

II

Civil society proposals for the codification and progressive development of international human rights law: The *Santiago Declaration on the Human Right to Peace*

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1. Introduction. 2. Constructing positive peace: The rights enumerated in the *Santiago Declaration*: A) General considerations. B) The rights of peoples. C) The rights of individuals and groups. Women and peace. 3. Subjects and obligated actors. 4. The promotion and monitoring mechanism of the human right to peace. 5. Conclusions.

1. Introduction

The *Santiago Declaration on the Human Right to Peace (SD)* was adopted on 10 December 2010 at the end of the International Congress on the Human Right to Peace, held in the *Forum 2010* or World Social Forum on Education for Peace in Santiago de Compostela.²

As stated by Prof Jaume Saura, the *SD* is the “most comprehensive attempt from the Spanish and international civil society to formulate in legal terms the human right to peace”.³ In fact, the *SD* is a draft resolution of unequivocal normative vocation by which civil society endeavors to contribute to the work of codification and progressive development of international human rights law

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² The text is available at www.aetidh.org/sites/default/files/Santiago-Declaration-en.pdf See also *infra* Annex I. With regard to the International Congress of Santiago de Compostela, *vid. supra* Carmelo FALEH PÉREZ & David FERNÁNDEZ PUYANA: “The International Congress on the Human Right to Peace”. Also available at www.aetidh.org

³ Jaume SAURA ESTAPÀ: “El derecho humano a la paz en perspectiva internacional”, in M.^a Isabel GARRIDO GÓMEZ (ed.): *El derecho a la paz como derecho emergente*, Barcelona: Atelier, 2011, p. 60.

(IHRL) within the United Nations, through the Human Rights Council and its Advisory Committee. Hence, the Spanish Society for International Human Rights Law (SSIHRL) —the promoter of the World Campaign in favour of the human right to peace—, refers to this dual level with the terms *private codification* (with regard to civil society) and *official codification* (concerning the United Nations). However, the *SD* is really the most important step in the private codification process, initially promoted by the Spanish civil society and progressively supported by civil society from other countries and regions of the world in order to enrich it and give it greater legitimacy. It finds its roots in the *Gernika-Lumo Declaration* (1 December 2005),⁴ but mainly in the *Luarca Declaration on the human right to peace* (30 June 2006),⁵ which was reviewed in 2010 in order to incorporate the contributions stemming from conferences and expert meetings held in Africa, Asia, Eastern and Western Europe and America. In 2010, the *Luarca Declaration* was further revised in the light of these contributions by a Technical Drafting Committee held in Bilbao, which on 24 February of that year adopted the *Bilbao Declaration*. Some months later, an international expert committee adopted the final revised version by approving the *Barcelona Declaration on the human right to peace* on the basis of which the International Congress of Santiago de Compostela further completed the task and culminated the private codification process.⁶

Since then, the Advisory Committee has been working on the issue according to the mandate of the Human Rights Council (HR Council). To achieve this aim, the SSIHRL made an oral statement before the HR Council on 15 March 2007 and organized multiple parallel events focused on specific elements of the human right to peace. These meetings coincided with the different sessions of the HR Council or the International Day of Peace, held on 21 September of each year. In addition, in November 2007 the SSIHRL promoted the constitution within the HR Council of a Group of Friend States, in which several countries have joined to embrace a political commitment with the codification process of the human right to peace. Presently, the Group of Friend States encompasses Senegal, Djibouti, the Plurinational State of Bolivia, Ecuador, Malaysia, Costa Rica, Uruguay and Spain.⁷

⁴ *Vid. Tiempo de Paz*, 80 (2006), pp.107-109.

⁵ Available at www.aedidh.org/?q=node/652

⁶ With regard to this process, see Carlos VILLÁN DURÁN: “Civil Society Organizations Contribution to the Human Right to Peace”, *International Journal on World Peace*, XXVIII, No. 4 (2011) and Carmelo FALEH PÉREZ: “Hacia un derecho humano a la paz internacionalmente reconocido. Desde París a Luarca y más allá...”, in Federico MAYOR ZARAGOZA *et al.*: *Hacia la paz desde los derechos humanos. Reflexiones sobre el derecho humano a la paz*, Bilbao: Unesco Etxea, 2009, pp. 17-23.

⁷ About these questions, see Carlos VILLÁN DURÁN: “The human right to peace in the work of the Human Rights Council”, in Carlos VILLÁN DURÁN and Carmelo FALEH PÉREZ (eds.): *Regional Contributions for a Universal Declaration on the Human Right to Peace*, Luarca: SSIHRL, 2010, pp. 267 ff.

