

RE-VISITING THE RIGHT TO PEACE

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Abstract:

Articolul cuprinde o succintă analiză, din perspectiva instituțională, juridică și diplomatică, a celor mai recente dezvoltări înregistrate în elaborarea unei declarații privind dreptul la pace, cu accent special pe rezultatele modeste și inconcludente obținute în acest sens până în 2014 în Consiliul Drepturilor Omului. Sunt studiate originile conceptului de drept la pace, rațiunile care pledează în favoarea codificării și dezvoltării progresive a acestui drept, dificultățile întâmpinate în recunoașterea universală a acestui drept, precum și perspectivele incerte ale finalizării unui document cuprinzător care să consacre fără ambiguitate dreptul la pace ca drept individual și colectiv. Sunt evocate, de asemenea, legăturile existente între dreptul la pace, dreptul la viață, dreptul la dezvoltare și cristalizarea unei culturi a păcii

Cuvinte cheie: Liga Națiunilor, Consiliul Drepturilor Omului, drepturi, obligații, cooperare, educație, toleranță, solidaritate, promovare, pace, ordine mondială.

Résumé:

Cet article contient une brève analyse, du point de vue institutionnel, juridique et diplomatique, des derniers développements dans l'élaboration d'une déclaration sur le droit à la paix, en mettant l'accent sur les résultats modestes et peu concluants obtenus sur ce plan jusqu'en 2014 au Conseil des droits de l'homme. Sont étudiées les origines du concept de droit à la paix, les raisons qui plaident en faveur de la codification et le développement progressif de ce droit, les difficultés rencontrées dans la reconnaissance universelle de ce droit et les perspectives incertaines quant au mandat concernant la rédaction d'un document compréhensif qui consacre sans ambiguïté le droit à la paix comme droit individuel et collectif. L'article évoque aussi les connexions entre le droit à la paix, le droit à la vie, le droit au développement et l'émergence d'une culture de la paix.

Mots-clés: Société des Nations, Conseil des droits de l'homme, droits, obligations, coopération, éducation, tolérance, solidarité, promotion, paix, ordre mondial.

The commemoration in 2014 of 100 years since the beginning of the First World War was expected to help the international community to make a significant step towards the recognition and promotion of the right to peace. Unfortunately, we witness new waves of untold violence and numerous armed conflicts which continue killing thousands of people. In times of instability, chaos and unpredictability is the right to peace a realistic goal to be consolidated by codification or is it just a humanistic wish, an aspiration? Is the object of this right indeterminate and its implementation impossible without enforceability? Is this right only a kind of distant historical ideal?

The most recent book dealing specifically with the right to peace opens with this sentence: "The greatest undiagnosed problem in international law in the early twenty-first century is the global importance, centrality, and

nature of the yet-to-be fully articulated human right to peace and its twin, the human right to development."¹

We will re-visit the right to peace in these pages from an institutional perspective, with particular emphasis on the role of the United Nations (UN) and its recent practical and diplomatic activities in promoting the collective consideration of this right and keeping it alive on the agenda of the complex process of codification and progressive development of international law.

¹ See Terrence E. Paupp, *Redefining Human Rights in the Struggle for Peace and Development*, Cambridge University Press, 2014, 577 p. The quote is taken from the e-version pages available at <http://www.amazon.com/Redefining-Human-Rights-Struggle-Development/dp/1107669316>. Terrence E. Paupp is the Vice-President, North America, of the International Association of Educators for World Peace. On general aspects of human rights see Irina Moroianu Zlătescu, *Drepturile omului - un sistem în evoluție*, second edition, IRDO, București, 2008.

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1. Origins

Without going too far in the history of international law, it should be reminded that the Covenant of the League of Nations adopted in Paris on 29 April 1919 starts with the following paragraph: The High Contracting parties proclaimed “the acceptance of obligations not to resort to war”.²

The Kellogg-Briand Pact whose full title is “Treaty between the United States and other Powers providing for the renunciation of war as an instrument of national policy”, signed at Paris on August 27, 1928 proclaims in its preamble the persuasion “that the peaceful and friendly relations now existing between their peoples may be perpetuated”. By article I of this Pact “The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.”³

Commenting on the two legal instruments, Nicolae Titulescu, stated: “Whether the Covenant of the League of Nations is, or is not, formally harmonized with the Kellogg Pact, both instruments continue to produce their legal effects. War as a legal institution has been finally banned!”⁴ The Second World War brought a tragic denial of this optimistic expectation.

The UN is a response to the two World Wars and reflects the renewed intention of the international community to suppress war. Article 1 (2) of the UN Charter (1945) proclaims the purpose of the world organization to “... take other appropriate measures to strengthen universal peace”.⁵

The Preamble of the Universal Declaration of Human Rights (1948) recognizes that the inherent dignity and the equal rights of all persons is the foundation of freedom, peace and justice in the world. The two Covenants on Civil, Political, Economic, Social and Cultural Rights (1966) textually repeated in their respective Preambles the already mentioned first

recital on peace contained in the Preamble of the Universal Declaration of Human Rights.⁶ In addition, the Covenants expressly recognized the linkage between the UN Charter and the concept of peace and human rights as understood in the light of the contributions received during the drafting process of the Charter and Declaration. In addition, many other human rights instruments stated that development and human rights play a crucial role in creating fair and equal societies founded upon freedom, justice and peace.

