursued the same aspirations for peace. In international and regional organizations there were equally abundant provisions relating to peace as an individual and collective right. The links between peace and security and respect for human rights inside and outside nations highlighted in the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Convention on the Rights of Persons with Disabilities.

29. Finally, Mr. Yutzis recalled that the private encoding of the human right to peace by civil society also reflected both the collective and the individual dimension of that right. Thus, in the Luarca Declaration on the Human Right to Peace, a document which was adopted by a committee of experts from civil society organizations, several articles detailed the scope of the individual applications of the right, which can be understood to apply to peoples as well. The Declaration also contained the generally accepted principle of dual ownership of the human right to peace. He noted that peace was indivisible, and thus manifested itself as a collective right of the human community of peoples and States while, at the same time, directly affecting each human being as an individual right.

30. Laurent Goetschel stated that the analysis of the content of the right of peoples to peace required a particular approach. Mr. Goetschel proposed a three-tiered approach to the right of peoples to peace. The first tier was the prohibition of the use of force in the Charter of the United Nations. A post-modern interpretation of the Charter could allow the right to peace to

contribute to and strengthen the prohibition of aggression. The notion of active prevention policy could be a contribution to the systematic worldwide implementation of a right to peace. It could lead to new priorities of the Security Council and the Human Rights Council and might even lead to new institutions. The second tier was a process perspective, which had a timeline. That tier was not about the justiciability of the right to peace, but referred to the right to a certain process. Such a process, which was not yet defined, could lead to strengthening certain rights, such as to development, education or health, and could lead to the prioritization of those rights and their systematization in the light of each other. Defining a process could be one of the major objectives of defining the right to peace. The third tier was context relevance. There was no definition of the right to peace at the general level that could be applied to the concrete context-relevant levels. Peace at the overall policy level was still largely politicized and populated with particular agendas that not all States would share.

IV. Session 3: The right of peoples to peace from a human rights perspective

31. The third session opened with a keynote address by Antônio Cançado Trindade, a judge with the International Court of Justice. In the address he discussed five key aspects related to the right of peoples to peace. In 1990, when speaking at the Global Consultation on the Right to Development as a Human Right, Mr. Cançado Trindade had addressed conceptual aspects such as the subjects, legal basis and contents of that right, its obstacles and possible means of implementation, and its relationship to other human rights, aspects which had a direct bearing on the peoples' right to peace. That had been, in his view, a worthwhile exercise, as, shortly afterwards, the right to development, as enshrined in the Declaration on the Right to Development (1986), had found significant endorsements in the final documents adopted by the United Nations world conferences that were held in the 1990s, which had brought it into the conceptual universe of international human rights law.

32. The other pertinent antecedent was the work undertaken in 1997 by the group of legal experts convened by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to prepare the Draft Declaration on the Human Right to Peace. The right to peace had been duly inserted by the UNESCO group into the framework of international human rights law; however, after the subsequent consultations with 117 member States, three main positions of the governmental experts had become discernible: those fully in support of the recognition of the right to peace as a human right, those who regarded it rather as a "moral right", and those to whom it was a human "aspiration" rather than a "legal right". That exercise as to the right to peace did not have the same outcome as the one pertaining to the right to development. In other words, the Declaration on the Right of Peoples to Peace had not yet generated a significant projection as did the Declaration on the Right to Development, despite the fact that, in a

historical perspective, the right to peace had been deeply rooted in human conscience for a much longer period than the right to development.

33. Mr. Cançado Trindade argued that in approaching the right of peoples to peace, one was confronted with some disquieting interrogations. First, it was well known that the Charter proclaimed, in its preamble, the determination of the peoples of the United Nations to save succeeding generations from the scourge of war, and, to that end, to live together in peace with one another as good neighbours. The phraseology was quite clear: in disclosing the constitutional vocation of the Charter, its draftsmen had referred to the peoples, rather than the States, of the United Nations. He wondered why it had taken so much time for the legal profession to acknowledge that constitutional conception, further evidenced by such key provisions as articles 2, paragraph 6, and 103 of the Charter.

34. Mr. Cançado Trindade considered that the debates within the United Nations system on the human right to peace had proved inconclusive and consensus difficult to reach due to the apparent over-sensitiveness of States when it came to what they regarded as presumably touching on their so-called vital interests. He wondered why so many years had lapsed between the adoption of the Declaration on the Right of Peoples to Peace and the current seeming revival of the subject by the Human Rights Council. He expressed concern about the fact that the adoption of a definition of the crime of aggression had not yet been achieved, despite the fact that one could have built on the Definition of Aggression (1974). According to Mr. Cançado Trindade, those and other questions remained unanswered because States were unable to speak a common language when it came to reaching an understanding as to the fundamentals to secure the very survival of humankind.

35. Concerning the time dimension — the long-term outlook — of the right of peoples' to peace, Mr. Cançado Trindade indicated that its roots could be traced back to the search for peace, which had predated by far the adoption of the Charter of the United Nations. Yet, earlier projects had proved incapable of accomplishing their common ideal, precisely because they had overemphasized restricting and abolishing wars related to inter-State relations and overlooked the bases for peace within each State and the role of non-State entities. He noted that more recent attempts to elaborate on the right to peace had displayed a growing awareness that its realization was ineluctably linked to the achievement of social justice within and between nations. During the twentieth century, the conceptual construction of the right to peace in international law had antecedents in successive initiatives taken in distinct contexts at the international level. The current generation had not yet grasped the lessons learned with so much suffering by previous generations. Yet, the exercise was to be pursued, as its purpose corresponded to an ancient human aspiration, which had been present in the human conscience for centuries.

36. With that consideration in mind, Mr. Cançado Trindade addressed the question of the assertion of the peoples' right to peace before contemporary international courts and tribunals. He concentrated on the experience of two such tribunals, in which he had served or was currently serving as judge, namely, the Inter-American Court of Human Rights and the International Court of Justice, respectively. That experience showed that the rights of peoples had been acknowledged and asserted before contemporary international tribunals. The Inter-American Court of Human Rights, in the case of the Community Mayagna (Sumo) Awas Tingni v. Nicaragua (2001), had extended protection to the right of all the members of an indigenous community to their communal property of their historical lands. Furthermore, three other decisions had had a direct bearing on the rights of peoples, their cultural identity and their very survival, namely, in *Yakye Axa Indigenous Community v. Paraguay* (2005–2006), *Sawhoyamaxa Indigenous Community v. Paraguay* (2005–2006), as well as in *Moiwana Community v. Suriname* (2005–2006), which had ruled on the case of the Moiwana massacre. Mr. Cançado Trindade added that such late jurisprudential development would have been unthinkable for the draftsmen of the American Convention on Human Rights. Massacres no longer fell into oblivion. Atrocities victimizing whole communities, or segments of the population, were being brought before contemporary international tribunals, for the establishment not only of the international criminal responsibility of individuals, but also of the international responsibility of States. That indicated that there had been clear advances in the realization of international justice in recent years, in cases of factual and evidentiary complexities.

37. Turning to the pertinent practice, in particular the pleadings before the International Court of Justice, Mr. Cançado Trindade recalled that the right of peoples to live in peace had been acknowledged and asserted before the Court in a number of cases. He also referred to the case law of the European Court of Human Rights, as well as of the African Commission on Human and Peoples' Rights.

38. Finally, Mr. Cançado Trindade focused on the peoples' right to peace and the lessons of history. After drawing extensively upon pertinent writings of some of the most prominent and influential historians of the twentieth century, he advocated a systemic approach to future consideration of the theme, relating the peoples' right to peace to other rights of peoples, and further relating the human right to peace to rights of peoples. He added that, current shortcomings notwithstanding, rights of peoples had lately been brought before contemporary international tribunals, including the International Court of Justice, despite the strictly inter-State character of the contentious procedure of the latter. He contended that the peoples' right to peace was justiciable, and that there was a path to be pursued to that end in the years to come.

39. William Schabas, Director of the Irish Centre for Human Rights, indicated that there

was clearly no consensus yet concerning both the definition of the right to peace and its regulation under international law. The fact that Human Rights Council resolution 11/4 had been adopted with the opposition of a number of States, most from one geographic region, illustrated that lack of consensus.

40. Mr. Schabas recalled that there were important negotiations being undertaken on the definition of the crime of aggression in the context of the Rome Statute of the International Criminal Court. Those negotiations would continue during the Review Conference of the Rome Statute in 2010. Some member States had not yet expressed their views and it was uncertain what the final decision of the review conference would be. Yet Mr. Schabas considered that it was more disturbing that the major non-governmental organizations working with human rights had been quite indifferent to the question of the crime of aggression.

41. The expert indicated that the right to peace was an underdeveloped value in human rights instruments. Universal human rights instruments did not give proper expression to the right to peace. There were, however, many references to peace in the preamble to the Universal Declaration of Human Rights. Those references also appeared in the preamble to the two human rights covenants. The preamble to the Universal Declaration of Human Rights was informed by the four freedoms referred to by Franklin D. Roosevelt, namely, freedom of belief, freedom of expression, freedom from want and freedom from fear. Freedom from fear was the expression of the right of peoples to peace.

42. Mr. Schabas further indicated that the International Court of Justice had been asked, in the context of its advisory opinion on the legality of nuclear weapons, to consider the relationship between international humanitarian law and international human rights law, specifically in the context of the right to life. The Court had indicated that international human rights law was applicable to armed conflict but that what constituted arbitrary deprivation of the right to life in the context of an armed conflict was to be interpreted in the context of international humanitarian law. The European Court of Human Rights had had a number of cases in which it had addressed the question of armed conflict without any reference to international humanitarian law, using instead the relevant human rights norms. Thus, in practice judicial organs had analysed the causes of armed conflict in order to determine whether human rights obligations had been violated. Therefore, international human rights law was not only concerned with the way in which parties behaved during an armed conflict, but also dealt with the causes of the conflict and with the question of whether the use of force was lawful.

43. Finally, Mr. Schabas recalled that the Human Rights Committee had dealt with the question of protecting the right to life in the context of armed conflict in its general comment No. 6. In its general comment No. 14 on nuclear weapons and the right to life, the Committee further drew a clear link between the prohibition of war and the right to life.

44. Fatimata-Binta Victoire Dah, Chairperson of the Committee on the Elimination of Racial Discrimination, noted that that Committee had been the first treaty body to function in the human rights system. The Committee had adapted to each new challenge, bearing in mind that racism found its expression in many varied and changing ways. The Committee had guided many States in their work and had achieved many of its goals. For example, the Committee held the view that political and social stability contributed to the enjoyment of human rights for all. Those who enjoyed rights should enjoy them without discrimination. The singularity of the International Convention on the Elimination of All Forms of Racial Discrimination rested on the identification of the rights holders. Claims of individuals or groups of individuals were recognized in the Convention under article 14. In order to assess State policy in the sphere of racial discrimination the rights evaluated were, among others, civil and political rights and economic and social rights, for example, the right to housing, education, and health. States must create the conditions for social coexistence in harmony through the respect of cultures and human rights, which was important considering that cultural differences were often at the root of conflicts. Ms. Daw stated that peace was possible when the State institutions worked properly and legitimate democratic systems were in place.

45. Ms. Dah indicated that from the Committee's experience it was possible to derive the message that peace was essential for the enjoyment of rights and that in the absence of peace victims could and should claim peace as a right along with other human rights. It was in that sense that the preamble to the International Convention on the Elimination of All Forms of Racial Discrimination stated that discrimination among human beings was an obstacle to friendly and peaceful relations among nations and could jeopardize peace and security among peoples and harmonious coexistence.

46. The expert also indicated that the notion of peoples had undergone important developments in the African and in the Latin American contexts. For instance, the African Charter on Human and Peoples' Rights was the first regional human rights treaty to incorporate the notion of peoples' rights. Moreover, Latin American countries had been actively pursuing efforts to provide the notion of indigenous peoples with adequate substance in the context of the United Nations Declaration on the Rights of Indigenous Peoples. In that respect, the development of the notion of indigenous peoples, for example, was significant because it recognized, among other things, their right to their traditionally owned or occupied lands.

47. Finally, Ms. Dah stated that there was an urgent need to codify the right of peoples to peace, and that all actors should support moves in that direction, in particular States participating in the non-aligned movement that were current members of the Human Rights Council. In that respect, she supported the idea to invite the Council to create an open-ended working group charged with the codification of such right.

V. Session 4: Measures and actions to raise awareness and to promote the right of peoples to peace

48. Laurent Goetschel, Director of Swisspeace, opened the last session by stating that there were three sectors in which civil society organizations were working to make the right to peace operational. The first area was the area of dealing with the past. In that respect, mechanisms such as truth commissions had proven to be useful means to achieve peace in post-conflict societies and to ensure that the rights of victims were protected. The second was the right to compensation, which included not only financial reparation, but also acknowledgment of past violations or accountability for perpetrators. The right to participation in such processes was important and all groups needed to be included. Therefore, capacity-building was essential for discriminated or marginalized groups to be able to participate in those processes. The third issue was related to statehood. The debates on rights were framed by a certain definition of state and of statehood. That implied that there was a right to recognition, not of groups of people per se, but of various forms of political life and organization. Finally, from a peace process perspective, it was dangerous to confuse law and legal processes with politics and policy processes. To bring political issues into the realm of the discussions of the right to peace was not constructive and did not contribute to the clarification of such a right.

49. UNESCO representative Luis Tiburcio recalled that UNESCO had dealt with the question of the right to peace in the 1990s. The organization had developed a document on the right to peace which had met with two elements of resistance. On the one hand, a political element, driven by Western developed States, which had stated that UNESCO was not the proper forum in which to discuss that right and that it should rather be discussed in the Security Council. That opposition had led to a confrontation in the Executive Board and General Conference of UNESCO. With regard to the second element, States had questioned how the notion of peace was covered by the organization's mandate. Mr. Tiburcio pointed out that the preamble to the UNESCO constitution stated that war was born in the minds of men; therefore, peace had been set as the ultimate objective of UNESCO, through its work done in the fields of science, education and cultural diversity.

50. Mr. Tiburcio recalled that when UNESCO had launched the International Decade for a Culture of Peace and Non-violence for the Children of the World (2001–2010), there had been a strong reservation on the part of some States that criticized the rather limited vision of the human right to peace as it had originally been presented. One instrument that had been used for the International Decade for a Culture of Peace was the Manifesto 2000 for a Culture of Peace and Non-violence, which had been signed by millions of people.

51. Mr. Tiburcio finally indicated that currently UNESCO had no specific position on the

human right to peace. It supported, participated in and cooperated with organizations which were working in the field of peace education. The current UNESCO Director had decided that UNESCO peace activities needed to be strengthened. A decision had therefore been taken to re-establish the culture of peace as a cross-cutting UNESCO programme.

52. Mr. Schabas indicated that there was currently some momentum to clarify the legal nature of the human right to peace. He expressed concern about the fact that the current debate on the crime of aggression in the context of the International Criminal Court could potentially harm that momentum. The review conference in June of 2010 that would decide whether to give the Court authority over the crime of aggression might or might not be successful. There were major obstacles to overcome, particularly because of the position of the permanent members of the Security Council. In the past it had proven very helpful to have an expert study on burgeoning rights. Having an in-depth academic study from a human rights perspective could help the Human Rights Council decide how to ensure that the right to peace found its place in international law.

53. Mr. de Zayas recalled that the United Nations must deliver on its mandate to save succeeding generations from the scourge of war. Peace and human rights could be considered as the object and purpose of the Charter of the United Nations. Moreover, disarmament was crucial to the survival of mankind. A world where human rights were respected was a world much less likely to engage in armed conflict. It was, thus, important to reaffirm the motto of the International Labour Organization “if you desire peace, cultivate justice”. Education for peace in its collective and individual dimensions was therefore necessary. Moreover, the work of civil society, including the drafting of the Luarca Declaration on the Human Right to Peace, must be welcomed.

54. Mr. de Zayas concluded by suggesting that the Human Rights Council could create the mandate of a special rapporteur or independent expert on the right to peace.

55. Mr. Yutzis indicated that no one doubted that peace was a long-awaited need, an indispensable achievement to transform the world into a home for all men and women who inhabited the planet. While it had never been easier to achieve peace, efforts were hampered by the negative currents that inhabited and were part of the human condition. Nevertheless, the will existed to create a humanity that was more united, more open to others and more humane, in peace and harmony. The end of the cold war and the disappearance of an identified enemy had not modified the structure of armies or slowed down the research and manufacture of weapons of mass destruction. For its part, peace was at the mercy of bilateral agreements related to arms control and was without relevant decisions to establish just relations between all human beings and a viable ethics of relations between humans and the environment. Peace remained an elusive dream in many parts of the world.