As a subsidiary body of the General Assembly of the United Nations, the HR Council has, among other competences, the power to recommend to the General Assembly “the further development of international law in the field of human rights” (paragraph 5.c of the resolution 60/251 of the General Assembly of 15 March 2006). In accordance with the Statute of the International Law Commission — which is the body in charge of the progressive development and codification of international law —, the concept of *progressive development* is related to “the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States”. This role is not equivalent to the *codification* of international law, which serves to designate “the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine”.⁸

The project, which is coordinated and promoted by the SSIHRL, along with more than 800 civil society organizations allied in the World Campaign in favour of the human right to peace, has characteristics of both functions. On one hand, it attempts to complete the codification of international law, but, primarily through its progressive development, it seeks to give more concrete content to what the international community has long recognized as pillars of the United Nations: peace and security, development and human rights. UN Secretary-General Kofi Annan stressed several times the close relationship between peace and security, development and human rights. On 20 October 1997 he said in Chicago,

During the cold war, peace and security tended to be defined simply in terms of military might or the balance of terror. Today, we have a greater appreciation for the non-military sources of conflict. We know that lasting peace requires a broader vision, encompassing education and literacy, health and nutrition, human rights and fundamental freedoms. We know that we cannot be secure amidst starvation. We cannot build peace without alleviating poverty. We cannot build freedom on foundations of injustice.⁹

However, the Preamble of the Charter of the United Nations contained a new vision on how to build international relations and how to address the problems of a world destroyed as a result of the great conflagration that occurred in the World War II. The Preamble is a very well conceived text that is inspired by the

⁸ Art. 15 of the Statute of the International Law Commission, doc. A/CN.4/4/Rev. 2, United Nations, New York, 1982.

⁹ Press Release SG/SM/6365 (20 Oct 1997). Available (English and Spanish) at www.un.org/news/Press/docs/1997/19971020.SGSM6365.html and www.un.org/spanish/aboutun/sg/reflexka.htm#dh (last access: December 2012).

strong determination to address the world's major problems, identifying the ends and aims around which the UN decided to join forces and to start a new international organization. Among these ends, emphasis should be put on the hope to save succeeding generations from the scourge of war. And in addition to this purpose (the absence of armed conflict), States reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of women and men and of nations large and small. They understood the necessity to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom. They pointed to the concept of *peace* in its fullest sense and provided inputs to achieve the purposes of a world that would put an end to violence. They did well, probably because they knew full well about the monstrosity of wars and how they are born. With regard to the aims, they should attained using the same open approach: the strong desire to practice tolerance and to live together in peace with one another as good neighbours, to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples.

This positive conception of peace was carried over to the Articles of the Charter and found its place in the midst of Article 1.¹⁰ In this Article, States spell out the purposes of the new entity by which nations should also strive (Article 1.4 of the Charter). The international organization was designed as a centre to implement the actions of nations in order to: (a) take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace; (b) bring about by peaceful means adjustment or settlement of international disputes or situations which might lead to a breach of the peace; (c) take other appropriate measures to strengthen universal peace; (d) achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without undue distinctions (Art. 1, paragraphs 1 to 3 of the Charter). As Wolfrum has stated, these provisions together with the Preamble show that peace is more than the absence of war and refer to an evolutionary development of international relations. It should lead to a decrease in the problems that can cause war.¹¹

¹⁰ Manfred LACHS: "Article 1, paragraph 1", in Jean-Pierre COT et Alain PELLET (dirs.): *La Charte des Nations Unies. Commentaire Article par Article*, Paris: Economica, Bruylant, 1991, p. 31.

¹¹ Cf. Bruno SIMMA *et al.* (ed.): *The Charter of the United Nations. A Commentary*, Oxford: Oxford University Press, 2002, p. 41.

In this regard, the General Assembly declared in 1949 — in a resolution entitled “Essentials of Peace” — that:

the Charter of the United Nations, the most solemn pact of peace in history, lays down basic principles necessary for an enduring peace; that disregard of these principles is primarily responsible for the continuance of international tension; and that it is urgently necessary for all Members to act in accordance with these principles in the spirit of cooperation on which the United Nations was founded¹²

It should be recalled that Clement R. Atlee, former Prime Minister of Great Britain, in his speech before the General Assembly, on 10 January 1946, stated that:

Now today, when victory has crowned our arms, we have to bring to the task of creating permanent conditions of peace the same sense of urgency, the same self-sacrifice and the same willingness to subordinate sectional interests to the common good as brought us through the crisis of war... We stress too that social justice and the best possible standards of life for all are essential factors in promoting and maintaining the peace of the world... In the purposes of the United Nations we have linked with the achievement of freedom from fear, the delivery of mankind from the peril of want... Without social justice and security there is no real foundation for peace, for it is among the socially disinherited and those who have nothing to lose that the gangster and the aggressor recruit their supporters¹³

In the *SD* peace is a universal value that in its positive conception derives a very powerful presence from its Preamble, which is based on the technique of the resolutions adopted by the General Assembly in form of Declarations of rights. The *SD* tries to counter the concept of peace that the Western culture has sought to impose on the rest of the world “from a negative and external perspective, as the mere absence of war, conflict or internal disorder, and, therefore, peace is defined by reference to its opposite State (i.e. war and conflict), ignoring the positive dimensions of peace”.¹⁴

The *SD* tries hard to disprove the narrow and negative concept of peace right from its Preamble. The 29 paragraphs identify the normative background that serves as a foundation to all rights, including Article 1, which recognizes as right-holders individuals and groups, peoples and all humankind, in the line of the resolution adopted by the General

¹² Resolution 290 (IV), 1 December 1949.

¹³ Doc. A/PV.1. Transcription of the first plenary session of the UNGA, 10 January 1946, pp. 40-43 (English-French) and 22-23 (Spanish). Available at www.un.org/Depts/dhl/landmark/pdf/a-pv1.pdf and www.un.org/Depts/dhl/spanish/landmarks/amajors.htm (last access, December 2012).

¹⁴ Celestino DEL ARENAL: “Paz y derechos humanos”, *Revista del Instituto Interamericano de Derechos Humanos*, 5 (1987-1), p. 7.

Assembly in 1978 by which it reaffirmed the “right of individuals, States and all mankind to live in peace”.¹⁵ Today this affirmation urges a concrete and specific content which gives a legal nature to the right to live in peace. To achieve this goal, international law is a tool that requires an “appropriate, uniform and non-selective implementation”. It should be particularly emphasized that the achievement of peace requires positive action to eliminate all kind of violence, whether or not armed, especially the economic, political, structural and cultural violence that feeds the emergence and the continuation of armed conflict. For this purpose, we require “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”. It is essential to come up with effective ways to meet the basic needs of all people by eliminating the economic and social inequalities, poverty and exclusion, which are the cause of structural violence that threatens peace. The *SD* also claims the need to move decisively toward an international economic order which, as noted by the General Assembly in its *Declaration on the Establishment of a New International Economic Order*, is

based on equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social systems, which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations.¹⁶

This new economic order was already recognized in Article 28 of the *Universal Declaration of Human Rights*, which states that “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”. To achieve the establishment of this new order, the *SD* is concerned by 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”.

Positive peace is inseparable from the diversity of life and the cultures where identity is the base of life as 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” (paragraph 7 of the *SD*). Finally, in the realization of peace, education is indispensable for the establishment of a universal culture of peace and that “since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed” (paragraph 8 of the *SD*).

¹⁵ Res 33/73 (*Declaration on the Preparation of Societies for Life in Peace*) adopted on 15 December 1978 by 139 votes in favour, 2 abstentions (Israel and United States of America) and no votes against.

¹⁶ Res. 3201 (S.VI) of 1 May 1974, adopted without a vote.

2. Constructing positive peace: The rights enumerated in the *Santiago Declaration*

A. General considerations

Positive peace, which does not exclude but rather completes the negative approach to peace, provides the core structure to the *SD*, as it is stated in several paragraphs of its Preamble. As Prof Celestino del Arenal has said, “it is necessary to advance not only towards the negative notion but also towards the positive notion of peace, which includes as duty holders human beings, humankind and States”.¹⁷ The concept of peoples should be also included, as the General Assembly already proclaimed that “the peoples of our planet have a sacred right to peace”.¹⁸

With regard to the Articles of the *SD*, it should be noted that its full content is provided for in section A, in which are included those rights that are part of peace as a human right (Articles 1 to 12). Often the right to peace is understood as a “synthesis right” and a “linkage for the development of human rights at the international level”.¹⁹ This is often alleged as an objection to the need to enunciate peace as a human right. However, as it has been stated by Prof Rodríguez Palop, “conceiving the right to peace as an instrumental and/or synthesis right should not be a problem, because all rights are interconnected and can be conceived as instrumental and/or synthesis rights with respect to others”.²⁰ In addition, at UNESCO, Mexico defended the need to codify the human right to peace, referring to the instrumental approach and to the important effect that the recognition of the human right to peace would have for the enjoyment of other human rights. Furthermore, “the right to peace can give new life to previous declarations, because achieving peace implies the full observance of all human rights, and peace is also performe the surest means by which they can be secured... We know now that there is no peace without freedom and justice”.²¹

¹⁷ Celestino DEL ARENAL: “Paz y derechos humanos”, *Revista del Instituto Interamericano de Derechos Humanos*, 5 (1987-I), p. 9.