There seems to be a general consensus both in the doctrine and in practice that the principles codified in Art. 2 of the Charter constitute the foundational principles of the whole body of contemporary international law and the simultaneous promotion and respect of human rights and peace are considered as essential purposes of the UN.

In harmony with this consensus, in 1978 the UN General Assembly adopted the Declaration on the Preparation of Societies for Life in Peace by 138 votes to none, with two abstentions. The practical impact of this Declaration was quite modest, but it did not discouraged further diplomatic efforts to give tangibility to the right to peace. In this context, on November 12 1984 the General Assembly adopted the Declaration of the Right of Peoples to Peace by 92 to none and 34 abstentions. Twenty-nine States were absent from the vote and two countries did not participate, because they disagreed with the initiative of adopting such a document. Romania voted in favor of this Declaration.⁷

The Declaration on the Right of Peoples to Peace contains a preamble and 4 operative paragraphs. It reaffirms “that the principal aim of the United Nations is the maintenance of international peace and security” and the “aspirations of all peoples to eradicate war from the life of mankind and, above all, to avert a world-wide nuclear catastrophe”. By virtue of operative paragraph 2, the declaration proclaims “that the preservation of the right of peoples to peace and the promotion of its implementation

² The full text of the Covenant is available at http://avalon.law.yale.edu/20th_century/leagcov.asp.

³ For the full text of the Kellogg-Briand Pact see http://avalon.law.yale.edu/20th_century/kbpact.asp.

⁴ See Nicolae Titulescu, *Pledoarii pentru pace*, Editura Enciclopedica, Bucuresti, 1996, p.294.

⁵ See <http://www.un.org/en/documents/charter/>

⁶ See the texts of all these instruments at <http://www.un.org/en/documents/udhr/>

⁷ Both declarations are available at http://www.un.org/documents/instruments/docs_en.asp?type=declarat. Details concerning the voting on these declarations can be found in the *Yearbook of the United Nations* for the respective years.

constitute a fundamental obligation of each State.” In paragraph 3, the declaration “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.” The final paragraph contains an appeal addressed 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. Regrettably, the Declaration on the Right of Peoples to Peace and the subsequent UN resolutions on the same matter could not receive the support of many important countries. Romania voted in favor of the Declaration.⁸

Inspired by the above mentioned declarations, some regional organizations drafted appropriate legal instruments which have explicitly recognized the right to peace as a collective right and have always treated it in connection with the principles contained in Art. 2 of the UN Charter (i.e., African Charter on Human and Peoples’ Rights and the Ibero-American Convention on Young People’s Rights). The African Charter on Human and Peoples’ Rights of 26 June 1981 in its Article 23 states: “The peoples have the right to peace and security both nationally and internationally. The principles of solidarity and friendly relations shall govern relations between States.”⁹

The most recent and remarkable example of successful regional efforts to promote the right to peace is offered by the ASEAN Human Rights Declaration adopted unanimously by the 10 ASEAN members on November 18, 2012 at a summit conference in Phnom Penh, Cambodia and published on November 19, 2012.

Paragraph 38 of the Declaration proclaims 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. To this end, ASEAN Member States should continue to

⁸ .See note 7 *supra*.

⁹ The African Charter on Human and Peoples Rights was adopted in Nairobi June 27, 1981 and entered into Force October 21, 1986. For its text see <http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf>

enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.”¹⁰

While the right to peace is *expressis verbis* recognized by ASEAN as both an individual and collective right, it is surprising to see that the relevant paragraph does not make any reference to peace-based values proclaimed in the ASEAN Charter. In this regard, it is useful to remind that in its resolution 67/173. Promotion of peace as a vital requirement for the full enjoyment of all human rights by all adopted by the UN General Assembly on December 20, 2012, the plenary forum of the world organization “1. Reaffirms that the peoples of our planet have a sacred right to peace; 2. Also reaffirms that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of all States; 3. Stresses that peace is a vital requirement for the promotion and protection of all human rights for all.” This resolution (document A/67/457/Add.2) was adopted by a recorded vote of 127 in favor to 54 against, with 6 abstentions. Romania voted against.¹¹

Limiting our analysis, as mentioned earlier, to the institutional sphere, it should be recalled that in 1997 the Director-General of UNESCO introduced the Draft Declaration on the Human Right to Peace as the Foundation of the Culture of Peace, in which he outlined the legal basis of the human right to peace and its linkage with the Culture of Peace.¹² It is in full harmony with the UNESCO Constitution which states that “since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be

¹⁰ The full text of the ASEAN Human Rights Declaration is available at <http://www.asean.org/resources/publications/asean-publications/item/asean-human-rights-declaration-ahrd3>

¹¹ See the collection of the UN General Assembly resolutions at <http://www.un.org/documents/resga.htm>

¹² On 31 July, 1997, Federico Mayor, the Director-General of UNESCO, wrote to the Heads of State or Government of Member States and Associate Members of UNESCO, informing them of the work done by the Organization concerning the human right to peace and seeking their comments and suggestions on the Draft Declaration on the Human Right to Peace, drawn up in Oslo in June 1997. All the documentation is available at <http://unesdoc.unesco.org/images/0011/001115/111544e.pdf>. A comprehensive outline of the many facets of the culture of peace is provided by UNESCO at http://www3.unesco.org/iycp/uk/uk_sum_cp.htm

constructed”, an important idea also to be found in the 1978 Declaration on the Preparation of Societies for Life in Peace.