56. Mr. Yutzis also noted that currently, the Human Rights Council was divided on the meaning and scope of the right to peace, and even the existence of that emerging right. The division had been inherited from the previous work of the Commission on Human Rights and the General Assembly during the cold war. Since the adoption by the General Assembly of the Declaration on the Preparation of Societies for Life in Peace (1978) and the Declaration on the Right of Peoples to Peace (1984), States had found ways of consensus to significantly advance the definition, content and scope of the right to peace. Mr. Yutzis suggested that the right to peace could be addressed within international human rights law from three perspectives: as part of the emerging right to international solidarity; as part of the right of all people and all peoples for a democratic and equitable international order; and as an essential element of the right of peoples to peace. Thus, in the work of the Human Rights Council the right to peace should be linked in its material formulation to emerging rights or solidarity, in particular the right to international solidarity, the right to a democratic and equitable international order as well as to the traditional right of peoples to peace.

57. Finally, Mr. Yutzis suggested that the Human Rights Council could reaffirm the right of peoples to peace as a collective and as an individual right. The Council could also initiate the codification of the human right to peace through the establishment of an open-ended working group, open to the participation of civil society organizations. It could also invite the Advisory Committee to prepare elements for the elaboration of a universal declaration on the human right to peace and to propose guidelines, norms and principles aimed at protecting and promoting that right. The Council could also invite human rights treaty bodies and special procedures to contribute to the development of the right to peace from the perspective of their respective mandates.

58. Throughout the meeting civil society organizations exchanged views with the experts and recalled that, inter alia, civil society organizations had been actively pursuing the progressive development of the notion of the right of peoples to peace. Their contribution was reflected, for instance, in the preparation and dissemination of the civil society group of experts' Luarca Declaration on the Human Right to Peace, as well as through their active participation in the context of the Human Rights Council discussions on the right of peoples to peace. Civil society organizations had also contributed with scholarly analysis aimed at contributing to the clarification of the content of the right of peoples to peace.

59. The expert workshop was concluded by Paul Seils, from the Office of the High Commissioner for Human Rights, who thanked the experts and all participants for their important contributions.

Annex

List of experts participating in the consultation

Antônio Augusto Cançado Trindade, Judge, International Court of Justice

Fatimata-Binta Victoire Dah, Chairperson, Committee on the Elimination of Racial Discrimination

Laurent Goetschel, Director, Swisspeace

Vera Gowlland-Debbas, honorary professor, Graduate Institute of International and Development Studies

Jarmo Sareva, Deputy Secretary-General, Conference on Disarmament

William Schabas, Director, Irish Centre for Human Rights, National University of Ireland, Galway

Thierry Tardy, faculty member, Geneva Centre for Security Policy

Luis Tiburcio, United Nations Educational, Scientific and Cultural Organization representative in Geneva

Mario Yutzis, former Chairperson of the Committee on the Elimination of Racial Discrimination

Alfred de Zayas, professor, Geneva School of Diplomacy and International Relations

5, Santiago Declaration on the Human Right to Peace (2010)

Santiago Declaration on the Human Right to Peace

— Preamble —

The General Assembly,

- (1) Considering that, in accordance with the Preamble to the Charter of the United Nations and the purposes and principles established therein, peace is a universal value, the *raison d'être* of the Organisation and a prerequisite for and a consequence of the enjoyment of human rights by all;
- (2) Considering that the uniform, non-selective and adequate application of international law is essential to the attainment of peace; and recalling that Article 1 of the UN Charter identifies as the fundamental purpose of the Organization the maintenance of international peace and security, which should be achieved *inter alia* through the economic and social development of peoples and the respect of human rights and fundamental freedoms without any kind of discrimination;
- (3) Recognising the positive dimension of peace which goes beyond the strict absence of armed conflict and is linked to the elimination of all types of violence, whether direct, political, structural, economical or cultural in both public and private sectors, which in turn requires the economic, social and cultural development of peoples as a condition for satisfying the needs of the human being, and the effective respect of all human rights and the inherent dignity of all members of the human family;
- (4) Considering that peace is inseparable from the diversity of life and cultures where identity is the base of life; and thus affirming that the foremost among rights is the right to life, from which other rights and freedoms flow, especially the right of all persons to live in peace;

- (5) Recalling further that Article 2 of the UN Charter stipulates that all Member States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; and further that the Member 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 and principles contained in the UN Charter;
- (6) Considering that the United Nations system in its entirety shares this vision, since “lasting peace can be established only if it is based on social justice” (Constitution of the International Labour Organisation, ILO); it aims to the improvement of the levels of life and nutrition of all peoples, as well as to the eradication of hunger (Constitution of the Food and Agriculture Organization, FAO); and it states that “the health of all peoples is fundamental to the attainment of peace and security” (Constitution of the World Health Organization, WHO);
- (7) Conscious of the vulnerability and dependence of every human being, and of the fact that certain circumstances render given groups and persons especially vulnerable; and aware of the need and the right of all persons to live in peace and to have established a national and international social order in which peace has absolute priority, so that the rights and freedoms proclaimed in the Universal Declaration of Human Rights can be fully realised;
- (8) Considering that education is indispensable for the establishment of an universal culture of peace and that, pursuant to the Preamble to the Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), “since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed”; and taking into account the Seville Statement on Violence adopted by the General Conference of UNESCO on 16 November;

- (9) Recalling the prohibition of war propaganda and the prohibition of incitement to hate and violence contained in Article 20 of the International Covenant on Civil and Political Rights, which shall be compatible with the full respect for freedom of expression;
- (10) Taking account of the principles and norms enshrined in international human rights law, international labour law, international humanitarian law, international criminal law and international refugee law; and considering that according to these principles and norms human rights are inalienable, universal, indivisible and inter-dependent, and that they reaffirm the dignity and the value of the human person, especially children and young people, as well as the equality in rights of women and men;
- (11) Recalling further the relevant resolutions of the General Assembly, inter alia resolution 2625 (XXV) of 24 October 1970 on friendly relations and cooperation among States; resolution 3314 (XXIX) of 14 December 1974 on the definition of aggression; resolution 3348 (XXIX) of 17 December 1974, in which the Assembly endorsed the “Universal Declaration on the Eradication of Hunger and Malnutrition”; resolution 3384 (XXX) of 10 November 1975, entitled “Declaration on the use of scientific and technological progress in the interests of peace and for the benefit of mankind”; Resolution 33/73 of 15 December 1978, entitled “Declaration on the preparation of societies for life in peace”; resolution 39/11 of 12 November 1984 entitled “Declaration of the right of peoples to peace”; resolution 53/243 A of 13 September 1999 entitled “Declaration and Programme of Action on a Culture of Peace”; resolution 55/2 of 5 September 2000 entitled “United Nations Millennium Declaration”, reaffirmed by resolution 60/1 of 15 September 2005, entitled “2005 World Summit Outcome”; and resolution 55/282 of 7 September 2001, by virtue of which the 21 of September of each year shall be observed as International Day of Peace;
- (12) Concerned about the constant and progressive degradation of the environment and about

the need and obligation to ensure to present and future generations a life in peace and in harmony with nature, ensuring their right to human security and the right to live in a safe and healthy environment; and recalling, among other instruments, the Stockholm Declaration of 16 June 1972, adopted by the United Nations Conference on the Human Environment; the World Charter for Nature contained in UN General Assembly Resolution 37/7 of 28 October 1982; the Convention on Biodiversity of 5 June 1992; the United Nations Framework Convention on Climate Change of 9 May 1992 and the Kyoto Protocol of 11 December 1997; the Rio Declaration on the Environment and Development of 14 June 1992; the United Nations Convention of 14 October 1994 to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa; the Convention of Aarhus of 25 June 1998 on access to information, public participation in decision-making and access to justice in environmental matters; and the Johannesburg Declaration on Sustainable Development of 4 September 2002;

(13) Observing that the commitment to peace is a general principle of international law, in accordance with Article 38.1.c) of the Statute of the International Court of Justice, as it was recognised by the International Expert Consultation on the Human Right to Peace representing 117 States, held in Paris, in March 1998;

(14) Recalling the Istanbul Declaration adopted by resolution XIX (1969) of the XXI International Red Cross Conference, which states that human beings have the right to enjoy lasting peace; resolution 5/XXXII (1976) of the former UN Commission on Human Rights, which affirms that everyone has the right to live in conditions of peace and international security; and resolutions 8/9 (18 June 2008) and 11/4 (17 June 2009) of the UN Human Rights Council entitled “promotion of the right of peoples to peace”;

(15) Recalling the commitments undertaken by African States pursuant to the Constitutive Act

of the African Union, the African Charter of Human and Peoples Rights, the Protocol to the African Charter concerning the Rights of Women in Africa; the commitments undertaken by States in the inter-American framework by virtue of the Charter of the Organization of American States, the American Convention on Human Rights and the Protocol of San Salvador, the Treaty of Institutionalization of the Latin American Parliament and, in the Ibero-American context, the Ibero-American Convention on Young People's Rights; the Asian instruments concerning peace, including the Declaration of Bangkok, the Charter of the Association of Southeast Asian Nations and the Asian Charter on Human Rights, as well as the terms of reference of the Intergovernmental Commission of Human Rights of the Association of Southeast Asian Nations; the commitment of Arab States in favour of peace, expressed in the Charter of the League of Arab States and the Arab Charter of Human Rights; the commitment of Islamic States in favour of peace, expressed in the Charter of the Organization of the Islamic Conference; as well as the commitments undertaken in the framework of the Council of Europe by virtue of its Statute, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, and other European conventions; and the European Union's Charter of Fundamental Rights;

(16) Concerned over the manufacture of weapons, the arms race and the excessive and uncontrolled traffic of all kinds of arms, jeopardising international peace and security; over the failure of States to observe the obligations laid down in the relevant treaties in the field of disarmament, and, in particular, the Treaty on the Non Proliferation of Nuclear Weapons; which constitutes an obstacle to the realisation of the right to development;

(17) Considering that the international community requires the codification and progressive development of the human right to peace, as an autonomous right with universal vocation and intergenerational character;

- (18) Concerned by gross and systematic violations committed in peace times, and considering that the Assembly of States Parties to the Rome Statute of the International Criminal Court shall define such violations as crimes against the human right to peace;
- (19) Acknowledging the contribution of women to peace processes and emphasizing the importance of their participation at all levels of decision making, as have been recognised by the United Nations General Assembly in its resolutions 3519 of 1975 and 3763 of 1982, and by the Security Council in its resolutions 1325 (2000), 1820 (2008), 1888 and 1889 (2009); as well as emphasising the full and effective implementation of the resolution 1325 on women and peace and security;
- (20) Further affirming that the achievement of peace is the shared responsibility of women and men, peoples and States, intergovernmental organizations, civil society, corporations and other social actors and, more generally, of the entire international community;
- (21) Considering that the promotion of a culture of peace, the world-wide redistribution of resources and the achievement of social justice must contribute to the establishment of more just global economic relations which will facilitate the fulfilment of the purposes of this Declaration, by eliminating the inequalities, exclusion and poverty, because they generate structural violence which is incompatible with peace at both national and international levels;
- (22) Affirming that peace must be based on justice, and that therefore all victims have a right to recognition of their status as victims without discrimination, to justice, to truth and to an effective reparation, as provided for in General Assembly resolution 60/147 of 16 December 2005, which proclaims the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, thereby contributing to reconciliation and the

establishment of lasting peace;

(23) Conscious that impunity is incompatible with peace and justice; and considering that every military or security institution must be fully subordinated to the rule of law and must be bound by the obligations arising under international law, to the observance of human rights and of international humanitarian law, and to the attainment of peace; and that, therefore, military discipline and the carrying out of orders from superiors must be subordinated to the achievement of those objectives;

(24) Concerned by the impunity and the increasing activities of mercenaries and private military and security companies; the outsourcing to the private sector of inherently security State functions and by the growing privatization of war;

(25) Affirming that peace implies the right of all persons to live in and to remain in their respective countries; conscious that mass exoduses and migratory flows are frequently involuntary and respond to dangers, threats and breaches of peace; and convinced that in order to assure the right to human security and the right of every person to emigrate and settle peacefully in the territory of another State, the international community should establish an international migration regime as a matter of urgency;

(26) Persuaded too that peace has been and continues to be a constant aspiration of all civilizations through all history of mankind, and that therefore all human beings should join their efforts toward the effective realization of peace;

(27) Paying tribute to all peace movements and ideas that have marked over the history of humankind, which have recently crystallized in major contribution including the Hague Agenda for Peace and Justice for the Twenty-first Century which emerged from the Hague Appeal for Peace Conference, 19991; the Earth Charter adopted at The Hague on 29 June 2000; and the Universal Declaration of the Rights of Mother Earth, adopted in Cochabamba

(Bolivia) on 22 April 2010, in the framework of the World People's Conference on Climate Change and the Rights of Mother

(28) Affirming that the human right to peace cannot be achieved without the realization of the equality of rights and respect for gender based differences; without respect for different cultural values and religious beliefs that are compatible with the universally recognized human rights; and without the elimination of racism, racial discrimination, xenophobia and other forms of related intolerance;

(29) Convinced that it is urgent and necessary that all States recognize peace as a human right and that they ensure its enjoyment by all persons under their jurisdiction, without any distinction, independently of race, descent, national, ethnic or social origin, colour, gender, sexual orientation, age, language, religion or belief, political or other opinion, economic situation, heritage, diverse physical or mental functionality, civil status, birth or any other condition;

Proclaims the following Declaration:

Part I Elements of the human right to peace

Section A. Rights

Article 1 Right holders and duty-holders

1.- Individuals, groups, peoples and all humankind have the inalienable right to a just, sustainable and lasting peace. By virtue of that right, they are holders of the rights and

freedoms proclaimed in this Declaration.

- 2.- States, individually, jointly or as part of multilateral organisations, are the principal duty-holders of the human right to peace. This right shall be implemented without any distinction or discrimination for reasons of race, descent, national, ethnic or social origin, colour, gender, sexual orientation, age, language, religion or belief, political or other opinion, economic situation or heritage, diverse physical or mental functionality, civil status, birth or any other condition.
- 3.- All individuals and peoples subjected to aggression, genocide, racism, racial discrimination, xenophobia and other related forms of intolerance, as well as apartheid, colonialism and neo-colonialism, deserve special attention as victims of violations of the human right to peace.

Article 2 Right to education on and for peace and all other human rights

- 1.- Education and socialization for peace is a condition sine qua non for unlearning war and building identities disentangled from violence.
- 2.- Individuals have the right to receive, under conditions of equal treatment, an education on and for peace and all other human rights. Such education should be the basis of every educational system; generate social processes based on trust, solidarity and mutual respect; incorporate a gender perspective; facilitate the peaceful settlement of conflicts; and lead to a new way of approaching human relationships within the framework of a culture of peace.
- 3.- Individuals have a right to demand and to obtain the competences needed to participate in the creative and non-violent transformation or prevention and resolution of conflicts throughout their life. These competencies should be accessible through formal and informal education.

Article 3 Right to human security and to live in a safe and healthy environment

- 1.- Individuals have the right to human security, including freedom from fear and from want, both being elements of positive peace.
- 2.- All peoples and individuals have the right to live in a private and public environment that is safe and healthy, and to be protected against any act or threat of physical or psychological violence, whether originating from State or non-State actors.
- 3.- All peoples and individuals have the right to demand from their governments the effective observance of the collective security's system established in the UN Charter, in particular its principle of peaceful settlement of disputes, with full respect of the norms of international law, international human rights law and international humanitarian law.
- 4.- Freedom from want implies the enjoyment of the right to sustainable development and of economic, social and cultural rights, in particular:
 - a.-) The right to food, drinking water, sanitation, health, clothing, housing, education and culture;
 - b.-) The right to work and to enjoy fair conditions of employment and trade union association; the right to equal remuneration among persons who perform the same occupation or function; the right to access to social services on equal terms; and the right to leisure.

Article 4 Right to development and to a sustainable environment

- 1.- The realization of the human right to peace and the eradication of structural violence requires that all individuals and peoples enjoy the inalienable right to participate in economic, social, cultural and political development in which all human rights and fundamental freedoms may be fully exercised, as well as to contribute to, and enjoy that development.
- 2.- All peoples and individuals have the right to the elimination of obstacles to the realization of

the right to development, such as servicing of unjust or unsustainable foreign debt burden and its conditionalities, or the maintenance of an unfair international economic order, because they generate poverty and social exclusion.

3.- All peoples and individuals have the right to live in a sustainable and safe environment as a foundation for peace and for the survival of mankind.

4.- The use of weapons that damage the environment, in particular radioactive weapons and weapons of mass destruction, is contrary to international humanitarian law, the right to the environment and the human right to peace. Such weapons must be urgently prohibited, and States that utilize them have the obligation to restore the previous condition of the environment by repairing all damage caused.

Article 5 Right to disobedience and to conscientious objection

1.- All peoples and individuals have the right not to be regarded as enemies by any State.

2.- Individuals, individually or as members of a group, have the right to civil disobedience and to conscientious objection against activities that entail a threat against peace.

3.- Individuals, individually or as members of a group, have the right to obtain conscientious objection status towards their military obligations.