During the general debate on this issue, UNESCO Member States were unanimous regarding the existence of an indivisible link between all human rights and peace, but also believed that the submitted Draft Declaration would primarily be an ethical document only designed to proclaim principles. In fact, there was not sufficient support to recognize *expressis verbis* the human right to peace. Moreover, some well-known legal practitioners and diplomats stated that the right to peace had never been explicitly formalized into a treaty, including the UN Charter, and that the existing UN human rights instruments had not given proper expression to this right.

2. Significant developments

The lack of consensus on the recognition of the right to peace did not prevent the submission of a number of interesting ideas stimulated by the frequent deliberations at the UN and at UNESCO on the ways and means of promoting the right to peace. Some delegations clearly and without reservations recognized the existence of the right to peace as a soft law element and advanced relevant arguments to demonstrate the full rationale of continuing the consideration of this right which belongs, as the doctrine has asserted, to the third generation of human rights, also designated as solidarity rights. Indeed, the rights of the third generation are marked by strong solidarity, holders and beneficiaries being attached to each other, while the rights of some are closely related to the rights of others, and the obligation to cooperation is applicable to all.¹³

In the only identified book dedicated entirely to the right to peace, the Canadian scholar and diplomat Douglas Roche advances the argument that peace is a universal third generation right, depending *inter alia* on the modern interconnectedness of all states. This current inter-dependency is unlike first generation rights having as a motto “liberty and equality”, which are rights related only to the sovereign states. The second generation rights

like education, health, or more generally economic, cultural and social rights are also devised in relation to the state, or its institutions and citizens. Essentially, third generation rights call for the redistribution of power and resources, and consider the current international system ineffective in its attempts to resolve contemporary problems.¹⁴

At present, it is asserted that globalization itself makes possible the universal right of peace, as a the third generation right, which is innovative and addresses a whole category of new and interconnected challenges. It is an essential right because the horrendous atrocities of wars, genocide, environmental devastation, world-wide hunger, displacement, disease and water shortages and the threat of nuclear annihilation, all make human living deplorable or near impossible for the vast majority of people in the modern global context. Without peace, it is now clear, the full realization of the first two generations of human rights is not possible or, more simply stated, without peace every other right is illusory. From this perspective, the right to peace is unique. It transcends all other rights, enables their exercise, and offers the innovation needed to lift up society and allow it to achieve its full potential.

That demonstration was not an easy task in all diplomatic debates. Several delegations repeated that a stand-alone right to peace does not exist under present international law. In their view, peace is not a human right, but it is above all a humanistic goal that could be best realized through the enforcement of existing human rights. These positions were systematically stated in all human rights bodies and workshops.¹⁵

¹⁴ See Douglas Roche, *The Human Right to Peace*, Novalis, Toronto, 2003, p. 271. See also Douglas Roche and Peter Langille, *The human right to peace*, *International Journal*, Vol. 59 (2), Spring 2004, pp. 458-460. Douglas Roche was Canada’s ambassador for disarmament from 1984 to 1989 and Chairman of the UN Disarmament Committee, the main UN body dealing with political and security issues in 1988. See also *Giving Teeth to Peace: Douglas Roche Book Review* by Dr. Larry Fisk at www.peace.ca/rochebookreview.htm. A recent book on all these issues is Angelo M. Codevilla, *To Make and Keep Peace Among Ourselves and with All Nations*, Hoover Institution Press, Stanford, California, 2014, p. 248.

¹⁵ The HRC is an inter-governmental body within the UN

¹³ The content of the general debate on the right to peace at the UN and UNESCO is summarized in the document mentioned in note 12 *supra*.

Yet, the predominant opinion in all these debates was a constructive one, namely that development, peace, security and human rights are interlinked and mutually reinforcing. However, as we will show in detail below, when this topic officially appeared on the agenda of the UN Human Rights Council (HRC) representatives of developed countries strongly re-emphasized their opinion that the mandate of the HRC is to promote and protect human rights, but not to elaborate a right to peace. Due to the lack of support of over one-third of the UN Member States, the promotion and implementation of the right of peoples to peace in the field of international law, and in particular in human rights sphere, have been unfortunately highly affected. A major reason for this situation is linked to the obvious fact that in order to progressively eliminate armed conflict and war across the earth and, consequently, enable humankind to live peace, a genuine protection of human rights, development and dignity should be at the center of all decision-making processes at both the national and international levels. It follows that in a negative context of war and armed conflict all human rights, in particular the right to life, are gravely violated and under such circumstances the right to peace itself appears just as an aspiration. The logical conclusion would be that only by rejecting war as an option, the international community might be able to materialize the right to peace.

In this regard, it is appropriate to remind that the right to life has been correctly characterized by diplomats and lawyers as the supreme human right, since without effective guarantee of this right, all other fundamental human rights and freedoms would be devoid of meaning. Therefore, the right to life has traditionally been linked to the right to peace.

The solid linkage between the right to life and peace is clearly stipulated in Art. 1 of the 1978 Declaration on the Preparation of Societies for Life in Peace, which states that “Every nation and every human being, regardless of race, conscience, language or sex, has the

inherent right to life in peace.”¹⁶ The obvious conclusion is that the right to life is not only the legal foundation for other rights, but also an integral part of all fundamental rights and freedoms which are essential to guaranteeing a better life for all human beings.

3. Attempts to codify the right to peace

After many unfruitful attempts at the UN and UNESCO to obtain a universal recognition of the right to peace, an Advisory Committee to deal specifically with this right was established in 2007 by the HRC. This Committee prepared a questionnaire to consult with Member States and other stakeholders on various aspects of the right to peace. The drafting group of this Committee submitted the text of a first draft declaration on the right of peoples to peace (A/HRC/AC/7/3) to the Advisory Committee at its seventh session, in August 2007, where it was discussed, analyzed and commented. A revised draft was presented to the Committee in February 2012 and its provisions were thoroughly and critically debated.

Later on, as no final agreement could be reached on the draft, the HRC requested the Advisory Committee to continue its work and to present a new draft declaration in June 2012.¹⁷

As to the terminology used, it should be recalled that in the original mandate of the HRC, reference was made to “the right of peoples to peace”, an expression taken from the UN General Assembly resolution 39/11, which was adopted in 1984. However, after further discussions, the Advisory Committee proposed the expression “right to peace”, which was judged to be more appropriate, as it covers both the individual and collective dimensions of this right.

In accordance with its mandate, the Advisory Committee was expected to elaborate a comprehensive, yet concise draft declaration focused on standards relating to international peace and security as core standards (elements of negative peace, absence of violence), and to include positive standards applicable in the areas of peace education, development,

system made up of 47 States responsible for the promotion and protection of all human rights around the globe. documents of this body quoted in the present article are available at <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Documents.aspx>.

¹⁶ See note 7 *supra*.

¹⁷ All the information is taken from the documentation available at <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Documents.aspx>.

protection of the environment and of victims and vulnerable groups.

The document A/HRC/20/31 contains the report of the Committee and in its Annex a Draft declaration on the right to peace whose text is composed of a Preamble and 14 articles. While the Preamble is a reaffirmation of general ideas from relevant UN resolutions, the 14 articles summarize valuable substantive provisions.¹⁸

Article 1 entitled Right to peace states in its first paragraph: *“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, color, 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”*.

The second and third paragraphs of Article 1 specify: *“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”*.

As this draft Declaration could not be finalized and adopted in the HRC due to the negative position of the representatives of developed countries and is no more on the table of negotiations, we will not continue the detailed analysis of the rest of its articles. However, it is useful and instructive to refer to the content of this document as a whole. The large range of human rights proposed as legal standards in the draft Declaration finds its origin in the concept of human dignity. It can be illustrated by the following elements included in the text of the draft : prohibition of racism, human security, disarmament, peace education and training, the right to conscientious objection to military services, the private military and security companies, resistance and opposition to oppression, peacekeeping, right to development, environment, rights of victims and vulnerable groups, refugees and migrants.

Article 13 entitled “Obligations and implementation” deserves a special attention, even if its content does not appear any more in

the next draft Declarations on the right to peace. Indeed, it is rewarding to read in Article 13 *inter alia* that

“The preservation, promotion and implementation of the right to peace constitute a fundamental obligation of all States and of the United Nations [...] 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”.

It should also be mentioned that in accordance with Article 14 containing Final provisions *“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”*¹⁹.

The fundamental merit of the above draft Declaration can be formulated by noting that its text reflects in clear terms the right to peace as a holistic right and concept which goes beyond the strict absence of armed conflicts being closely linked to the elimination of structural violence as a result of the economic and social inequalities in the world. While the draft is no more on the negotiations table, non-governmental organizations which had supported it delivered a joint statement in Geneva in which they expressed the hope that the draft of the Advisory Committee would not be entirely discarded.

4. Modest outcomes

The draft Declaration analyzed in the previous section not being finalized and adopted, the HRC by its resolution 20/15 of 5 July 2012 decided to establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace. The first session of this group took place from 18 to 21 February 2013 in Geneva. The HRC took note of the group’s report. Bearing in mind

¹⁸ See the relevant information in document A/HRC/20/31 available at <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Documents.aspx>.

¹⁹ See note 18 *supra*. For an interesting and comprehensive analysis of racism see Irina Moroianu Zlatescu, *Protection against racism and discrimination*, IRDO, Bucharest, 2011, pp.25-45.

the progressive development of this issue, the HRC decided that the working group shall hold a second session in 2014. This decision, dated 13 June 2013, was adopted by a recorded vote of 30 to 9, with 8 abstentions. The voting was as follows: *In favor*: Angola, Argentina, Benin, Botswana, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Côte d'Ivoire, Ecuador, Ethiopia, Gabon, Guatemala, Indonesia, Kenya, Kuwait, Libya, Malaysia, Maldives, Mauritania, Pakistan, Peru, Philippines, Qatar, Sierra Leone, Thailand, Uganda, United Arab Emirates, Venezuela (Bolivarian Republic of) *Against*: Austria, Czech Republic, Estonia, Germany, Japan, Montenegro, Republic of Korea, Spain, United States of America *Abstaining*: India, Ireland, Italy, Kazakhstan, Poland, Republic of Moldova, Romania, Switzerland.²⁰

We have reproduced the details of the vote, as it reflects in a persuasive manner the political differences which still persist in the HRC at this current stage of negotiations on a document dedicated to the right to peace. Eliminating or mitigating these differences will be difficult and it seems unlikely that the old draft of the declaration will be re-submitted for further consideration. Moreover the very process of negotiating a comprehensive declaration on the right to peace has atrophied. This illustrates the current weakness of human rights diplomacy. Facts are eloquent.