4.- Members of any military or security institution have the right not to participate in wars of aggression, international military operations not authorised by the United Nations, or other armed operations, whether international or internal, which violate the principles and norms of international human rights law or international humanitarian law. Furthermore, they have the right to disobey orders that are manifestly contrary to the above mentioned principles and norms. In addition, they have the obligation to disobey orders to commit or participate in genocide, crimes against humanity or war crimes. The duty to obey military superior orders

does not exempt from the observance of these obligations, and disobedience of such orders shall not in any case constitute a military offence.

5.- Individuals, individually or as members of a group, have the right not to participate in, and to publicly denounce scientific research for the manufacture or development of arms of any kind.

6.- Individuals, individually or as members of a group, have the right to object to participate in a working or professional capacity, and to oppose taxation for military expenditures connected with military operations in support of armed conflicts that violate international human rights law or international humanitarian law. States shall provide acceptable alternatives to tax payers who object to the use of their tax money for military purposes.

7.- Individuals, individually or as members of a group, have the right to be protected in the effective exercise of their right to disobedience and conscientious objection .

Article 6 Right to resist and oppose oppression

1.- All peoples and individuals have the right to resist and oppose all regimes that commit international crimes or other grave, massive or systematic violations of human rights, including the right of peoples to self-determination, in accordance with international law.

2.- All peoples and individuals have the right to oppose war; war crimes, genocide, aggression, apartheid and other crimes against humanity; violations of other universally recognized human rights; any propaganda in favour of war or incitement to violence; and violations of the human right to peace, as defined in this Declaration. The glorification of violence and its justification as necessary to build the future and enable progress shall be prohibited by law.

Article 7 Right to disarmament

1.- All peoples and individuals have the right to demand from all States that they proceed in a

joint and coordinated manner and within a reasonable period of time to general and complete disarmament, under comprehensive and effective international supervision. In particular, States shall urgently eliminate all weapons of mass destruction or of indiscriminate effect, including nuclear, chemical and biological weapons. In addition, States shall adopt effective and coordinated measures in order to progressively phase out their armies and foreign military bases.

2.- All peoples and individuals have the right to have the resources freed by disarmament allocated to the economic, social and cultural development of peoples and to the fair redistribution of natural wealth, responding especially to the needs of the poorest countries and of the groups in situations of vulnerability, aiming to put an end to inequalities, social exclusion and extreme poverty.

3.- States shall prohibit and refrain from outsourcing inherently state military and security functions to private contractors.

Article 8 Freedom of thought, opinion, expression, conscience and religion

1.- All peoples and individuals have the right to access and to receive information from diverse sources without censorship, in accordance with international human rights law, in order to be protected from manipulation in favour of warlike or aggressive objectives.

2.- All peoples and individuals have the right to denounce any event that threatens or violates the human right to peace, and to freely participate in peaceful political, social and cultural activities or initiatives for the defence and promotion of the human right to peace, without interference by governments or by the private sector.

3.- All peoples and individuals have the right to be protected against any form of cultural violence. To this end, persons should fully enjoy their freedom of thought, conscience,

expression and religion, in conformity with international human rights law.

Article 9 Right to refugee status

1.- All individuals have the right to seek and to enjoy refugee status without discrimination, in the following circumstances:

- a.-) If the person suffers persecution for engaging in activities in favour of peace and other human rights, or for claiming the right to conscientious objection against war or military service;
- b.-) If the person has a well-founded fear of persecution by State or non-State agents, on grounds of race, sex, religion, nationality, sexual orientation, membership in a particular social group or political opinions, family status, or any other condition;
- c.-) If the person flees his/her country or place of origin or residence because his/her life, security or liberty has been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that gravely perturb public order.

2.- Refugee status should include, inter alia, the right to voluntary return to one's country or place of origin or residence in dignity and with all due guarantees, once the causes of persecution have been removed and, in case of armed conflict, it has ended.

Article 10 Right to emigrate and to participate

1.- All individuals have the right of freedom of movement and to emigrate if their right to human security or to live in a safe and healthy environment, as stipulated in Article 3 of this Declaration, is seriously threatened.

2.- In order to promote social inclusion and prevent structural violence ensuing from

discrimination in the enjoyment of human rights, migrants have the right to participate, individually or collectively, in the public affairs of the country in which they have their residence, and to benefit from specific mechanisms and institutions that facilitate such participation, in accordance with international human rights law.

Article 11 Rights of all victims

- 1.- All victims of human rights violations have the right, without discrimination, to recognition of their status as such and to an effective remedy to protect them against violations of human rights, particularly of the human right to peace.
- 2.- All individuals have an inalienable right, not subject to statutory limitations, to obtain justice in respect of gross violations of human rights, including the investigation and determination of the facts, as well as the identification and punishment of those responsible.
- 3.- The victims of human rights violations, the members of their families and society in general have the right to know the truth, not subject to statutory limitations.
- 4.- Every victim of a human rights violation has the right, in accordance with international human rights law, to the restoration of the violated rights; to obtain effective and complete redress, including the right to rehabilitation and compensation; measures of symbolic redress or reparation as well as guarantees that the violation will not be repeated. Such redress shall not preclude recourse to popular courts or tribunals of conscience and to institutions, methods, traditions or local customs of peaceful settlement of disputes, which may be acceptable to the victim as adequate reparation.

Article 12 Groups in situations of vulnerability

- 1.- All individuals share the same human dignity and have an equal right to protection.

Nevertheless, there are certain groups in situations of specific vulnerability who deserve special protection. Among them are women in particular situations, children, victims of enforced or involuntary disappearances, persons with diverse physical or mental functionality, elderly persons, displaced persons, migrants, minorities, refugees and indigenous peoples.

- 2.- States shall ensure that the specific effects of the different forms of violence on the enjoyment of the rights of persons belonging to groups in situations of vulnerability are assessed. States also have the obligation to ensure that remedial measures are taken, including the recognition of the right of persons belonging to groups in situations of vulnerability to participate in the adoption of such measures.
- 3.- States, international organizations, in particular the United Nations, and civil society shall facilitate the specific contribution of women to the prevention, management and peaceful settlement of disputes, and promote their contribution to building, consolidating and maintaining peace after conflicts. To this end, the increased representation of women shall be promoted at all levels of decision-making in national, regional and international institutions and mechanisms in these areas.
- 4.- All individuals deprived of their liberty have the right to be treated humanely; their right life, dignity and physical and moral integrity shall be respected. In case of children, detention shall be imposed exclusively as a last resort and be limited to exceptional cases. States shall ensure conditions of detention that promote rehabilitation and inclusion of persons deprived of their liberty, particularly children and youth, ensuring their education, training and general development.
- 5.- The enforced or involuntary disappearance of individuals constitutes a crime against humanity. Their victims have the rights to the recognition of their detention, to regain their freedom and to obtain complete, effective, fair and adequate reparation.

6.- Indigenous peoples have all the rights guaranteed to them by international human rights law, particularly the right to live on their lands, to enjoy their natural resources and to the effective protection of their cultural heritage.

Section B. Obligations

Article 13 Obligations for the realization of the human right to peace

- 1.- The effective and practical realization of the human right to peace necessarily entails duties and obligations for States, international organizations, civil society, peoples, individuals, corporations, the media and other actors in society and, in general, the entire international community.
- 2.- The fundamental responsibility for preserving peace and protecting the human right to peace lies with the States and also with the United Nations as the most universal body which harmonizes the concerted efforts of the nations to realise the purposes and principles proclaimed in the UN Charter.
- 3.- States shall take all the necessary measures for ensuring development and protection of the environment, including disaster preparedness strategies, as their absence poses a threat to peace. States have the obligation to cooperate in all necessary fields in order to achieve the realization of the human right to peace, in particular by implementing their existing commitments to promote and provide increased resources to international cooperation for development.
- 4.- States are also required to adopt measures to build and consolidate peace and have the responsibility to protect humankind from the scourge of war. This, however, shall not be interpreted to imply for any State any entitlement to intervene in the territory of other States.

- 5.- Effectiveness of the United Nations should be further enhanced in its dual functions of preventing violations and protecting human rights and human dignity, including the human right to peace. In particular, it is for the General Assembly, the Security Council, the Human Rights Council and other competent bodies to take effective measures to protect human rights from violations which may constitute a danger or threat to international peace and security.
- 6.- The United Nations system must engage in a thorough and effective manner, through the United Nations Peace-building Commission, in cooperation with other entities of the United Nations and relevant regional and sub-regional organisations, in the elaboration of integrated strategies for peace and for the reconstruction of affected countries following the end of armed conflicts. Such strategies must ensure stable sources of financing and effective coordination within the United Nations system. In this context, the effective implementation of the Programme of Action on a Culture of Peace is underscored.
- 7.- Any military action outside the framework of the UN Charter is unacceptable, constitutes a most grave violation of the principles and purposes of the UN Charter, and is contrary to the human right to peace. The so-called “preventive war” constitutes a crime against peace.
- 8.- In order to better guarantee the human right to peace, the composition and procedures of the Security Council shall be reviewed so as to reflect and better ensure the representation of today’s international community. The methods of work of the Security Council must be transparent and allow a meaningful participation in its debates by civil society and other actors.

Article 14 Establishment of the Working Group on the Human Right to Peace

- 1.- A Working Group on the Human Right to Peace (hereinafter called "the Working Group") will be established. It will be composed of ten members who will have the duties set forth in

Article 15.

- 2.- The Working Group will be composed of experts from the Member States of the United Nations who will carry out their duties with complete independence and in a personal capacity.
- 3.- The following criteria shall be taken into account for their election:
 - a.-) The experts shall be of high moral standing, impartiality and integrity, and show evidence of long and sufficient experience in any of the spheres stated in Part I of this Declaration;
 - b.-) Equitable geographical distribution and representation of the different forms of civilization and of the main legal systems of the world;
 - c.-) There shall be a balanced gender representation; and
 - d.-) There may not be two experts nationals from the same State.
- 4.- The members of the Working Group will be chosen by secret ballot at a session of the United Nations General Assembly from a list of candidates proposed by the Member States and by civil society organisations. The ten candidates who obtain the highest number of votes and a two thirds majority of the States present and voting will be elected. The initial election will take place at the latest three months after the date of adoption of this Declaration.
- 5.- The experts will be elected for four years and may be re-elected only once. 6.- Half of the Working Group will be renewed every two years.

Article 15 Functions of the Working Group

- 1.- The main function of the Working Group is to promote the observance and implementation of this Declaration. In the exercise of its mandate the Working Group shall have the following competences:
 - a.-) To promote worldwide observance and awareness of the human right to peace, acting with discretion, objectivity and independence and adopting an integrated approach which

- takes account of the universality, interdependence and indivisibility of human rights and the overriding need to achieve international social justice;
- b.-) To gather, assemble and respond effectively to any relevant information from States, international organizations and their organs, civil society organizations, national human rights institutions, concerned individuals and any other reliable source;
- c.-) To carry out in loco investigations concerning violations of the human right to peace and to report to the pertinent bodies;
- d.-) To address, when it considers it appropriate, recommendations, appeals and urgent actions to the UN Member States, asking them to adopt appropriate measures for the effective realization of the human right to peace, in accordance with Part I of this Declaration. The States shall give due consideration to those recommendations and appeals;
- e.-) To draw up, on its own initiative or at the request of the General Assembly, the Security Council or the Human Rights Council, the reports it deems necessary in the event of an imminent threat to or serious violation of the human right to peace, as defined in Part I of this Declaration;
- f.-) To present an annual report of its activities to the General Assembly, the Security Council and the Human Rights Council, in which it will include the conclusions and recommendations it may be considered necessary to the effective promotion and protection of the human right to peace, paying special attention to situations linked to armed conflicts;
- g.-) To prepare for the attention of the General Assembly a draft international convention on the human right to peace with a mechanism for monitoring inter alia States compliance with its full and effective implementation. The future conventional mechanism and the Working Group shall coordinate their mandates to avoid duplicating their activities;
- h.-) To contribute to the elaboration of definitions and norms concerning the crime of

aggression and the limits of legitimate self-defence;

- i.-) To submit to the Prosecutor of the International Criminal Court or other competent international criminal tribunals, reliable information about any situation in which it would appear that crimes which fall within the jurisdiction of the International Criminal Court or of another international criminal tribunal, have been committed;
- j.-) To approve by a majority of its members the working methods for the regular functioning of the Working Group, which shall include inter alia rules on the appointment of its Bureau, as well as the procedure for the adoption of decisions and recommendations.

2.- The Working Group shall have its seat in New York and hold three ordinary sessions per year, as well as any extraordinary sessions to be determined in accordance with its working methods. The Working Group shall have a permanent Secretariat which will be provided by the UN Secretary General. The expenditures of the Working Group, including those associated with in loco investigations, shall be financed as part of the regular budget of the United Nations.

Final provisions

- 1.- No provision of this Declaration may be interpreted as meaning that it confers on any State, group or individual any right to undertake or develop any activity, or carry out any act contrary to the purposes and principles of the United Nations, or likely to negate or violate any of the provisions of this Declaration, as well as in international human rights law, international labour law, international humanitarian law, international criminal law and international refugee law.
- 2.- The provisions of this Declaration shall apply without prejudice to any other provision more propitious to the effective realization of the human right to peace formulated in accordance

with the domestic legislation of States or stemming from applicable international law.

- 3.- All States must implement in good faith the provisions of this Declaration by adopting relevant legislative, judicial, administrative, educational or other measures necessary to promote its effective realization.

6, Progress Report of the Human Rights Council Advisory Committee on the Right of Peoples to Peace (A/HRC/17/39, 2011)

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**Progress report of the Human Rights Council
Advisory Committee on the right of peoples to
peace***

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I. Introduction¹

1. In its resolution 14/3, the Human Rights Council requested its 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 and to report on the progress thereon to the Council at its seventeenth session.

2. In its recommendation 5/2, the Advisory Committee designated Chinsung Chung, Miguel d'Escoto Brockmann, Wolfgang Stefan Heinz (Rapporteur) and Mona Zulficar (Chairperson) as members of the drafting group.² The drafting group, later expanded to include Shigeki Sakamoto and Latif Hüseyinoy, submitted a draft progress report to the Advisory Committee for consideration at its sixth session. The present report will be submitted to the Council for its consideration at its seventeenth session.

II. Right to peace in international law and practice

3. The Charter of the United Nations begins by proclaiming international peace and security as a common purpose, in Article 1; as a principle, in Article 2; and as the basis for dispute settlement in Chapter VI (Arts. 33-38). In Article 55, the Charter refers to the promotion of human rights as a necessary condition for peaceful and friendly relations between States. The right to peace is inherent in the Charter.

4. The United Nations plenary principal organ, the General Assembly, has recognized the right to peace in numerous resolutions, with a minority of Member States abstaining. Most notably, in the annex to its resolution 34/11, the Assembly proclaimed that “the peoples of our planet have a sacred right to peace”. This was reaffirmed in subsequent Assembly resolutions, in particular in resolutions 53/243, 57/216, 60/163 and 63/189. The right was also affirmed by the Commission on Human Rights in its resolutions 5 (XXXII) 76, 2000/66 and 2002/71, and by the Human Rights Council in its resolutions 8/9, 11/4 and 14/3. A number of countries have consistently abstained or voted against these resolutions.

5. The International Convention on the Elimination of All Forms of Racial Discrimination states in its preamble that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples.³

6. The International Covenant on Civil and Political Rights notes in its preamble that human rights are the foundation of peace in the world.⁴ In its general comment No. 6, the Human Rights Committee emphasizes the relationship between the right to life, prevention of war and the prohibition of propaganda for war, including the proliferation of nuclear weapons; in its general comment No. 14 on nuclear weapons and the right to life, it draws a clear link between the prohibition of war and the right to life.

7. The Convention on the Elimination of All Forms of Discrimination against Women states that the full and complete development of a country, the welfare of the world and the

¹ The Rapporteur thanks Lena Ebe M.A., intern at the German Institute for Human Rights, for her excellent support in the preparation of the first version of the present paper.

² Advisory Committee recommendation 5/2.

³ United Nations, *Treaty Series*, vol. 660, 195.

⁴ *Ibid.*, vol. 999, 171.

cause of peace requires the maximum participation of women on equal terms with men in all fields.⁵

8. The Convention on the Rights of the Child has an optional protocol on the involvement of children in armed conflict.⁶

9. The Convention on the Rights of Persons with Disabilities reaffirms the crucial role of human rights in general for creating fair and equal societies founded upon freedom, justice, development and peace.⁷

10. Article 23 of the African Charter on Human and Peoples' Rights unambiguously recognizes that all peoples "shall have the right to national and international peace and security".

11. The Charter of the Association of Southeast Asian Nations of 2007 reiterates the common desire of its member States to live in peace (in its preamble) and to maintain and enhance peace (several times in articles 1 and 2 and in its provisions calling for the peaceful settlement of disputes).

12. Civil society organizations, especially the Spanish Society for International Human Rights Law, and many other non-governmental organizations have also recognized the existence of a right to peace in numerous documents prepared by experts and endorsed by hundreds of non-governmental organizations. The Santiago Declaration on the Human Right to Peace of December 2010 was the result of a four-year world campaign of the Society that brought together inputs from all regions of the world. The initiative is noteworthy in its deliberate effort to seek universal values by drawing upon local and international law from Western and non-Western legal traditions. An international observatory of the human right to peace was also created. More than 900 civil society organizations and cities have endorsed the United Nations documents submitted through the Society.

13. In 1998, more than 200 non-governmental organizations drafted an Asian human rights charter over a three-year discussion process. The Charter asserts that "all persons have a right to peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence".⁸

III. Approach proposed by the Advisory Committee

14. In its resolution 14/3, the Human Rights Council requested the Advisory Committee to prepare a draft declaration on the right of peoples to peace, in consultation with Member States, civil society, academia and all relevant stakeholders.

15. In its resolutions 8/9, 11/4 and 14/3, the Council recognized the right to peace; a number of Member States voted against the resolution.

16. The Advisory Committee suggests a focused approach to clarify the right to peace and to enhance its implementation.

17. The Advisory Committee therefore proposes that peace should be conceived as both the absence of organized violence within a country or between countries and the

⁵ Ibid., vol. 1249, 13.

⁶ Ibid., vol. 2173, 222.

⁷ General Assembly resolution 61/106.

⁸ Miscellaneous authors, Asian Human Rights Charter, para. 4.1. Available from www.unhcr.org/refworld/docid/452678304.html.

comprehensive and effective protection of human rights, gender equality and social justice, economic well-being and free and widespread expression of different cultural values, without discrimination or restraints.

IV. Core dimensions

A. International peace and security

18. In its resolution 14/3, the Human Rights Council reaffirmed that the peoples of our planet have a sacred right to peace, and also that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of all States and stresses the importance of peace for the promotion and protection of all human rights for all. It reaffirmed standards from previous resolutions of the General Assembly and the Council, as well as articles from the Charter of the United Nations.

19. The purposes of the United Nations, as set out in Article 1 of the Charter, are to maintain international peace and security and to take appropriate measures to strengthen universal peace. Articles 55 and 56 of the Charter require the Organization and all its Member States with a view to the creation of stability and well-being, which are necessary for peaceful and friendly relations among nations, to promote universal respect for, and observance of, human rights and fundamental freedoms for all.

20. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations stresses the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for human rights.⁹

21. This right has been repeated reaffirmed by the General Assembly in its resolutions. For example, in 1978, the Assembly reaffirmed the right of individuals, States and all mankind to life in peace in its Declaration on the Preparation of Societies for Life in Peace.¹⁰ It added that every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace. Respect for that right, as well as for the other human rights, is in the common interest of all mankind and an indispensable condition of advancement of all nations, large and small, in all fields.

22. The Declaration of the Right of Peoples to Peace solemnly declared that the peoples of our planet have a sacred right to peace and that every State has a fundamental obligation to promote and implement this right.

23. At the 2010 Review Conference of the Rome Statute, held in Kampala, the State parties to the Rome Statute of the International Criminal Court agreed to add aggression to the Court's short list of prosecutable crimes. The members adopted by consensus amendments to the Rome Statute, including a definition of the crime of aggression and a regime establishing how the Court would exercise its jurisdiction over this crime.¹¹ An act of aggression is defined as the use of armed force by one State against another State without the justification of self-defence or authorization by the Security Council.¹²

⁹ General Assembly resolution 2625 (XXV), annex.

¹⁰ General Assembly resolution 33/73.

¹¹ "Delivering on the promise of a fair, effective and independent Court: the crime of aggression", available from www.iccnw.org/?mod=aggression.

¹² The definition, as well as the actions qualifying as acts of aggression contained in the amendments (for example, invasion by armed forces, bombardment and blockade), are influenced by General

Proposed standards

1. The peoples of our planet have a human right to peace.
2. The preservation, promotion and implementation of the right of peoples to peace constitute a fundamental obligation of all States.
3. Peace and development are fundamental human rights that are the pillars of the United Nations system and the foundations for human security and well-being;
4. Exercise of the right of peoples to peace and its promotion and implementation demand that the policies of States are directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use or threat of 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;
5. All States shall promote the establishment, maintenance and strengthening of international peace and security in an international system based on respect for the Principles enshrined in the Charter and the promotion of all human rights and fundamental freedoms, including the right to development and the right of peoples to self-determination;
6. All States shall respect and put into practice the Principles and Purposes of the Charter in their relations with all other States, irrespective of their political, economic or social systems or of their size, geographical location or level of economic development, particularly refraining 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 and further refraining from intervening in matters which are essentially within the domestic jurisdiction of any State;
7. All States, in accordance with the Principles of the Charter, shall use peaceful means to settle any dispute to which they are parties and the continuance of which is likely to endanger the maintenance of international peace and security, and encourages States to settle their disputes as early as possible, as an important contribution to the promotion and protection of all human rights of everyone and all peoples.¹³
8. To strengthen international rule of law, all States should strive to support the International Criminal Court and its work on crimes against humanity, war crimes, the crime of genocide and the crime of aggression.

B. Disarmament

24. The manufacture of weapons, arms races and the excessive and uncontrolled traffic of all kinds of arms jeopardize international peace and security. The failure of States to observe the obligations laid down in the relevant treaties in the field of disarmament, including the Treaty on the Non-Proliferation of Nuclear Weapons, and the possession, deployment and threat of use of weapons impedes respect for human rights.

25. The continuing existence of nuclear weapons poses a permanent threat to world peace, as their use would have catastrophic consequences for all life on earth and humankind in general.¹⁴ The Human Rights Committee has recognized that the designing,

Assembly resolution 3314 (XXIX). See "US opposes ICC bid to make 'aggression' a crime under international law", *CSMonitor*, 15 June 2010.

¹³ See General Assembly resolution 39/11 (1984), Human Rights Council resolutions 8/9 (2008), 11/4 and 14/3 (paras. 6-10), and Article 2 of the Charter.

¹⁴ The Russell-Einstein Manifesto, London, 9 July 1955, resolution.

testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront humankind today.¹⁵ In its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* of 8 July 1996, the International Court of Justice unanimously concluded that article VI of the Treaty on the Non-Proliferation of Nuclear Weapons and other international commitments required States to “pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control”. An annual General Assembly resolution welcoming the Court’s conclusion calls for negotiations on a convention prohibiting and eliminating nuclear weapons globally as the means of meeting the obligation.¹⁶

26. Weapons of mass destruction, including nuclear, chemical and biological weapons, do not only have an instant negative effect on peoples and individuals and the enjoyment and exercise of a variety of their human rights. The development, production, stockpiling and use of weapons of mass destruction or of indiscriminate effect may also imply unforeseeable, uncontrollable and long-term and cross-border effects on the environment threatening the livelihood of succeeding generations.

27. The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques¹⁷ states in article 1 that each State party to the Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State party.

28. The final outcome document of the International Conference on the Relationship between Disarmament and Development¹⁸ concluded that true and lasting peace and security in this interdependent world demanded rapid progress in both disarmament and development as two of the most urgent challenges facing the world today.

29. The Secretary-General has underlined that disarmament contributes to creating a more stable international and national order that is favourable to development and human rights.¹⁹ Several initiatives by the United Nations have also addressed the international arms trade and illegal arms trade.²⁰

30. The right to full disarmament must be understood to be part of the right of peoples to live in peace. The right to disarmament should be a component of the right of peoples to peace as well as part of the right to international solidarity.²¹

¹⁵ General comment No. 14 on nuclear weapons and the right to life (Art. 6), 1984, para. 4.

¹⁶ See for example General Assembly resolution 64/55. It is significant that, at the 2010 Treaty Review Conference, for the first time, the Action Plan on Nuclear Disarmament, in the final document, affirms that “all States need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons.” It then notes the Five-Point Proposal for Nuclear Disarmament of the Secretary-General, proposing, inter alia, consideration of negotiations on a nuclear weapons convention or agreement on a framework of separate mutually reinforcing instruments, backed by a strong system of verification. The 2010 Review Conference thus acknowledged that elimination of nuclear weapons would require a global institutional and legal system.

¹⁷ United Nations, *Treaty Series*, vol. 1108, p. 151.

¹⁸ A/CONF.130/39.

¹⁹ See A/59/119.

²⁰ For example, the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, and the work of the Open-ended Working Group towards an Arms Trade Treaty.

²¹ *Colloquium on the New Human Rights*, Matias Romero Institute of Diplomatic Studies of the

Proposed standards

1. All peoples and individuals have the right to demand from all States that they urgently eliminate all weapons of mass destruction or of indiscriminate effect, including nuclear, chemical and biological weapons. States shall engage actively in the strict and transparent control of arms trade and suppression of illegal arms trade. Furthermore, States should proceed in a joint and coordinated manner and within a reasonable period of time to further disarmament, under comprehensive and effective international supervision.²²

2. All peoples and individuals have the right to have the resources freed by disarmament allocated to the economic, social and cultural development of peoples and to the fair redistribution of natural wealth, responding especially to the needs of the poorest countries and of groups in situations of vulnerability, aiming to put an end to inequalities, social exclusion and extreme poverty.²³

3. All peoples and individuals have the right to live in a sustainable and safe environment as a foundation for peace and for the survival of mankind.

4. All peoples and individuals have a right to live in a world free of weapons of mass destruction. The use of weapons that damage the environment, in particular radioactive weapons and weapons of mass destruction, is contrary to international humanitarian law, the right to the environment and the human right to peace. Such weapons must be urgently eliminated and prohibited, and States that utilize them have the obligation to restore the previous condition of the environment by repairing all damage caused.

C. Human security

31. The right to peace includes the element of human security. Human security focuses on the basic needs of the human being. It includes both the twin values of freedom from fear and freedom from want.²⁴ The first refers to threats from conflicts and the protection of non-combatants during war, such as nuclear, chemical and biological threats; the second, to the challenges of economic insecurity and inequity, access to food, water, housing and adequate health care, and the elimination of illiteracy.²⁵

32. Human security addresses the structural causes of instability and conflict, such as poverty, inequality and lack of economic opportunity. Human security requires economic development and enhancing social justice.²⁶ According to the Declaration and Programme of Action on a Culture of Peace,²⁷ peacebuilding strategies must assure equity in development and food security.

Secretariat for the External Affairs of Mexico, United Nations Educational, Scientific and Cultural Organization SS-80/CONF.806/4, 1980.

²² See for instance General Assembly resolutions 1653 (XVI), 2444 (XXIII), 2826 (XXVI), 2936 (XXVII) and 47/39, annex, and A/CONF.95/15, annex I.

²³ See Asian Charter, "The enormous expenditures on arms have diverted public revenues from programmes for the development of the country or the well-being of the people" (para. 4.5).

²⁴ In larger freedom: towards development, security and human rights for all (A/59/2005), paras. 25-126.

²⁵ "Human security now", final report of the Commission on Human Security, Communications Development incorporated in Washington, D.C., with direction by its British partner Grundy and Northedge, New York, 2003, pp. 94-124.

²⁶ McFarlane, H. and Foong Khong, Y., *Human security and the UN: A critical history*. Bloomington, Ind.: Indiana University Press, 2006, p. 151.

²⁷ General Assembly resolution 53/243.

33. In the 2005 World Summit Outcome,²⁸ world leaders affirmed their commitment to work towards a security consensus based on the recognition that many threats are interlinked, that development, peace, security and human rights are mutually reinforcing, that no State can best protect itself by acting entirely alone and that all States need an effective and efficient collective security system pursuant to the purposes and principles of the Charter.

34. The objective of lasting and just peaceful coexistence can only be achieved by recognizing the human security element of the right to peace.

Proposed standards

1. Individuals have the right to human security, including freedom from fear and from want, both being elements of positive peace. This includes the right to an adequate standard of living, including adequate food, water, housing, health care, education and social security.

2. All peoples and individuals have the right not to be regarded as enemies by any State.²⁹

3. All peoples and individuals have the right to live in an environment that is safe and healthy, including an atmosphere that is free from dangerous interference, and to be protected against any act or threat of physical or psychological violence, whether originating from State or non-State actors.

4. All peoples and individuals have the right to be protected from genocide, war crimes, wars of aggression, ethnic cleansing and crimes against humanity. If Member States are unable to prevent these crimes from occurring within their own borders, they should call on the United Nations to fulfil that responsibility in keeping with the Charter and international law.³⁰

5. All peoples and individuals have the right to demand from their Governments the effective observance of the norms of international law, international human rights law and international humanitarian law.³¹

6. All peoples and individuals have the right to democratic governance of military and related budgets, to an open debate about national and human security needs and policies, defence and security budgeting, as well as to accountability of decision makers to democratic oversight institutions.³²

D. Resistance to oppression

35. The preamble to the Universal Declaration of Human Rights recognizes that, “whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to

²⁸ General Assembly resolution 60/1, para. 72.

²⁹ Santiago Declaration on the Human Right to Peace, adopted by the International Congress on the Human Right to Peace, adopted on 10 December 2010 at the World Social Forum on Peace Education, Santiago de Compostela, Spain, art. 5, para. 1.

³⁰ General Assembly resolution 60/1, paras. 138-139.

³¹ See Santiago Declaration, art. 3 para. 3.

³² Since the 1990s, the Security Council has often expressed the need for a reform of the security sector, including gender issues, in its resolutions. See for example “Security Council urges security sector reform ahead of Central African polls”, press release, 21 December 2009, and Council resolutions 1509 (2003), 1833 (2008), 1902 (2009) and 1906 (2009).

rebellion against tyranny and oppression, that human rights should be protected by the rule of law". The General Assembly has affirmed the right of all peoples to resist colonial or alien domination.³³

36. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations recognizes the importance of peace to human rights, as well as the realization that "the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security". At the same time, the Declaration also recognized that every State "has the duty to refrain from any forcible action which deprives peoples ... of their right to self-determination" and that peoples subjected to such violence have a right to take "actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination" and to "seek and to receive support as determined by the General Assembly".³⁴

37. The right to resist and oppose oppression is essential to achieving and maintaining a just peace.

Proposed standards

1. All peoples and individuals have the right to resist and oppose oppressive colonial or alien domination that constitutes a flagrant violation of their human rights, including the right of peoples to self-determination, in accordance with international law.

2. All individuals have the right to oppose war crimes, genocide, aggression, apartheid and crimes against humanity, violations of other universally recognized human rights, any propaganda in favour of war or incitement to violence and violations of the human right to peace, as defined in the present declaration.³⁵

E. Peacekeeping

38. Peacekeeping operations relate to the protection of human rights at least in two ways. First, they focus on the physical protection of civilians in post-conflict environments, which is a key component of human security. The second way relates to alleged violations by peacekeepers and/or associated personnel and their immunity under operational command of the United Nations. Local populations should have appropriate avenues for making complaints and receiving a response.³⁶

Proposed standard

States and the United Nations shall include the comprehensive and effective protection of civilians as a priority objective into mandates of peacekeeping operations. Peacekeeping missions and peacekeepers shall comply fully with United Nations rules and procedures regarding professional conduct, including the lifting of immunity in cases of criminal misconduct committed off-duty, to allow local population recourse to legal

³³ See General Assembly resolution 37/35.

³⁴ General Assembly resolution 2625 (XXV), annex.

³⁵ See Santiago Declaration, art. 6, para. 2. See also Asian Charter, para. 3.4.

³⁶ See resources on webpage "Protection from sexual exploitation by UN and related personnel", with available from www.un.org/en/pse/taskforce/tools_manage.shtml. See also Marten Zwanenburg, *Accountability of Peace Support Operations*, Leiden, Boston 2005, and Keith J. Allred, "Human Trafficking and Peacekeepers", in Cornelius Friesendorf (ed.), "Strategies against Human Trafficking. the Role of the Security Sector", Vienna and Geneva, 2010, pp. 299-328.

proceedings and redress. Troop-contributing States should take every measure to investigate effectively comprehensively complaints against members of their national contingents.

F. Right to conscientious objection and freedom of religion and belief

39. Conscientious objection to military service is recognized by the United Nations, as reflected in statements made by the Human Rights Committee and the Commission on Human Rights. It derives from the right to freedom of thought, conscience and religion, and applies to both conscripts and volunteers.