The Report of the open-ended intergovernmental working group on a draft United Nations declaration on the right to peace was presented in 2014 by the Chair-Rapporteur Christian Guillermet-Fernández to the 27th session of the HRC. The activities described in this report are mostly related to the detailed consideration of a new draft UN Declaration on the right to peace, a text composed of a 20 paragraphs Preamble and 4 articles.²¹

While the Preamble of the new draft contains as the previous one a number of general references to relevant international documents having direct or indirect relationships with the right to peace, some pertinent references which

were absent in the previous draft deserve to be mentioned. Significant documents are quoted in the new draft such as: the United Nations Declaration on Human Rights Education and Training, the Declaration and Program of Action on a Culture of Peace, which recognized that a culture of peace is a set of values, attitudes, traditions and modes of behavior and ways of life based on, among other things, full respect for and promotion of all human rights and fundamental freedoms.

The final paragraph of the Preamble contains a solemn invitation addressed to all stakeholders to guide themselves in their activities by recognizing the supreme importance of practicing tolerance, dialogue, cooperation and solidarity among all stakeholders as a means to promote world peace through human rights and to end, reduce and prevent progressively war and armed violence.

The most important observation generated by a careful analysis of the 4 operative articles of the new draft is the total absence of any reference formulated *expressis verbis* to the right to peace. That absence illustrates an obvious regression in the approach towards the mandate of elaboration of a document specifically dedicated to the right to peace. While the content of the 4 operative articles is not objectionable *per se*, the very fact that the document avoids using the expression "right to peace" diminishes the significance and the value of the document, even if it would have the chance to be adopted in its present form.

Article 1 is a positive one. It reads as follows: "*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*".

However, a crucial idea clearly formulated in the previous draft - *Individuals and peoples have a right to peace* - cannot be found anywhere in the new draft whose title containing a reference to the right to peace could not be accepted and remains in brackets.

The analysis of the debates on the new draft shows that even this new draft, which eliminated all or nearly all ideas on which consensus could not be reached during the consideration of the first draft, is far from being acceptable by all delegations. We will

²⁰ All the information is taken from the extensive HRC documentation available at <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx>.

²¹ The full text of the draft can be accessed at <http://www.ohchr.org/EN/HRBodies/HRC/RighttoPeace/Pages/WGDraftUNDeclarationontheRighttoPeace.aspx>.

summarize some positions expressed about the new draft on the basis of the report submitted by the Chair-Rapporteur and using to the extent possible the original terminology of the document.²²

According to the report, several delegations stated again that a stand-alone right to peace did not exist under international law. Explicit reference to the right to peace was strongly opposed by these delegations, which repeated their principled non-recognition of that right. They disagreed with the idea of peace as a prerequisite to human rights. Others maintained that international law did not currently provide a right to peace and they expressed certain reservations concerning even the need for a new declaration. In their view, it was difficult to draw substantive obligations from the current vague definition of a right to peace, which they could recognize neither as an individual nor as a collective right. Therefore, they could not support the expression of “the right to peace” in the text, starting with the title of the draft declaration.

Delegations supporting the explicit inclusion of the right to peace in the document reiterated their opinion that a clear and explicit reference to the right to peace was indispensable in order to fulfill the mandate of the HRC for drafting a declaration on the right to peace. In their view, the right to peace had to be included *expressis verbis* and given greater prominence in the text. Otherwise, they argued, the group would be taking a step backwards from what had been previously agreed.

Many delegations considered that the right to peace was a fundamental precondition for economic and social progress and the enjoyment of all human rights. In their view, the notion of the right to peace existed as a collective right in the normative legal framework of international law and already enjoyed broad support in the international community. They believed that the right to peace in itself was a true right and was necessary for the achievement of individual and collective rights in every nation. One delegation recalled that the right to enjoy peace was also firmly stipulated in the Human Rights Declaration of the Association of Southeast Asian Nations shortly analyzed above.

While most delegations diplomatically welcomed the new draft, some felt that important elements should not be omitted in the interest of brevity and asked that fundamental principles be preserved, such as: the importance of respecting the sovereignty, territorial integrity and political independence of sovereign States. Some requested the inclusion of direct references 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 (annexed to General Assembly resolution 2625 (XXV) of 24 October 1970), to the Declaration on the Right of Peoples to Peace, to the Declaration on the Preparation of Societies for Life in Peace, to the Declaration on the Right to Development, to the United Nations Millennium Declaration, as mentioned by many delegates in the deliberations on the first draft declaration. They appreciated that, as the draft declaration should be seen as an effort to codify the right to peace, references to those relevant declarations seemed essential.²³

On the other hand, the representatives of non-governmental organizations shared the critical sentiment that the new draft added little towards constituting the right to peace. They regretted the absence of a clear reference to the right to peace in the text and considered that the declaration needed to provide a conceptual definition of that right.