40. The Human Rights Committee has recognized the right of conscientious objection to military service as part of the right to freedom of thought, conscience and religion enshrined in article 18 of the International Covenant on Civil and Political Rights. In its general comment No. 22,³⁷ the Committee stated that no discrimination was permitted among conscientious objectors on the basis of the nature of their particular beliefs. Moreover, it has also addressed the issue in many of its concluding observations on State reports and in its cases, most significantly in the case of *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea* and thereafter in 11 communications from conscientious objectors of different backgrounds in the same country.³⁸

41. In its resolution 1995/83, the Commission on Human Rights stated that persons performing military service should not be excluded from the right to have conscientious objections to military service. It also welcomed the fact that some States accept claims of conscientious objection as valid without inquiry, and called for independent and impartial decision-making bodies where this was not the case.³⁹ The Human Rights Committee expressed concern about determinations by military judicial officers in individual cases of conscientious objection, and encouraged placing the assessment of applications for conscientious objector status under the control of civilian authorities.⁴⁰

42. Furthermore, in its resolution 1998/77, the Commission on Human Rights stated that there was a right to object military service on conscientious reasons, as that objection was a legitimate expression of the freedom of thought, conscience and religion, and that States should refrain from punishing or discriminating against conscientious objectors.

43. Regionally, there is also some support for respecting conscientious objection to compulsory military service.⁴¹

44. Discrimination and violence in the name of religion or belief is at the heart of many conflicts based on religious issues, often intertwined with ethnic, national, political or historical backgrounds. In its resolution 4/10, the Human Rights Council recognized that the disregard for and infringement of human rights and fundamental freedoms, in particular

³⁷ CCPR/C/21/Rev.1/Add.4, para. 11.

³⁸ The Committee identified conscientious objection to military service as a protected form of manifestation of religious belief under article 18(1) of the Covenant, and held that the Republic of Korea had violated article 18 by not providing for conscientious objection to military service for these two Jehovah's Witnesses. In the other cases, see communications Nos. 1593 to 1603/2007.

³⁹ Ibid. See also Commission on Human Rights resolutions 2000/66 and 2002/71.

⁴⁰ CCPR/CO/78/ISR, para. 24, and CCPR/CO/83/GRC, para. 15.

⁴¹ See for example Council of Europe, "Conscientious objection to compulsory military service", Strasbourg 2007, and the Permanent Council of the Organization of American States, working group to prepare the draft American declaration on the rights of indigenous peoples, Outcomes of the Tenth Meetings of Negotiations in the quest for points of consensus, La Paz, – 23-27 April 2007, art. XXX, para. 4 e.

the right to freedom of thought, conscience, religion or belief, continued to bring, directly or indirectly, wars and great suffering to humankind.

Proposed standards

1. Individuals have the right to conscientious objection and to be protected in the effective exercise of this right.

2. States have the obligation to prevent members of any military or other security institution from taking part in wars of aggression or other armed operations, whether international or internal, which violate the principles and norms of international human rights law or international humanitarian law. Members of any military or other security institutions have the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms. The duty to obey military superior orders does not exempt from the observance of these obligations, and disobedience of such orders shall in no case constitute a military offence.⁴²

3. Individuals have the right to expect that States pay special attention to help solve conflicts related to religious and ethnic issues in cooperation with civil society.

G. Private military and security companies

45. The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination recommended in July 2010 that its draft proposal for a possible new international legal instrument regulating private military and security companies be carefully considered. The draft of a possible convention on private military and security companies defines in article 3 as its scope of application States and intergovernmental organizations within the limits of their competence with respect to private military and security companies, their activities and personnel. It would apply to “all situations whether or not the situation is defined as an armed conflict”.

46. Pursuant to its resolution 15/26, the Human Rights Council has set up an open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies.

Proposed standards

1. States shall refrain from outsourcing inherently State military and security functions to private contractors. States shall establish an international regime with clear rules regarding the functions, oversight and monitoring of existing private military and security agencies.

2. States shall ensure that private military and security companies, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international human rights and humanitarian law. They shall take such legislative, administrative and other measures as may be necessary to ensure that such companies and their personnel are held accountable for violations of applicable national or international law. Any responsibility attributable to a

⁴² See Santiago Declaration, art. 5, para. 4.

private military or security company is independent of and does not eliminate the responsibility that a State or States may incur.⁴³

V. Other dimensions

A. Peace education

47. The right to peace is inconceivable without a comprehensive, serious commitment to education, both formal and non-formal. Concepts of long-standing historical threats to a country, of adversaries and enemies, glorification of violence, racist attitudes towards foreigners and even foreign nations and many other perceptions, often misguided by the media and political and other interest groups, can profoundly undermine any serious attempt to create a culture of peace. Conversely, serious professional education and media reporting can greatly enhance a culture of peace and diminish racist, aggressive, discriminatory and violent attitudes. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has been very active in this field since the 1970s.

48. In 1974, UNESCO adopted its Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, in which it stressed the importance of education to both peace and human rights.

49. The Millennium Development Declaration states that human beings must respect each other, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted.⁴⁴

50. In its resolution 14/3, the Human Rights Council called upon States and relevant United Nations bodies to promote effective implementation of the Declaration and Programme on a Culture of Peace.

51. Many General Assembly and Human Rights Council resolutions on the right to peace contain provisions supporting peace education.⁴⁵

Proposed standards

1. All peoples and individuals have a right to comprehensive peace education. Such education should be the basis of every educational system, generate social processes based on trust, solidarity and mutual respect, incorporate a gender perspective, facilitate the peaceful settlement of conflicts and lead to a new way of approaching human relationships within the framework of a culture of peace.⁴⁶

2. All peoples and individuals have a right to demand and obtain the competences needed to participate in the creative and non-violent resolution or, failing that,

⁴³ A/HRC/15/25, annex, art. 5.

⁴⁴ General Assembly resolution 55/2, para. 6.

⁴⁵ For example, General Assembly resolution 53/243A, and Human Rights Council resolutions 8/9, para. 9, 11/4, para. 10, and 14/3, paras. 10-11.

⁴⁶ Santiago Declaration, art. 2, para. 2.

transformation, of conflicts throughout their life. These competencies should be accessible through formal and informal education.⁴⁷

3. The glorification of violence and its justification shall be prohibited.⁴⁸

4. All peoples and individuals have the right to have access to access and receive information from diverse sources without censorship, in accordance with international human rights law, in order to be protected from manipulation in favour of warlike or aggressive objectives.⁴⁹

5. All peoples and individuals have the right to denounce any event that threatens or violates the human right to peace, and to freely participate in peaceful political, social and cultural activities or initiatives for the defence and promotion of the human right to peace, without interference by Governments or the private sector.⁵⁰

6. States have the obligation:

(a) To increase educational efforts to remove hate messages, distortions, prejudice and negative bias from textbooks and other educational media, and to ensure the basic knowledge and understanding of the world's main cultures, civilizations and religions;

(b) To update and revise educational and cultural policies to reflect a human rights-based approach, cultural diversity, intercultural dialogue and sustainable development;

(c) To revise national laws and policies that are discriminatory against women, and adopt legislation that addresses domestic violence, the trafficking of women and girls and gender-based violence.⁵¹

B. Development

52. The right to development addresses many ingredients of a positive peace, such as improving the living conditions of the mainstream population, proactive protection of all economic, social and cultural rights, and gender-specific support for vulnerable groups. It is suggested that it take up selected crucial standards rather than attempting to repeat the long list of existing standards developed by relevant United Nations Organs and agencies.⁵²

53. The Declaration on the Right to Development⁵³ recognizes the interlinked and mutually reinforcing character of development and peace, declaring that the elimination of

⁴⁷ Ibid., art. 2, para. 3.

⁴⁸ Ibid., art. 6, para. 2. Article 20 of the International Covenant on Civil and Political Rights states that "Any propaganda for war shall be prohibited by law" and that "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." See also Asian Charter, para. 3.4.

⁴⁹ Santiago Declaration, art. 8, para. 1.

⁵⁰ Ibid., art. 8, para. 2.

⁵¹ A/63/127, para. 66.

⁵² For example, the Working Group on the Right to Development, the high-level task force on the implementation of the right to development, special procedures mandate holders, such as the Special Rapporteurs on the right to food and on foreign debt, and the work of United Nations agencies such as the Food and Agricultural Organization of the United Nations, the International Labour Organization, the World Health Organization, the United Nations Development Programme and the United Nations Children's Fund.

⁵³ General Assembly resolution 41/128, annex.

threats of war would contribute to the establishment of circumstances propitious to development, and that international peace and security are essential elements for the realization of the right to development.

54. Furthermore, States should take steps to eliminate obstacles to development resulting from failure to observe civil and political and economic, social and cultural rights, and should use resources freed by disarmament for comprehensive development.⁵⁴

55. In 1999, the General Assembly adopted the Declaration and Programme of Action on a Culture of Peace,⁵⁵ which served as the basis for the International Year for the Culture of Peace and the International Decade for a Culture of Peace and Non-violence for the Children of the World. Member States were encouraged to take actions to promote a culture of peace at the national level, as well as at the regional and international levels. Civil society was to be involved at all levels to widen the scope of activities on a culture of peace.

56. The Millennium Development Declaration contains various references to peace as an important objective of the United Nations. In particular, section II emphasizes the nexus between peace, security and disarmament as well as between human rights, democracy and good governance. In the Declaration, Member States agreed to ensure greater policy coherence and better cooperation between the United Nations, its agencies, the Bretton Woods Institutions and the World Trade Organization, as well as other multilateral bodies, with a view to achieving a fully coordinated approach to the problems of peace and development.⁵⁶ This corresponds to Millennium Development Goal targets 8 B and C, which demands that States deal comprehensively with the debt problems of developing countries through national and international measures. Furthermore, States undertook the obligation to develop an open, rule-based, predictable, non-discriminatory trading and financial system that includes a commitment to good governance, development and poverty reduction – both nationally and internationally.⁵⁷

Proposed standards

1. Peoples and individuals have a right to State policies that pursue peace and security and development as interlinked and mutually reinforcing, and as serving as a basis for one another. The obligation to promote comprehensive and sustainable economic, social, cultural and political development implies the obligation to eliminate threats of war and, to that end, to strive towards disarmament, and the free and meaningful participation of the entire population in this process.

2. The realization of the human right to peace and the eradication of structural violence require that all individuals and peoples enjoy the inalienable right to participate in economic, social, cultural and political development, in which all human rights and fundamental freedoms may be fully exercised, as well as to contribute to and enjoy that development.⁵⁸

3. All peoples and individuals should enjoy freedom from want in order to live in peace. They should enjoy the right to sustainable development and economic, social and cultural rights and, in particular:

⁵⁴ Ibid., arts. 3 (3) and 7.

⁵⁵ General Assembly resolution 53/243 (1999).

⁵⁶ General Assembly resolution 55/2, sect. VIII.

⁵⁷ Ibid., paras. 13 and 16.

⁵⁸ Santiago Declaration, art. 4, para. 1.

(a) The right to food, drinking water, sanitation, health, clothing, housing, education and culture;

(b) The right to work and to enjoy fair conditions of employment and trade union association; the right to equal remuneration among persons who perform the same occupation or function; the right to have access to social services on equal terms; and the right to leisure.⁵⁹

4. All peoples and individuals have the right to the elimination of obstacles to the realization of the right to development, such as the servicing of unjust or unsustainable foreign debt burdens and their conditionalities, or the maintenance of an unfair international economic order, because they generate poverty and social exclusion. States and the United Nations system shall fully cooperate in order to remove such obstacles, both internationally and domestically.⁶⁰

C. The environment, in particular climate change

57. The environment is a crucial aspect of the right to peace. An area of particular relevance is climate change.⁶¹

58. Climate change has a negative impact on a variety of human rights, ranging from the right to life, food, water, health, housing and shelter through to the right to self-determination of peoples and rights relating to livelihood and culture, migration and resettlement and personal security in cases of conflict.⁶² Furthermore, the historical contribution to and the share of the burden caused by climate change are distributed highly unevenly.⁶³ Adaptation and mitigation policies and long-term protection, however, may also have adverse effects.⁶⁴

59. In 2008, the Human Rights Council, in its resolution 7/23, requested OHCHR to undertake a study on human rights and climate change. The study⁶⁵ was presented in 2009 and deals with, inter alia, the impact of climate change-induced displacement and conflict. It also analyses the consequences of climate change on relevant obligations under international human rights law. According to the Special Rapporteur on the right to food, land degradation has prompted, together with other factors, fights over resources in the conflict in the Darfur region of the Sudan and in other conflicts in Africa.⁶⁶ The non-governmental organization Alert International has identified 46 countries with a high risk of armed conflict owing to climate change and 56 States threatened by political instability.⁶⁷

⁵⁹ Ibid., art. 3, para. 4.

⁶⁰ Ibid., art. 4, para. 2.

⁶¹ The United Nations Framework Convention on Climate Change defines climate change or "global warming" as "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods" (art. 1, para. 2).

⁶² "Climate Change and Human Rights: A Rough Guide", International Council on Human Rights Policy, p. 1, available from http://www2.ohchr.org/english/issues/climatechange/docs/submissions/136_report.pdf. See also Human Rights Council resolution 7/23, first preambular paragraph.

⁶³ A/HRC/10/61; see also article 3 of the Framework Convention.

⁶⁴ See International Council on Human Rights Policy, "Climate Change and Human Rights", pp. 1–2.

⁶⁵ A/HRC/10/61.

⁶⁶ A/HRC/7/5.

⁶⁷ For information on indicators and criteria used for country assessment, see "A climate of conflict: the links between climate change, peace and war", International Alert, November 2007, pp. 18–19.

Proposed standards

1. All peoples and individuals have the right to live in an environment that is safe and healthy, including an atmosphere that is free from dangerous man-made interference, and to be protected against any act or threat of physical or psychological violence, whether originating from State or non-State actors.

2. All peoples and individuals have the right to be protected from genocide, war crimes, ethnic cleansing, crimes of aggression and crimes against humanity.⁶⁸

3. States affirm that the adverse impacts of man-made climate change interfere with the enjoyment of human rights, in particular economic, social and cultural rights, and thereby threaten domestic and international development, stability, peace and security. Consequently, States must assume responsibility for mitigating climate change based on the best available scientific evidence and their historical contribution to climate change in order to ensure that all people have the ability to adapt to the adverse effects of climate change, particularly those interfering with human rights.

4. All peoples and individuals have a human right to participate in sustainable development and the implementation of policies to mitigate and adapt to environmental destruction, especially climate change, and free and meaningful participation in the development and implementation of such mitigation and adaptation policies.

5. All States shall be held responsible for the environmental impact of war, including environmental modifications, whether deliberate or unintentional, that result in long-lasting or severe effects, cause lasting destruction, damage or injury to another State.

D. Victims and vulnerable groups

60. All individuals share the same human dignity and have an equal right to protection. Nevertheless, there are certain groups with specific vulnerability who deserve special protection. These include women in particular situations, children, victims of enforced or involuntary disappearance, disabled, elderly and displaced persons, migrants, refugees and indigenous peoples, and minorities stereotyped with endangering national security.

61. In 2000, in its resolution 1325 (2000), the Security Council recognized for the first time the strong link between women, peace and security, and stressed the need to address gender-based violence and gender inequality in conflict and post-conflict situations, and the importance of women's equal participation in all efforts to maintain and promote sustainable and just peace and security. States obligations include protection of women and girls from rape, forced pregnancy, and the use of women as instruments of war and sexual slavery. Security Council resolutions 1888 (2009) and 1889 (2009) introduced new approaches to integrate gender into all aspects of peace and security.

62. When looking at individuals and groups that are particularly vulnerable to violence and armed conflict, it is clearly visible that those individuals and groups have previously experienced, in many cases, discrimination, exclusion and marginalization in political, social, economic or other ways. States should be aware of this connection and consequently perceive the fight against discrimination as one preventive measure against the breakout and deterioration of violence and armed conflict, allowing all individuals, groups and peoples to enjoy their right to peace.

⁶⁸ available from www.international-alert.org/pdf/A_Climate_Of_Conflict.pdf.

⁶⁸ General Assembly resolution 60/1, paras. 138-139.

63. All victims of human rights violations have a right to remedy, non-repetition and accountability of perpetrators,⁶⁹ as well as the right to recognition of their status as victims, without discrimination.⁷⁰ On the rights of victims particularly vulnerable and their right to remedies, the Human Rights Committee, in its general comment No. 31 on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights, advocated for such remedies being appropriately adapted so as to take account of the special vulnerability of certain categories of person, including, in particular, children.⁷¹

64. With regard to the past of an armed conflict or national emergency situation, mechanisms such as truth commissions have proven to be useful means to achieve peace in post-conflict societies and to ensure that the rights of victims are protected. Another second important issue is the right to compensation, which includes not only financial reparation, but also acknowledgment of past violations or accountability for perpetrators. The right to participate in such processes is important and all groups need to be included.

Proposed standards

1. States shall ensure that the specific effects of the different forms of violence on the enjoyment of the rights of persons belonging to groups in situations of vulnerability are taken fully into account. They have the obligation to ensure that remedial measures are taken, including the recognition of the right of persons belonging to groups in situations of vulnerability to participate in the adoption of such measures.⁷²

2. Every victim of a human rights violation has the right, in accordance with international human rights law, to the restoration of the violated rights; to obtain effective and complete redress, including the right to rehabilitation and compensation; to measures of symbolic redress or reparation; and to guarantees that the violation will not be repeated.⁷³

3. States, international organizations, in particular the United Nations, and civil society shall facilitate the specific contribution of women to the prevention, management and peaceful settlement of disputes, and promote their contribution to building, consolidating and maintaining peace after conflicts. To this end, the increased representation of women shall be promoted at all levels of decision-making in national, regional and international institutions and mechanisms in these areas.

4. All individuals and peoples subjected to aggression, genocide, racism, racial discrimination, xenophobia and other related forms of intolerance or apartheid, colonialism and neo-colonialism deserve special attention as victims of violations of the human right to peace.⁷⁴

⁶⁹ See in particular the Universal Declaration of Human Rights, art. 8; the International Covenant on Civil and Political Rights, art. 2; the International Convention on the Elimination of All Forms of Racial Discrimination, art. 6; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14; the Convention on the Rights of the Child, art. 39; the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), art. 3; Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, art. 91; and the Rome Statute of the International Criminal Court, arts. 68 and 75.

⁷⁰ General Assembly resolution 60/147, para. 21.

⁷¹ CCPR/C/21/Rev.1/Add.13, para. 15.

⁷² See Convention on the Rights of Persons with Disabilities, preamble.

⁷³ Ibid., art. 11, para. 4.

⁷⁴ Santiago Declaration, art. 1, para. 3.

VI. Obligations of States

65. According to the Draft Articles on the Responsibility of States for Internationally Wrongful Acts of the International Law Commission, States that have committed an internationally wrongful act are liable to make reparation for any injury, whether it be material or moral, caused by the internationally wrongful act of a State.⁷⁵ Such an internationally wrongful act (action or omission) must be attributable to the State and further constitute a breach of an international obligation of the State.⁷⁶ Clearly, such obligations arise through a number of treaties and conventions as well as customary international law on the topic, referring both to peace and war times.⁷⁷

66. The Santiago Declaration reflects the obligations of States. Article 13 provides that:

(a) The effective and practical realization of the human right to peace necessarily entails duties and obligations for States, international organizations, civil society, peoples, individuals, corporations the media and other actors in society and, in general, the entire international community;

(b) The fundamental responsibility for preserving peace and protecting the human right to peace lies with the States and also with the United Nations as the most universal body harmonizing the concerted efforts of nations to realize the purposes and principles proclaimed in the Charter of the United Nations;

(c) States should take all the necessary measures to ensure the development and protection of the environment, including disaster preparedness strategies, as their absence poses a threat to peace, and have the obligation to cooperate in all necessary fields in order to achieve the realization of the human right to peace, in particular by implementing their existing commitments to promote and provide increased resources to international cooperation for development;

(d) States are also required to take measures to build and consolidate peace, and have the responsibility to protect humankind from the scourge of war. This, however, should not be interpreted to imply for any State any entitlement to intervene in the territory of other States;

(e) To guarantee the human right to peace, Member States are called on to strive for reform of the Security Council in order to reflect and better ensure a fair and balanced representation of today's international community. The methods of work of the Security Council must be transparent and allow civil society and other actors to participate in its debates.

VII. Monitoring and implementation

67. Three new mechanisms have been proposed.

⁷⁵ General Assembly resolution 56/83, annex, art. 31.

⁷⁶ *Ibid.*, art. 2.

⁷⁷ For example, the UNESCO World Heritage Convention, the obligations of the Rio Declaration on Environment and Development, principles 2, 14, 18, 19 and 24, and Additional Protocol I to the 1949 Geneva Conventions, articles 55 and 56.

A new special procedure

68. At the expert workshop on the right of peoples to peace, convened by OHCHR in Geneva on 15 and 16 December 2009, an expert suggested creating the mandate of Special Rapporteurs or independent expert on the right to peace.⁷⁸

A new working group

69. The Spanish Society for the Advancement of Human Rights Law suggested setting up a working group as a monitoring mechanism. The Santiago Declaration mentions in article 15 a working group on the human right to peace, which would be composed of 10 members, with the functions of promoting the observance and implementation of the Declaration. In its mandate, the working group would have the competences (a) to promote worldwide observance and awareness of the human right to peace; (b) to gather, assemble and respond effectively to any relevant information from States, international organizations and their organs, civil society organizations, national human rights institutions, concerned individuals and any other reliable source; (c) to carry out *in loco* investigations concerning violations of the human right to peace and to report to the pertinent bodies; (d) to address recommendations, appeals and urgent actions to the States Members of the United Nations, requesting them to take appropriate measures for the effective realization of the human right to peace, giving due consideration to those recommendations and appeals; (e) to draw up, on its own initiative or at the request of the General Assembly, the Security Council or the Human Rights Council, the reports it deems necessary in the event of an imminent threat to or serious violation of the human right to peace; (f) to present an annual report of its activities to the General Assembly, the Security Council and the Human Rights Council; (g) to contribute to the elaboration of definitions and norms concerning the crime of aggression and the limits of legitimate self-defence; and (h) to submit to the Prosecutor of the International Criminal Court or other competent international criminal tribunals reliable information about any situation in which it would appear that crimes falling within the jurisdiction of the Court or of another international criminal tribunal have been committed.

A new open-ended working group

70. At the above-mentioned expert workshop, one expert suggested an open-ended working group of Member States, open to the participation of civil society organizations.⁷⁹

71. The Advisory Committee does not recommend a specific mechanism at this time, electing rather to await comments and proposals arising from the discussion.

VIII. Conclusion

72. The present report proposes more than 40 possible standards for inclusion in the draft declaration on the human right of peoples to peace, specific rationale for including them and relevant legal standards.

73. After its sixth session, the Advisory Committee invited stakeholders to comment on the present report in a questionnaire, as is the custom in all study projects.

74. In the light of discussions held by the Human Rights Council and of responses from stakeholders, at its upcoming meetings the Advisory Committee will work on a

⁷⁸ A/HRC/14/38, para. 54.

⁷⁹ Ibid., para. 57.

draft declaration. The ultimate aim is to produce a document that helps to promote freedom, peace and security and which will be valuable in the promotion of the human rights agenda and the right to peace.

Annex II

Some pointers on concepts of peace

This appendix intends to give a brief overview over different dimensions and approaches on peace and a right thereof.

It mainly focuses on who may be right holders and duty bearers, whether a right to peace can be perceived as an individual and/or collective right and on the prospect of a juridification of a right to peace. Further, it focuses on the relationship of a right to peace to other human rights and introduces the notion of human security.

A. Negative and positive peace

1. A key issue, abundantly discussed in academic debate is what constitutes peace or absence of peace. Negative peace is often understood to signify the absence of direct, physical violence.

2. In contrast, the understanding of positive peace goes beyond strict absence of armed conflict and is associated with the elimination of all kinds of violence and effective respect for all human rights. Only in peaceful environments, the conditions for satisfying the basic needs of human beings are met.^a Naturally, notions of positive peace differ considerably in states and societies over time, but there are certainly some common elements. To give just one example, the Kroc Institute of International Peace Studies at the University of Notre Dame asserts that ‘peace’ within peace studies,

“is defined not just as the absence of war (negative peace), but also the presence of the conditions for a just and sustainable peace, including access to food and clean drinking water, education for women and children, security from physical harm, and other inviolable human rights (positive peace). This idea is rooted in the understanding that a “just peace” is the only sustainable kind of peace; an approach that seeks merely to “stop the guns” while ignoring the denial of human rights and unjust social and political conditions will not work in the long run”.^b

3. Another perspective is Johan Galtung’s approach:

“The basic point is that peace is a relation, between two or more parties. The parties may be inside a person, a state or nation, a region or civilization, pulling in different directions. Peace is not a property of one party alone, but a property of the relation between parties. Saying that in no sense belittles the significance of the party’s intent and capability to build peaceful relations. But, like a marriage, it is not the sum of the capabilities of the parties. Which is why we can have lovely people related in a less-than-lovely marriage. And vice versa.

What kind of relations can we have? Three types, it seems:

- (a) Negative, disharmonious: what is bad for one is good for the Other.
- (b) Indifferent: a non-relation, they do not care about the Other.

^a We just recall here the debate about (structural) violence, use of force, war, right of self-determination, right of resistance to cite only a few aspects of a complex issue.

^b The Kroc Institute of International Peace Studies at the University of Notre Dame, “What is peace studies?”, <http://69.5.8.7/node/312>, retrieved at 12 Oct 2010.

- (c) Positive, harmonious: what is bad-good for one is bad-good for Other.

In the real world relations may be mixes of all three. When the negative relation is brought about with intent, the party is an actor, we talk about direct violence, or harm, and about war if the actor is collective. If the violence to a party is not intended (but watch out for acts of commission, more or less intended!) it maybe referred to as indirect, often caused by inequitable structures producing harm - structural violence. And then the role of culture legitimizing either or both types of violence: cultural violence.

From this follow two concepts of peace:

- (a) Negative Peace: the absence of violence, like a cease-fire, like keeping them apart, not negative but indifferent relations.

- (b) Positive Peace: the presence of harmony, intended or not. They are as different as negative health, the absence of (symptoms of) illness and positive health, the feeling of wellness and the capacity to handle some illness.”^c

B. The collective and individual dimension: peoples and individuals should be rights holders

4. At the OHCHR Workshop (2009) an expert noted that there was a tendency to perceive the right to peace primarily from the perspective of collective rights. Yet, he argued that peace was also a personal right, prior to and indispensable to other rights. He indicated that peace must be seen as an enabling right empowering individuals to enjoy civil, political, economic, social and cultural rights. Moreover, one should not be limited to considering peace as the absence of war. Humanity needed to ensure positive peace in the form of social justice. He stated that the right to peace must be understood and implemented in a holistic manner, among other things, through, respect for civil and political rights and must include a focus on the obligations that peace imposes both on States and on individuals.^d

5. Another expert at the workshop noted that the “right to peace had a definite individual dimension, which was assessed through the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.”^e

6. An expert mentioned that there is a generally accepted principle of dual ownership of the human right to peace. He noted that peace was indivisible, and thus manifested itself as a collective right of the human community of peoples and States while, at the same time, directly affecting each human being as an individual right.^f

7. Another expert held that the meaning given to the term “peoples” for the purposes of peoples’ right to peace still remained unclear, leading to an uncertainty as to the rights holders. The term “peoples” might have different meanings for the purposes of different

^c Johan Galtung, “A mini theory of peace”, http://www.transnational.org/Resources_Treasures/2007/Galtung_MiniTheory.html, retrieved at 12 Oct 2010.

^d OHCHR Workshop (2009), para 15.

^e OHCHR Workshop (2009), para 27.

^f *Ibid.*, para 29.

rights of peoples. The question was whether the duty bearers were individual States, States acting collectively through the United Nations, or the international community as a whole.[§]

C. Other collective rights

8. If one looks at other collective rights, such as the right to development and the Declaration on the Rights of Indigenous Peoples, those clearly include collective as well as individual rights.

9. The UN Declaration on the Right to Development (1986)^h, for example, states in article 1 (a)

“an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

10. In article 2, it specifies that the human person is the central subject of development and should be the active participant and beneficiary of the Right to Development.

“The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”

11. The United Nations Declaration on the Rights of Indigenous Peoples (2007)ⁱ combines collective and individual rights:

Article 7

(a) Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

(b) Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. ...

Article 17

(a) Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

(b) States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from

[§] Ibid., para 10. See also Santiago Declaration (2010), Article 1 para 2.

^h GA Resolution 41/128, “United Nations Declaration on the Right to Development” (1986).

ⁱ GA Resolution 61/295 (2007), “United Nations Declaration on the Rights of Indigenous Peoples”.

performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

(c) Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

D. A legal standard, an emerging standard, not yet a human rights standard

12. At the OHCHR Workshop (2009), different opinions were voiced by experts whether a right to peace (a) existed, (b) was an emerging right or (c) represented rather an aspiration.^j For the purpose of this progress report the question of legal status is less important. There is a request by the Human Rights Council for a draft declaration, so there is obviously a political will to strengthen a soft law standard.

13. Regarding the question of assertion of peoples' right before contemporary international courts and tribunals, former judge Cançado Trindade spoke at the OHCHR Workshop (2009) about his experience at two such tribunals in which he had served or was currently serving as a judge, namely, the Inter-American Court of Human Rights and the International Court of Justice. That experience showed that the rights of peoples had been acknowledged and asserted before contemporary international tribunals. It indicated that there had been clear advances in the realization of international justice in recent years, in cases of factual and evidentiary complexities.^k

E. Relationship of an emerging right to peace to other human rights, especially the right to solidarity

14. At the OHCHR Workshop (2009), an expert suggested that the right to peace could be addressed within international human rights law from three perspectives: (1) as part of the emerging right to international solidarity; (2) as part of the right of all people and all peoples for a democratic and equitable international order; and (3) as an essential element of the right of peoples to peace. Thus, in the work of the Human Rights Council the right to peace should be linked in its material formulation to emerging rights or solidarity, in

^j OHCHR Workshop (2009), para 14, 56.

^k Judge Cançado Trindade reported: "The Inter-American Court of Human Rights, in the case of the *Community Mayagna (Sumo) Awas Tingni v. Nicaragua* (2001), had extended protection to the right of all the members of an indigenous community to their communal property of their historical lands. Furthermore, three other decisions had had a direct bearing on the rights of peoples, their cultural identity and their very survival, namely, in *Yakye Axa Indigenous Community v. Paraguay* (2005–2006), *Sawhoyamaya Indigenous Community v. Paraguay* (2005–2006), as well as in *Moiwana Community v. Suriname* (2005–2006), which had ruled on the case of the Moiwana massacre. Mr. Cançado Trindade added that such late jurisprudential development would have been unthinkable for the draftsmen of the American Convention on Human Rights. Massacres no longer fell into oblivion. Atrocities victimizing whole communities, or segments of the population, were being brought before contemporary international tribunals, for the establishment not only of the international criminal responsibility of individuals, but also of the international responsibility of States" (OHCHR 2009 Workshop, para 36).

particular the right to international solidarity, the right to a democratic and equitable international order as well as to the traditional right of peoples to peace.¹

15. The independent expert on human rights and international solidarity, Rudi Muhammad Rizki, has argued in a report that “some respondents viewed solidarity as a principle born together with international human rights law through the pursuit of peace among nations. However, it lacks visibility in current human rights instruments because it has no binding force. International solidarity is the only way to alleviate poverty, including extreme poverty.” In the context of Third generation rights, and recognizing that solidarity rights are Third generation rights, he mentioned, the right to economic and social development, the right to participate in and benefit from the “common heritage of mankind”, the right to peace, the right to a healthy and sustainable environment, the right to humanitarian disaster relief and the right to communication.^m

F. Human security

16. It is interesting to look at the relationship of a right to peace to human security. The concept of human security is of particular relevance here. Since its first appearance in the 2004 World Development Report of UNDP, a major effort has been undertaken to develop the understanding of security beyond the military aspect. Instead with the concept of human security, one looks at multi-faceted possible threats against the population. Hence, the understanding of security has become much broader and much deeper, which inevitably has also given rise to criticism in the academic debate that the concept of human security lacks a clear focus and “borders”.

17. The General Assembly has asked the Secretary-General to report on progress in the area of human security.ⁿ His last report on human security emphasized

(a) Broadly defined, human security encompasses freedom from fear, freedom from want and freedom to live in dignity. Together, these fundamental freedoms are rooted in the core principles of the Charter of the United Nations. They are also reflected in the many human security-related initiatives and activities undertaken by United Nations agencies, funds and programmes and by intergovernmental organizations as outlined in the compendium^o submitted to the General Assembly. ...

(b) Calls for such a broader concept of security are rooted in the common issues faced by all Governments. No matter how powerful or seemingly insulated Governments may be, today’s global flow of goods, finance and people increase the risks and uncertainties confronting the international community. It is in this interconnected environment that Governments are invited to consider the survival, livelihood and dignity of individuals as the fundamental basis for their security. (...)

18. In the summary of the report, it is noted that

“(h)uman security is based on a fundamental understanding that Governments retain the primary role for ensuring the survival, livelihood and dignity of their citizens. It is an invaluable tool for assisting Governments in identifying critical and pervasive threats to the welfare of their people and the stability of their sovereignty. It

¹ OHCHR Workshop (2009), para 56.

^m United Nations, “Report of the independent expert on human rights and international solidarity, Rudi Muhammad Rizki”, UN doc. A/HRC/15/32 (2010), para. 13, 20.

ⁿ United Nations, “Human Security - Report of the Secretary-General”, UN doc. A/64/701 (2010).

^o For an overview of human security-related initiatives and activities by members of the Friends of Human Security and United Nations agencies, funds and programmes, see Annex of A/62/695 (2008).

advances programmes and policies that counter and address emerging threats in a manner that is contextually relevant and prioritized. This helps Governments and the international community to better utilize their resources and to develop strategies that strengthen the protection and empowerment framework needed for the assurance of human security and the promotion of peace and stability at every level – local, national, regional and international.”