As to the further work on the draft, it was pointed out that, considering the nature of the declaration and bearing in mind that it was mainly a political document, the new version to be prepared should be of a declarative character and the action-oriented part should only be inserted at the end of the text. One delegation, however, questioned the action-oriented character of the document. It was mentioned that the declaration should be seen as an expression of political will, rather than as an action-oriented tool.

Some delegations as well as the representatives of non-governmental organizations requested the inclusion in the text of references to the suppression of war

²² See note 21 *supra*.

²³ The UN Secretariat treats all these declarations as being highly significant and they are grouped together and made available at http://www.un.org/documents/instruments/docs_en.asp?type=declarat.

propaganda and the arms trade, commitment to disarmament and the promotion of peace and human rights education. A proposal was advanced for establishing an appropriate mechanism to monitor full compliance with the future UN declaration on the right to peace. It was also suggested that a reference to the systemic dimension of the right to peace, as well as to the importance of a multilateral approach, should be included in the preamble of the document, in order to reflect the need for dealing with the structural causes of conflict and for developing a culture of consolidation of peace.

The inclusion of a paragraph on tolerance and dialogue between religions and civilizations was also suggested, considering their contribution to the right to peace.²⁴

5. Perspectives

The two readings of the most recent text prepared by the Chair-Rapporteur of the open-ended intergovernmental working group on a draft UN declaration on the right to peace which took place in Geneva in July 2014 could not lead to the fulfillment of its mandate established by the HRC in resolution 23/16. The Chair-Rapporteur announced that it was not his intention to present in July 2014 a new text on the basis of the proposals made by delegations. Yet, in his view, delegations demonstrated their desire to advance the work and displayed willingness to negotiate. His goal was to obtain a clear understanding of the positions of all those involved in order to finalize the text.²⁵ It can be anticipated that the deliberations and resolutions of the current 69th session of the UN General Assembly (2014-2015) will give a new impetus to the diplomatic efforts for the implementation of the mandate of the HRC on the matter. Yet, success is far from certain. To quote a diplomatic expression used by the former UN Secretary-General Boutros Boutros-Ghali, the world organization risks to be “debilitated by political opportunism”²⁶ while

²⁴ See the full report, the list of documents and other useful information at <http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/SecondSession.aspx>.

²⁵ See note 24 *supra*.

²⁶ See Boutros Boutros-Ghali, *An Agenda for Peace*, United Nations, New York, 1992, p.47. See also Kofi Annan’s acceptance speech for Nobel Peace Prize at

dealing with the codification and progressive development of the right to peace.

We witness contradictory trends in approaches on the right to peace. Examples are numerous. We will reproduce just a few of them. The legislative authority of the UN General Assembly on the issue of the right to peace was further strengthened by a resolution adopted on December 18, 2013 under the symbol and title 68/175. *Promotion of a democratic and equitable international order* in which the plenary forum of the UN “Affirms that a democratic and equitable international order requires, *inter alia*, the realization of the following: [...] *The right of all peoples to peace*”. This resolution was adopted by a recorded vote of 132 in favor to 52 against, with 6 abstentions. Romania voted against.²⁷

While the UN resolutions are characterized as being simple, non-mandatory recommendations, the right to peace is frequently invoked in connection with the duties of States with respect to disarmament treaties whose mandatory nature is not questioned. Thus, Article 6 of the Treaty on the Non-Proliferation of Nuclear Weapons (1st July 1968) stipulates that “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”²⁸

Mention should be also made of the advisory opinion of the International Court of Justice of July 8, 1996 that there is “an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects”.²⁹

<http://www.nobel.se/peace/laureates/2001/annan-lecture.html>

²⁷ The full text of the resolution is available at <http://www.un.org/en/ga/68/resolutions.shtml>.

²⁸ For an analysis of the Treaty and its full text see <http://www.state.gov/documents/organization/141503.pdf>.

²⁹ On 8 July 1996 the International Court of Justice handed down its advisory opinion on the request made by the UN General Assembly on the question concerning the Legality of the Threat or Use of Nuclear Weapons. See the full text of the opinion at <http://www.icj-cij.org/docket/index.php?sum=498&code=unan&p1=3&p2=4&case=95&k=e1&p3=5>.

The right to peace also includes the right to oppose the war. The legal evidence is offered by Article 20 of the International Covenant on Civil and Political Rights which states: “Any propaganda for war shall be prohibited by law.”³⁰

In its resolution no. 67/173 - Promotion of peace as a vital requirement for the full enjoyment of all human rights by all, adopted on December 20, 2013 the UN General Assembly “*Underlines the vital importance of education for peace as a tool to foster the realization of the right of peoples to peace, and encourages States, the specialized agencies of the United Nations system, and intergovernmental and non-governmental organizations to contribute actively to this endeavor*”.³¹

Indeed, according to the great German philosopher Georg Hegel, “education is the art of making man ethical”³², while the famous South-African statesman Nelson Mandela believed that “education is the most powerful weapon which you can use to change the world”.³³

These ideas have remarkable implications today, when educational institutions are expected to bring active contributions to the collective efforts to universalize humanism and bring about a galaxy of knowledge in favor of peace as a supreme value of humankind.