19. Regarding national sovereignty, the document argues that

(a) “the Charter also gives equal weight to the sovereignty of States as well as to the livelihood and dignity of people everywhere. As articulated in the preamble and in Articles 1 and 2 of the Charter, the international community cannot have peace and security unless the rights of individuals and their fundamental freedoms are supported. In this context, human security, by addressing the varied aspects of insecurity and by focusing on the respective roles of individuals, communities and Governments, provides the analytical framework for the creation of genuine possibilities for partnership between Governments and citizens. As a result, the application of human security is expected to reinforce the stability and security of both, as well as that of the international community.”

(b) “Common to all the above definitions are three essential components that encompass the principles of human security and help further explore the added value of the concept. First, human security is in response to current and emerging threats – threats that are multiple, complex and interrelated and can acquire transnational dimensions. Second, human security calls for an expanded understanding of security where the protection and empowerment of people form the basis and the purpose of security. Third, human security does not entail the use of force against the sovereignty of States and aims to integrate the goals of freedom from fear, freedom from want and freedom to live in dignity through people-centred, comprehensive, context-specific and preventive strategies.”

(c) “The human security concept derives much of its strength from a dual policy framework that rests upon the mutually reinforcing pillars of protection and empowerment. Application of this framework offers a comprehensive approach that combines top-down norms, processes and institutions, including the establishment of early warning mechanisms, good governance and social protection instruments, with a bottom-up focus, in which participatory processes support the important role of individuals and communities as actors in defining and implementing their essential freedoms. As a result, human security not only promotes a framework under which people are protected and empowered, and are therefore in a better position to actively prevent and mitigate the impact of insecurities, but it also helps in establishing a social contract among various actors in a given society by cultivating public discourse, promoting local ownership and strengthening States (...).”

Annex IV

Asian Human Rights Charter (1998, extract)

The right to peace

1. All persons have the right to live in peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence. The peoples of Asia have suffered great hardships and tragedies due to wars and civil conflicts which have caused many deaths, mutilation of bodies, external or internal displacement of persons, break up of families, and in general the denial of any prospects of a civilized or peaceful existence. Both the state and civil society have in many countries become heavily militarized in which all scores are settled by force and citizens have no protection against the intimidation and terror of state or private armies.

2. The duty of the state to maintain law and order should be conducted under strict restraint on the use of force in accordance with standards established by the international community, including humanitarian law. Every individual and group is entitled to protection against all forms of state violence, including violence perpetrated by its police and military forces.

3. The right to live in peace requires that political, economic or social activities of the state, the corporate sector and the civil society should respect the security of all peoples, especially of vulnerable groups. People must be ensured security in relation to the natural environment they live in, the political, economic and social conditions which permit them to satisfy their needs and aspirations without recourse to oppression, exploitation, violence, and without detracting from all that is of value in their society.

4. In fighting fascist invasion, colonialism, and neo-colonialism, Asian states played a crucial role in creating conditions for their peoples to live in peace. In this fight, they had justifiably stressed the importance of national integrity and non-intervention by hegemonic powers. However, the demands of national integrity or protection against the threats of foreign domination cannot now be used as a pretext for refusing to the people their right to personal security and peaceful existence any more than the suppression of people's rights can be justified as an excuse to attract foreign investments. Neither can they justify any refusal to inform the international community about the individual security of its people. The right of persons to live in peace can be guaranteed only if the states are accountable to the international community.

5. The international community of states has been deeply implicated in wars and civil conflicts in Asia. Foreign states have used Asian groups as surrogates to wage wars and have armed groups and governments engaged in internal conflicts. They have made huge profits out of the sale of armaments. The enormous expenditures on arms have diverted public revenues from programmes for the development of the country or the well-being of the people. Military bases and other establishments (often of foreign powers) have threatened the social and physical security of the people who live in their vicinity

**Report of the Human Rights Council Advisory Committee on the right of peoples to
peace**

Draft declaration on the right to peace

Preamble

The Human Rights Council,

Reaffirming the common will of all people to live in peace with each other,

Reaffirming also that the principal aim of the United Nations is the maintenance of international peace and security,

Bearing in mind the fundamental principles of international law set forth in the Charter of the United Nations,

Recalling General Assembly resolution 39/11 of 12 November 1984, in which the Assembly proclaimed that the peoples of our planet have a sacred right to peace,

Recalling also the African Charter on Human and Peoples' Rights, which states that all peoples have the right to national and international peace and security,

Recalling further that all Members 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,

Convinced that the prohibition of the use of force is the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the human rights and fundamental freedoms proclaimed by the United Nations,

Expressing the will of all peoples that the use of force must be eradicated from the world, including through full nuclear disarmament, without delay,

Adopts the following:

Article 1. Right to peace: principles

1. Individuals and peoples have a right to peace. This right shall be implemented without any distinction or discrimination for reasons of race, descent, national, ethnic or social origin, colour, gender, sexual orientation, age, language, religion or belief, political or other opinion, economic situation or heritage, diverse physical or mental functionality, civil status, birth or any other condition.
2. States, severally and jointly, or as part of multilateral organizations, are the principal duty-holders of the right to peace.
3. The right to peace is universal, indivisible, interdependent and interrelated.
4. States shall abide by the legal obligation to renounce the use or threat of use of force in international relations.
5. All States, in accordance with the principles of the Charter of the United Nations, shall use peaceful means to settle any dispute to which they are parties.
6. All States shall promote the establishment, maintenance and strengthening of international peace in an international system based on respect for the principles enshrined in the Charter and the promotion of all human rights and fundamental freedoms, including the right to development and the right of peoples to self-determination.

Article 2. Human security

1. Everyone has the right to human security, which includes freedom from fear and from want, all constituting elements of positive peace, and also includes freedom of thought, conscience, opinion, expression, belief and religion, in conformity with international human rights law. Freedom from want implies the enjoyment of the right to sustainable development and of economic, social and cultural rights. The right to peace is related to all human rights, including civil, political, economical, social and cultural rights.
2. All individuals have the right to live in peace so that they can develop fully all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence.
3. Everyone has the right to be protected from genocide, war crimes, the use of force in violation of international law, and crimes against humanity. If States are unable to prevent these crimes from occurring within their jurisdiction, they should call on Member States and the United Nations to fulfil that responsibility, in keeping with the Charter of the United Nations and international law.

4. States and the United Nations shall include in mandates of peacekeeping operations the comprehensive and effective protection of civilians as a priority objective.
5. States, international organizations, in particular the United Nations, and civil society shall encourage an active and sustained role for women in the prevention, management and peaceful settlement of disputes, and promote their contribution to building, consolidating and maintaining peace after conflicts. The increased representation of women shall be promoted at all levels of decision-making in national, regional and international institutions and mechanisms in these areas. A gender perspective should be incorporated into peacekeeping operations.
6. Everyone has the right to demand from his or her Government the effective observance of the norms of international law, including international human rights law and international humanitarian law.
7. Mechanisms should be developed and strengthened to eliminate inequality, exclusion and poverty, as they generate structural violence, which is incompatible with peace. Both State and civil society actors should play an active role in the mediation of conflicts, especially in conflicts relating to religion and/or ethnicity.
8. States should ensure democratic governance of military and related budgets, an open debate about national and human security needs and policies, defence and security budgeting, as well as accountability of decision makers to democratic oversight institutions. They should pursue people-oriented concepts of security, such as citizens' security.
9. To strengthen international rule of law, all States shall strive to support international justice applicable to all States equally and to prosecute the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Article 3. Disarmament

1. States shall engage actively in the strict and transparent control of arms trade and the suppression of illegal arms trade.
2. States should proceed in a joint and coordinated manner and within a reasonable period of time to further disarmament, under comprehensive and effective international supervision. States should consider reducing military spending to the minimum level necessary to guarantee human security.

3. All peoples and individuals have a right to live in a world free of weapons of mass destruction. States shall urgently eliminate all weapons of mass destruction or of indiscriminate effect, including nuclear, chemical and biological weapons. The use of weapons that damage the environment, in particular radioactive weapons and weapons of mass destruction, is contrary to international humanitarian law, the right to a healthy environment and the right to peace. Such weapons are prohibited and must be urgently eliminated, and States that have utilized them have the obligation to restore the environment by repairing all damage caused.

4. States are invited to consider the creation and promotion of peace zones and of nuclear weapon-free zones.

5. All peoples and individuals have the right to have the resources freed by disarmament allocated to the economic, social and cultural development of peoples and to the fair redistribution of natural wealth, responding especially to the needs of the poorest countries and of groups in situations of vulnerability.

Article 4. Peace education and training

1. All peoples and individuals have a right to a comprehensive peace and human rights education. Such education should be the basis of every educational system, generate social processes based on trust, solidarity and mutual respect, incorporate a gender perspective, facilitate the peaceful settlement of conflicts and lead to a new way of approaching human relationships within the framework of the Declaration and the Programme of Action on a Culture of Peace and dialogue among cultures.

2. Everyone has the right to demand and obtain the competences needed to participate in the creative and non-violent resolution of conflicts throughout their life. These competencies should be accessible through formal and informal education. Human rights and peace education is essential for the full development of the child, both as an individual and an active member of society. Education and socialization for peace is a condition sine qua non for unlearning war and building identities disentangled from violence.

3. Everyone has the right to have access to and receive information from diverse sources without censorship, in accordance with international human rights law, in order to be protected from manipulation in favour of warlike or aggressive objectives. War propaganda should be prohibited.

4. Everyone has the right to denounce any event that threatens or violates the right to peace, and to participate freely in peaceful political, social and cultural activities or initiatives for the defence and promotion of the right to peace, without interference by Governments or the private sector.

5. States undertake:

(a) To increase educational efforts to remove hate messages, distortions, prejudice and negative bias from textbooks and other educational media, to prohibit the glorification of violence and its justification, and to ensure the basic knowledge and understanding of the world's main cultures, civilizations and religions and to prevent xenophobia;

(b) To update and revise educational and cultural policies to reflect a human rights-based approach, cultural diversity, intercultural dialogue and sustainable development;

(c) To revise national laws and policies that are discriminatory against women, and to adopt legislation that addresses domestic violence, the trafficking of women and girls and gender-based violence.

Article 5. Right to conscientious objection to military service

1. Individuals have the right to conscientious objection and to be protected in the effective exercise of this right.

2. States have the obligation to prevent members of any military or other security institution from taking part in wars of aggression or other armed operations, whether international or internal, which violate the Charter of the United Nations, the principles and norms of international human rights law or international humanitarian law. Members of any military or other security institutions have the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms. The duty to obey military superior orders does not exempt from the observance of these obligations, and disobedience of such orders shall in no case constitute a military offence.

Article 6. Private military and security companies

1. States shall refrain from outsourcing inherently State military and security functions to private contractors. For those activities that may be outsourced, States shall establish a national and an international regime with clear rules regarding the functions, oversight and monitoring of existing private military and security companies. The use of mercenaries violates international law.

2. States shall ensure that private military and security companies, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international humanitarian law and international human rights law. They shall take such legislative, administrative and other measures as may be necessary to ensure that such companies and their personnel are held accountable for violations of applicable national or international law. Any responsibility attributable to a private military or security company is independent and does not eliminate the responsibility that a State or States may incur.

3. The United Nations shall establish, together with other international and regional organizations, clear standards and procedures for monitoring the activities of private military and security companies employed by these organizations. States and the United Nations shall strengthen and clarify the relationship and accountability of States and international organizations for human rights violations perpetrated by private military and security companies employed by States, intergovernmental and international non- governmental organizations. This shall include the establishment of adequate mechanisms to ensure redress for individuals injured by the action of private military and security companies.

Article 7. Resistance and opposition to oppression

1. All peoples and individuals have the right to resist and oppose oppressive colonial, foreign occupation or dictatorial domination (domestic oppression).

2. Everyone has the right to oppose aggression, genocide, war crimes and crimes against humanity, violations of other universally recognized human rights, and any propaganda in favour of war or incitement to violence and violations of the right to peace..

Article 8. Peacekeeping

1. Peacekeeping missions and peacekeepers shall comply fully with United Nations rules and procedures regarding professional conduct, including the lifting of immunity in cases of criminal misconduct or the violation of international law, to allow the victims recourse to legal proceedings and redress.

2. Troop-contributing States shall take appropriate measures to investigate effectively and comprehensively complaints against members of their national contingents. Complainants should be informed about the outcome of such investigations.

Article 9. Right to development

1. Every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
2. Everyone shall enjoy the right to development and economic, social and cultural rights and, in particular:
 - (a) The right to adequate food, drinking water, sanitation, housing, health care, clothing, education, social security and culture;
 - (b) The right to decent work and to enjoy fair conditions of employment and trade union association; the right to equal remuneration among persons who perform the same occupation or function; the right to have access to social services on equal terms; and the right to leisure;
 - (c) All States have an obligation to cooperate with each other to protect and promote the right to development and other human rights.
3. All peoples and individuals have the right to the elimination of obstacles to the realization of the right to development, such as the servicing of unjust or unsustainable foreign debt burdens and their conditionalities or the maintenance of an unfair international economic order that generates poverty and social exclusion. States and the United Nations system shall cooperate fully in order to remove such obstacles, both internationally and domestically.
4. States should pursue peace and security and development as interlinked and mutually reinforcing, and as serving as a basis for one another. The obligation to promote comprehensive and sustainable economic, social, cultural and political development implies the obligation to eliminate threats of war and, to that end, to strive to disarmament and the free and meaningful participation of the entire population in this process.

Article 10. Environment

1. Everyone has the right to a safe, clean and peaceful environment, including an atmosphere that is free from dangerous man-made interference, to sustainable development and to international action to mitigate and adapt to environmental destruction, especially climate change. Everyone has the right to free and meaningful participation in the development and implementation of mitigation and adaptation policies. States have the responsibility to take action to guarantee these

rights, including technology transfer in the field of climate change, in accordance with the principle of common but differentiated responsibility.

2. States have the responsibility of mitigating climate change based on the best available scientific evidence and their historical contribution to climate change in order to ensure that all people have the ability to adapt to the adverse effects of climate change, particularly those interfering with human rights, and in accordance with the principle of common but differentiated responsibility. States, in accordance with United Nations Framework Convention on Climate Change, with the resources to do so, have the responsibility for providing adequate financing to States with inadequate resources for adaptation to climate change.

3. States, international organizations, corporations and other actors in society are responsible for the environmental impact of the use of force, including environmental modifications, whether deliberate or unintentional, that result in any long-lasting or severe effects or cause lasting destruction, damage or injury to another State.

4. States shall take all the necessary measures to ensure development and protection of the environment, including disaster preparedness strategies, as their absence poses a threat to peace.

Article 11. Rights of victims and vulnerable groups

1. Every victim of a human rights violation has the right, in accordance with international human rights law and not subject to statutory limitations, to know the truth, and to the restoration of the violated rights; to obtain the investigation of facts, as well as identification and punishment of those responsible; to obtain effective and full redress, including the right to rehabilitation and compensation; to measures of symbolic redress or reparation; and to guarantees that the violation will not be repeated.

2. Everyone subjected to aggression, genocide, foreign occupation, racism, racial discrimination, xenophobia and other related forms of intolerance or apartheid, colonialism and neo-colonialism deserve special attention as victims of violations of the right to peace.

3. States shall ensure that the specific effects of the different forms of violence on the enjoyment of the rights of persons belonging to groups in situations of vulnerability, such as indigenous peoples, women suffering from violence and individuals deprived of their liberty, are taken fully into account. They have the obligation to ensure that remedial measures are taken, including the

recognition of the right of persons belonging to groups in situations of vulnerability to participate in the adoption of such measures.

Article 12. Refugees and migrants

1. All individuals have the right to seek and to enjoy refugee status without discrimination, if there is a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of one's nationality and is unable or, owing to such fear, unwilling to avail oneself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.

2. Refugee status should include, *inter alia*, the right to voluntary return to one's country or place of origin or residence in dignity and with all due guarantees, once the causes of persecution have been removed and, in case of armed conflict, it has ended. Special consideration should be given to challenges, such as the situation of war refugees and of refugees fleeing hunger.

3. States should place migrants at the centre of migration policies and management, and pay particular attention to the situation of marginalized and disadvantaged groups of migrants. Such an approach will also ensure that migrants are included in relevant national plans of action and strategies, such as plans on the provision of public housing or national strategies to combat racism and xenophobia. Although countries have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect, protect and fulfil the human rights of all individuals under their jurisdiction, regardless of their nationality or origin and regardless of their immigration status.

Article 13. Obligations and implementation

1. The preservation, promotion and implementation of the right to peace constitute a fundamental obligation of all States and of the United Nations as the most universal body harmonizing the concerted efforts of the nations to realize the purposes and principles proclaimed in the Charter of the United Nations.

2. States should cooperate in all necessary fields in order to achieve the realization of the right to peace, in particular by implementing their existing commitments to promote and provide increased resources to international cooperation for development.

3. The effective and practical realization of the right to peace demands activities and engagement beyond States and international organizations, requiring comprehensive, active contributions from civil society, in particular academia, the media and corporations, and the entire international community in general.
4. Every individual and every organ of society, keeping the present Declaration constantly in mind, shall strive to promote respect for the right to peace by progressive measures, national and international, to secure its universal and effective recognition and observance everywhere.
5. States should strengthen the effectiveness of the United Nations in its dual functions of preventing violations and protecting human rights and human dignity, including the right to peace. In particular, it is for the General Assembly, the Security Council, the Human Rights Council and other competent bodies to take effective measures to protect human rights from violations that may constitute a danger or threat to international peace and security.
6. The Human Rights Council is invited to set up a special procedure to monitor respect for and the implementation of the right to peace and to report to relevant United Nations bodies.

Article 14. Final provisions

1. No provision of the present Declaration may be interpreted as conferring on any State, group or individual any right to undertake or develop any activity or carry out any act contrary to the purposes and principles of the United Nations, or likely to negate or violate any of the provisions of the Declaration or of those in international human rights law, international labour law, international humanitarian law, international criminal law and international refugee law.
2. The provisions of the present Declaration shall apply without prejudice to any other provision more propitious to the effective realization of the human right to peace formulated in accordance with the domestic legislation of States or stemming from applicable international law.
3. All States must implement in good faith the provisions of the present Declaration by adopting relevant legislative, judicial, administrative, educational or other measures necessary to promote its effective realization.

(Operational articles)

Article 1

Everyone is entitled to the promotion, protection and respect for all human rights and fundamental freedoms, in particular the right to life, in a context in which all human rights, peace and development are fully implemented.

Article 2

States should enhance the principles of freedom from fear and want, equality and non-discrimination and justice and rule of law as a means to build peace within societies. In this regard, States should undertake measures to bring about, maintain and enhance conditions of peace, particularly to benefit people in need in situations of humanitarian crises.

Article 3

States, the United Nations including its specialized agencies, as well as other interested international, regional, national and local organizations and civil society, should adopt all possible actions with the purpose of implementing, strengthening and elaborating this Declaration, including the establishment and enhancement of national institutions and related infrastructures.

Article 4

The provisions included in this Declaration shall be interpreted in light of the Charter of the United Nations, the Universal Declaration of Human Rights and other relevant international instruments ratified by countries.

[United Nations Declaration on the right to peace]

Preamble

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights and the International Covenants on Civil, Political, Economic, Social and Cultural Rights,

Recalling the Declaration on the Right to Development, the Millennium Declaration, including the Millennium Development Goals and the Vienna Declaration and Programme of Action,

Mindful of the Declaration on the Preparation of Societies for Life in Peace, the Declaration on the Right of Peoples to Peace and the Declaration and Programme of Action on a Culture of Peace,

Recalling that the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations recognised that friendly relations among nations are based on the respect for the principles of equal rights, self-determination of peoples, territorial integrity, political independence, international cooperation, peaceful settlement of disputes, sovereignty and non-interference in domestic jurisdiction of any State,

Recalling that the Declaration on Measures to Eliminate International Terrorism recognised that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security,

jeopardize friendly relations among States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society,

Recalling the determination of the peoples of the United Nations to practice tolerance and live together in peace with one another as good neighbors in order to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, and to promote social progress and better standards of life in larger freedom,

Recalling 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, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recognizing that peace is not only the absence of conflict, but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation,

Recalling also that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and that freedom, justice and peace are prerequisites for the enjoyment of dignity and of the inalienable rights by all members of the human family,

Recalling that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind,

Recalling in particular that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized,

Recalling that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that the international community should treat human rights in a fair

and equal manner, on the same footing and with the same emphasis,

Recalling that the United Nations contributes, through dialogue and cooperation, towards the prevention of human rights violations and abuses and prompt responses to human rights emergencies,

Recalling the world commitment to eradicate poverty and promote sustained economic growth, sustainable development and global prosperity for all and the need to reduce inequalities within and among countries,

Recalling the importance of prevention of armed conflict in accordance with the purposes and principles of the Charter and of the commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world,

Recalling that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Recalling that since wars begin in the minds of human beings, it is in the minds of human beings that the defences of peace must be constructed,

Recalling also that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of human beings and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern,

Recalling that a culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on, among others, respect for life, ending violence and promotion and practice of non-violence through education, dialogue and cooperation and the

right to development,

Recalling that a culture of peace is greatly enhanced when Governments, the United Nations system as well as other multilateral organizations increase considerably the resources allocated to programmes aiming at the establishment and strengthening of national legislation, national institutions and related infrastructure, which uphold human rights awareness through training, teaching and education,

Recalling further that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security,

Recalling also that tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human, as well as the virtue that makes peace possible and contributes to the promotion of a culture of peace,

Recalling that every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace,

Inviting solemnly all stakeholders to guide themselves in their activities by recognizing the supreme importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace through the realization of all human rights and fundamental freedoms, in particular the right to life, and dignity. To that end, the present generations should ensure that both they and future generations learn to live together in peace and brotherhood with the highest aspiration of sparing future generations the scourge of war and ensuring the maintenance and perpetuation of humankind:

Article 1

Everyone is entitled to enjoy peace and security, human rights and development.

Article 2

States should respect, implement and promote equality and non-discrimination, justice and the rule of law and guarantee freedom from fear and want as a means to build peace within and between societies.

Article 3

The United Nations and specialized agencies, as well as international, regional, national and local organizations and civil society should take appropriate sustainable measures to act, support and assist in achieving the present Declaration.

Article 4

Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations. The provisions included in this Declaration are to be understood in the line of the Charter of the United Nations, the Universal Declaration of Human Rights and relevant international and regional instruments ratified by States.

10, Intergovernmental Working Group Chairperson's report to the Human Rights Council (A/HRC/29/45, 2015)

Text presented by the Chairperson-Rapporteur on 24 April 2015

United Nations declaration on the right to peace*

Preamble

The General Assembly,

PP1 *Guided* by the purposes and principles of the Charter of the United Nations,

PP2 *Recalling* the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Vienna Declaration and Programme of Action,

PP3 *Recalling also* the Declaration on the Right to Development, the United Nations Millennium Declaration, including the Millennium Development Goals, and the 2005 World Summit Outcome,

PP4 *Recalling further* the Declaration on the Preparation of Societies for Life in Peace, the Declaration on the Right of Peoples to Peace and the Declaration and Programme of Action on a Culture of Peace, and other international instruments relevant to the subject of the present declaration,

* The title of the the text presented by the Chairperson-Rapporteur was not discussed at the third session of the working group.

- PP5 *Recalling* the Declaration on the Granting of Independence to Colonial Countries and Peoples,
- [PP6 *Recalling* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,]**
- PP7 *Reaffirming* the obligations of all Member States, as enshrined in the Charter of the United Nations, to 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, and to settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered,
- [PP8 *Reaffirming* that the full realization of the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination, as enshrined in the Charter and embodied in the International Covenants on Human Rights, as well as in the Declaration on the Granting of Independence to Colonial Countries and Peoples, is integrally linked to the fuller development of a culture of peace,]
- PP9 *Recognizing* the importance of the settlement of disputes or conflicts through peaceful means,
- [PP10 *Deeply deploring* all acts of terrorism, recalling that the Declaration on Measures to Eliminate International Terrorism recognizes 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 States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society, and solemnly reaffirming its unequivocal condemnation of all acts, methods and

** Square brackets denote text on which consensus was not reached.

practices of terrorism [including providing support for terrorist groups, such as financial support and safe havens for those who incite, plan, finance or commit terrorist acts as criminal and unjustifiable], wherever and by whomever committed,]

[PP11 *Stressing* that all measures taken in the fight against terrorism must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law, as well as those enshrined in the Charter,]

PP12 *Reaffirming* the determination of the peoples of the United Nations as expressed in the Preamble to the Charter to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, to promote social progress and better standards of life in larger freedom, and to practice tolerance and live together in peace with one another as good neighbours,

PP13 *Recalling* 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, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

[PP14 *Recognizing* that peace is not only the absence of conflict, but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation,]

PP15 *Recalling also* that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and recognizing that peace [is critically enhanced for] the full enjoyment of all inalienable rights derived from the inherent dignity of all human beings,

PP16 *Recalling further* that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized,

- PP17 *Recalling* the commitment of the international community to eradicate poverty and to promote sustained economic growth, sustainable development and global prosperity for all and the need to address inequalities within and among States,
- PP18 *Recognizing* the importance of the prevention of armed conflict [, notably/including] through [multilateralism and diplomacy], in accordance with the purposes and principles of the Charter, and of the commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world, bearing in mind the human and material costs of armed conflicts,
- PP19 *Recalling* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,
- PP20 *Reaffirming* the conviction expressed in the Constitution of the United Nations Educational, Scientific and Cultural Organization that, since wars begin in the minds of human beings, it is in the minds of human beings that the defences of peace must be constructed,
- [PP21 *Recalling* that every State has the duty to address advocacy of hatred and prejudice against other peoples as contrary to the principles of peaceful coexistence and friendly cooperation,]
- PP22 *Recalling* the importance of promoting actions aimed at [eliminating the root causes] the contributing factors of conflict, while taking into consideration, inter alia, political, social and economic factors,
- [PP23 *Recalling* that development assistance and capacity-building based on the principle of national ownership in post-conflict situations should restore peace through rehabilitation, reintegration and reconciliation processes involving all those engaged, and recognizing the importance of peacemaking, peacekeeping and peacebuilding activities of the United Nations for the global pursuit of peace and security,]

- PP24 [*Recalling* also that the wide diffusion of culture], and the education of humanity for justice and liberty and peace are indispensable to the dignity of human beings and constitute a [sacred] duty that all nations must fulfil in a spirit of mutual assistance and concern,
- PP25 *Reaffirming* that the culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life, as identified in the Declaration on a Culture of Peace, and that all this should be fostered by an enabling national and international environment conducive to peace,
- PP26 *Recognizing* the importance of moderation and tolerance as values contributing to the promotion of peace and security,
- PP27 *Recognizing also* the important contribution that civil society organizations can make in building and preserving peace, as well as in strengthening a culture of peace,
- PP28 *Stressing* the need for States, the United Nations system and other relevant international organizations to allocate [substantial] resources to programmes aimed at strengthening the culture of peace and upholding human rights awareness through training, teaching and education,
- PP29 *Stressing also* the importance of the contribution of the United Nations Declaration on Human Rights Education and Training to the promotion of a culture of peace,
- PP30 *Recalling* that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding, are among the best guarantees of international peace and security,
- PP31 *Recalling also* that tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human, as well as the virtue that makes peace possible and contributes to the promotion of a culture of peace,
- PP32 *Recalling* further that [every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace],

PP33 *Recalling further* that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of a society as a whole and within a democratic framework based on the rule of law would contribute to the strengthening of friendship, cooperation and peace among peoples and States,

[PP34 *Recalling* the primary responsibility of States to promote measures to eliminate all forms of racism, racial discrimination, xenophobia and related intolerance, as well as all forms of intolerance and discrimination based on religion or belief,]

[PP35 *Recognizing* that racism, racial discrimination, xenophobia and related intolerance are among the root causes of armed conflict and very often one of its consequences, and recalling that non-discrimination is a fundamental principle of international law,]

PP36 *Inviting* 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,

Article 1^{***}

Everyone has the right to enjoy peace such that security is maintained, all human rights are promoted and protected and development is fully realized.

Article 2

*** The articles of the text presented by the Chairperson-Rapporteur were not discussed at the third session of the working group.

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.

Article 3

States, the United Nations and specialized agencies should take appropriate sustainable measures to implement the present Declaration. Encourages international, regional, national and local organizations and civil society to support and assist in the implementation of the present Declaration.

Article 4

Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations. The provisions included in this Declaration are to be interpreted in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and international law.

11, UN Declaration on the Right to Peace (A/RES/71/189, 2016)

**Resolution adopted by the General Assembly on 19
December 2016**

Declaration on the Right to Peace

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Vienna Declaration and Programme of Action,

Recalling also the Declaration on the Right to Development, the United Nations Millennium Declaration⁷ the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals, and the 2005 World Summit Outcome,

Recalling further the Declaration on the Preparation of Societies for Life in Peace, the Declaration on the Right of Peoples to Peace and the Declaration and Programme of Action on a Culture of Peace, and other international instruments relevant to the subject of the present Declaration,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Recalling also that the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations solemnly proclaimed 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, in accordance with the Charter; the duty of States to cooperate with one another in accordance with the Charter; the principle of equal rights and self-determination of peoples; the

principle of the sovereign equality of States; and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

Reaffirming the obligations of all Member States, as enshrined in the Charter, to 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, and to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

Acknowledging that the fuller development of a culture of peace is integrally linked to the realization of the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination as enshrined in the Charter and embodied in the International Covenants on Human Rights,⁴ as well as in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960,

Convinced 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 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, contained in General Assembly resolution 2625 (XXV) of 24 October 1970,

Recognizing the importance of the settlement of disputes or conflicts through peaceful means,

Deeply deploring all acts of terrorism, recalling that the Declaration on Measures to Eliminate International Terrorism¹⁵ declared 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 States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society, and reaffirming that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed,

Stressing that all measures taken in the fight against terrorism must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law, as well as those enshrined in the Charter,

Urging all States that have not yet done so to consider, as a matter of priority, becoming

parties to international instruments related to terrorism,

Reaffirming that the promotion and protection of human rights for all and the rule of law are essential to the fight against terrorism, and recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but are complementary and mutually reinforcing,

Reaffirming also the determination of the peoples of the United Nations, as expressed in the Preamble to the Charter, to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, to promote social progress and better standards of life in larger freedom, and to practice tolerance and live together in peace with one another as good neighbours,

Recalling 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, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recognizing that peace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured,

Recalling that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and recognizing that peace is promoted through the full enjoyment of all inalienable rights derived from the inherent dignity of all human beings,

Recalling also that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized,

Recalling further the world commitment to eradicate poverty and to promote sustained economic growth, sustainable development and global prosperity for all, and the need to reduce inequalities within and among countries,

Recalling the importance of the prevention of armed conflict in accordance with the purposes and principles of the Charter and of the commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world,

Recalling also that the full and complete development of a country, the welfare of the

world and the cause of peace require the maximum participation of women, on equal terms with men in all fields,

Reaffirming that, since wars begin in the minds of human beings, it is in the minds of human beings that the defence of peace must be constructed, and recalling the importance of the settlement of disputes or conflicts through peaceful means,

Recalling the need for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs,

Recalling also that development assistance and capacity-building based on the principle of national ownership in post-conflict situations should restore peace through rehabilitation, reintegration and reconciliation processes involving all those engaged, and recognizing the importance of the peacemaking, peacekeeping and peacebuilding activities of the United Nations for the global pursuit of peace and security,

Recalling further that the culture of peace and the education of humanity for justice, liberty and peace are indispensable to the dignity of human beings and constitute a duty that all nations must fulfil in a spirit of mutual assistance and concern,

Reaffirming that the culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life, as identified in the Declaration on a Culture of Peace, and that all this should be fostered by an enabling national and international environment conducive to peace,

Recognizing the importance of moderation and tolerance as values contributing to the promotion of peace and security,

Recognizing also the important contribution that civil society organizations can make in building and preserving peace, and in strengthening a culture of peace,

Stressing the need for States, the United Nations system and other relevant international organizations to allocate resources to programmes aimed at strengthening a culture of peace and upholding human rights awareness through training, teaching and education,

Stressing also the importance of the contribution of the United Nations Declaration on Human Rights Education and Training¹⁶ to the promotion of a culture of peace,

Recalling that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding, are among the best guarantees of international peace and security,

Recalling also that tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human, and the virtue that makes peace possible and contributes to the promotion of a culture of peace,

Recalling further that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of a society as a whole and within a democratic framework based on the rule of law would contribute to the strengthening of friendship, cooperation and peace among peoples and States,

Recalling 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,

Recognizing 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,

Inviting solemnly all stakeholders to guide themselves in their activities by recognizing the high importance of practising 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,

Declares the following:

Article 1

Everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.

Article 2

States should respect, implement and promote equality and non-discrimination, justice and

the rule of law, and guarantee freedom from fear and want as a means to build peace within and between societies.

Article 3

States, the United Nations and specialized agencies should take appropriate sustainable measures to implement the present Declaration, in particular the United Nations Educational, Scientific and Cultural Organization. International, regional, national and local organizations and civil society are encouraged to support and assist in the implementation of the present Declaration.

Article 4

International and national institutions of education for peace shall be promoted in order to strengthen among all human beings the spirit of tolerance, dialogue, cooperation and solidarity. To this end, the University for Peace should contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge.

Article 5

Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations. The provisions included in the present Declaration are to be understood in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights³ and relevant international and regional instruments ratified by States.