Ban Ki-moon, the UN Secretary-General, stated in many occasions that there is no greater tool than education to enhance human dignity, promote a culture of non-violence, and build lasting peace. In his opinion, through education, the world community of nations can craft new ways of living with each other and the planet. Moreover, education can also lay the foundation for developing new forms of global citizenship and solidarity that are essential during the current global era.³⁴

³⁰ The full text of the Covenant is available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³¹ See the relevant resolution at <http://www.un.org/documents/resga.htm>.

³² See Georg Wilhelm Friedrich Hegel, *Quotes*, available at http://www.goodreads.com/author/quotes/6188.Georg_Wilhelm_Friedrich_Hegel.

³³ See Nelson Mandela, *Quotes*, available at <http://www.goodreads.com/quotes/16243>.

³⁴ The full text is available at UN Secretary-General Ban Ki-moon's Statements www.un.org/sg/statements/

In this regard, the professional discussions and UN documents about the University for Peace established in 1980 and based in Costa Rica are quite instructive. This University which is open to all 193 UN member states places special emphasis on the areas of conflict prevention, peacekeeping, peacebuilding and the peaceful settlement of disputes. It has launched programs in the areas of democratic consensus-building and training of academic experts in the techniques of peaceful resolution of conflicts. Special attention has been paid to promoting education for peace that fosters respect for the values inherent in peace and universal coexistence among peoples, including respect for the life, dignity and integrity of human beings, as well as friendship and solidarity at the global level.

In this context, it is appropriate to recall the significance of the UN General Assembly appeal addressed to the states that have not already done so to accede to the International Agreement for the Establishment of the University for Peace, thereby demonstrating their support for an educational institution devoted to the cause of a universal culture of peace.

In accordance with Article 2 of the Charter of the University for Peace, which is annexed to the above mentioned Agreement, the University is established with a clear determination to provide humanity with an international institution of higher education for peace and with the aim of promoting among all human beings the spirit of understanding, tolerance and peaceful coexistence, to stimulate cooperation among peoples and to help lessen obstacles and threats to world peace and progress, in keeping with the noble aspirations proclaimed in the UN Charter. To this end, the University shall contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge fundamental to the full development of the human person and societies through the interdisciplinary study of all matters relating to peace.

An Appendix to the Charter contains the General principles formulated by the Commission on the University for Peace established by the General Assembly pursuant to its resolution 34/111 of 14 December 1979. In accordance with this document the persistence

of war in the history of mankind and the growing threats against peace jeopardize the very existence of the human race and make it imperative that peace should no longer be viewed as a negative concept, as the end of conflict or as a simple diplomatic compromise, but rather that it should be achieved and ensured through the most valuable and most effective resource that man possesses: education.

The same document contains the following strong assessment which is not publicized by mass-media: *“Peace is the primary and irrevocable obligation of a nation and the fundamental objective of the United Nations; it is the reason for its existence. However, the best tool for achieving this supreme good for humankind, namely education, has not been used.”*³⁵

In a realistic approach, this assessment reminds that many nations and international organizations have attempted to attain peace through disarmament. This effort must be continued; yet facts show that man should not be too optimistic as long as the human mind has not been imbued with the notion of peace from an early age.

The conclusion of this assessment is action – oriented and the language used is imperative: decision must be made to save the human race, which is threatened by war, through education for peace. The reason invoked for this appeal is highly persuasive: if education has been the instrument of science and technology, there is all the more reason to use it to achieve this primary right of the human being, which can be presumed to be the right to peace.

Since 2012 there is a European center of the University for Peace based in The Hague. This center has the task to strengthen peace education by organizing professional trainings, lectures, seminars, and workshops. Educational and research programs are characterized by the interaction between theory and practice, also contributing to policy innovations, and being useful to both academics and professionals.³⁶

The arguments in support of peace education have to be addressed first of all to young people who need help in combating the violence they see around them. More importantly, conflict resolution education contributes to the

³⁵ All information about the University for Peace, including the elements used in this article, are available at its official site <http://www.upeace.org/>.

³⁶ See note 35 *supra*.

development of resilience in young people. It improves their social and emotional abilities, as well as their academic performance, and at the same time helping them to eliminate manifestations of vandalism and violence.³⁷

If the science of peace is further developed under the name of irenology, it should lead to adequate new academic curricula adapted to the specific needs of the developed and developing countries. If it is successful, peace education will produce new generations of inspirational leaders and enlightened citizens who can advance the right to peace, being themselves well equipped to work with the NGOs and the public opinion.

Martin Luther King stated: “In order not to perish together as fools, we must learn to live together as brothers.”³⁸ This can be achieved by a solid process of education leading not only to accumulating knowledge but also to assimilating strong peace-oriented beliefs. In this respect Mahatma Gandhi asserted: “Your beliefs become your thoughts. Your thoughts become your words. Your words become your actions. Your actions become your habits. Your habits become your **values**. Your values become your destiny.”³⁹

In accordance with the UN resolution 61/271 entitled International Day of Non-Violence of June 15, 2007, a document co-sponsored by many states, including Romania, the UN General Assembly proclaimed October 2 as the International Day of Non-Violence, a day to be commemorated worldwide⁴⁰. In 2014 this day marked the 145th anniversary of the birth of Mahatma Gandhi, leader of the Indian independence movement and pioneer of the philosophy and strategy of non-violence, a

³⁷ Useful information for these considerations can be found in the book by Douglas Roche, *The Human Right to Peace*, mentioned in note 14 *supra*.

³⁸ This quote was taken from www.betterworld.net/quotes/diversity-quotes-3.htm

³⁹ Mahatma Gandhi’s quote is available at <http://www.quotes.net/quote/41782>.

⁴⁰ The draft resolution was submitted by India on behalf of 140 countries representing all continents. Its full text is available at <http://www.un.org/documents/resga.htm>. While introducing the draft, the Indian representative quoted Mahatma Gandhi who said : “Non-violence is the greatest force at the disposal of mankind. It is mightier than the mightiest weapon of destruction devised by the ingenuity of man”. See http://www.mea.gov.in/images/main_2007.pdf

visionary man who believed that, without truth and non-violence, there can be nothing but the destruction of humanity.

In accordance with UN resolutions, non-violence, tolerance, full respect for all human rights and fundamental freedoms for all, democracy, development, mutual understanding and respect for diversity are inter-linked and mutually reinforcing.

Mahatma Gandhi's doctrine of non-violence is particularly topical now, at a time when extreme violence is dramatically visible in many parts of the world. Thus, re-emphasizing the universal relevance of the principle of non-violence, promoting the right to peace and making it tangible must be treated as a crucial task on our planet if the community of nations truly believes that global peace is a supreme value of humankind.

The UN Secretary-General's message on the International Day of Non-Violence (2014) contains instructive ideas which deserve to be re-emphasized in connection with the right to peace. In accordance with this message, the principles enshrined in the Universal Declaration of Human Rights, adopted in 1948, the year of Gandhi's death, owe much to his beliefs. It is timely to recall Gandhi's call for peace and reconciliation, and his warning that, "An eye for an eye ends up making the whole world blind." The message contains a strong appeal to foster a culture of peace, built on dialogue and understanding, for living together in harmony while respecting and celebrating humanity's rich diversity. Finally, the same message formulates *expressis verbis* a call on all people to counter the forces of intolerance, advance global citizenship and forge human solidarity based on Mahatma Gandhi's philosophy of non-violence.⁴¹

From a strictly institutional perspective, it is significant that in a most recent UN report entitled "Promotion of a culture of peace and interreligious and intercultural dialogue, understanding and cooperation for peace" the final conclusion of the document reads as follows: "The present report demonstrates the commitment of a large number of United Nations entities to the promotion of a culture of peace in the broad sense of the word. It also

⁴¹ See the full text of the message at UN Secretary-General Ban Ki-moon's Statements www.un.org/sg/statements/

reveals the interconnectedness between the culture of peace and interreligious and intercultural dialogue, calling for an increasingly integrated approach on the part of the entities of the United Nations system to these problems, particularly in their activities at the field level."⁴²

Henry Kissinger asserted in 2014 that "Our age is insistently, at times almost desperately, in pursuit of a concept of world order".⁴³

In our view that concept must clearly incorporate in its content the right to peace. Yet, the codification and progressive development of this right is an open process with unpredictable outcome. While realistically expecting more progress in this process, it is usefully to recall a topical appeal formulated by Nicolae Titulescu, who on November 19, 1930, in a lecture given in English at Cambridge University stated: "[...]in order to build a lasting Peace, do not content yourselves with the existing structure of legal instruments, but rather try to make, everyone for oneself, courageously, the necessary effort and come closer to those from whom you are separated by the temporary outlook of immediate interest".⁴⁴

Young people have to be sensitive to such a humanistic appeal as they would benefit in practical terms from a universal culture of peace, if the right to peace is globally recognized as a genuine right. They will have to fight for it. If they fail in their efforts, there is a dangerous risk that the current dramatic upheavals on our planet will herald the collapse of the existing world order. However, a lasting consensus on the recognition, respect, promotion and full implementation of the right to peace would be a pivotal guarantee for a peaceful world order.

⁴² The report was circulated on 2 October 2014 under the symbol A/69/413 and will be considered during the 69th session of the UN General Assembly. An interesting presentation about globalization and culture can be found in Dr. Ion Diaconu, *Cultura si drepturile omului*, Editura Pro Universitaria, Bucuresti, 2012, pp.168-179. See also David Adams, *Moving from a Culture of War to a Culture of Peace* at <http://www.forusa.org>

⁴³ See Henry Kissinger, *World Order*, Penguin Press HC, New York, 2014, p. 432. The quote was taken from <http://www.amazon.com/World-Order-Henry-Kissinger/dp/1594206147>. See also Ethical Globalization Initiative at <http://www.eginitiative.org>.

⁴⁴ See Nicolae Titulescu, *Pledoarii pentru pace*, Editura Enciclopedica, Bucuresti, 1996, p. 301.