¹⁸ Res 39/11 by which it adopted the *Declaration on the Right of Peoples to Peace* on 12 November 1984, with 92 votes in favour, 34 abstentions (mostly developed countries) and no votes against.

¹⁹ Carlos FERNÁNDEZ LIESA: “Derecho a la paz y jurisdicción universal: el asunto Couso”, in M.^a Isabel GARRIDO GÓMEZ (ed.): *El derecho a la paz como derecho emergente*, Barcelona: Atelier, 2011, p. 161.

²⁰ M.^a Eugenia RODRÍGUEZ PALOP: “El derecho a la paz: un cambio de paradigma”, in M.^a Eugenia RODRÍGUEZ PALOP and Ignacio CAMPOY CERVERA: *Desafíos actuales a los derechos humanos: reflexiones sobre el derecho a la paz*, Madrid: Dykinson, 2006, p. 54.

²¹ Statement by Mr M. Limón Rojas to the General Conference of UNESCO. UNESCO (1999): *Proceedings of the General Conference, Twenty-ninth session, Paris. 1997, Volume 3, Paris, 1999*, pp. 334-335.

The rights included in the *SD* cover essential fields for the achievement of the “inalienable right to a just, sustainable and lasting peace”, the legitimate right-holders of which should be, without discrimination and in accordance with civil society, the following: individuals, groups, peoples and all humankind (Art. 1.1). Therefore, the *SD* is linked to the concept of peace as a human right *in statu nascendi* in its double dimension, individual and collective, and as a synthesis, by integrating other human rights, since their effective realization depends on the implementation of others.²² In this line, the General Assembly noted in 2005 that “peace is a vital requirement for the promotion and protection of all human rights for all” and “the deep fault line that divides human society between the rich and the poor and the ever-increasing gap between the developed and developing worlds pose a major threat to global prosperity, peace and security and stability”.²³

The only difficulty with respect to the right-holders concerned humankind, which has been excluded from the catalogue of subjects in international law. In any case, civil society wanted to keep it among the right-holders because it was already recognized by the General Assembly in 1978 by reaffirming the “right of... all mankind to life in peace”.²⁴ Although the Charter of the United Nations refers to it only in its Preamble to preserve it from the scourge of war, this is not the first time that Declarations and Treaties of the United Nations have included the concept of humankind. The Preamble of the Antarctic Treaty of 1 December 1959 expressly recognizes that “it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord”. On the other hand, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967), recognized “the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes” (Preamble), and provided that “the exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind” (Article 1). Another treaty, the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979) stated that “the moon and its natural resources are the common

²² Celestino DEL ARENAL: “Paz y derechos humanos”, *Revista del Instituto Interamericano de Derechos Humanos*, 5 (1987-1), p. 15.

²³ GA Resolution 60/163 (“The promotion of peace as a prerequisite for the full enjoyment of all human rights by all”), adopted on 16 December 2005 by 116 votes in favour, 8 abstentions and 53 votes against.

²⁴ Res. 33/73 (*Declaration on the Preparation of Societies for Life in Peace*). *Cit. supra*.

heritage of mankind” and referred to the establishment of an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the moon as such exploitation is about to become feasible (Article 11.1 and 11.5). In addition, the Principles relating to remote sensing of the Earth from space, approved on 3 December 1986 by the General Assembly in its resolution 41/65, recognize (Principle XI) that:

remote sensing shall promote the protection of mankind from natural disasters. To this end, States participating in remote sensing activities that have identified processed data and analysed information in their possession that may be useful to States affected by natural disasters, or likely to be affected by impending natural disasters, shall transmit such data and information to States concerned as promptly as possible.

Also, the Convention on Biological Diversity (1992) states that the conservation of diversity is a “common concern of humankind” and that together with its sustainable use “contribute to peace for humankind” (Preamble). Finally, the international seabed area and its resources was designated as the “common heritage of mankind” in the Convention on the Law of the Sea of 1982, in the line of the resolution 2749 (XXV) adopted by the General Assembly on 17 December 1970. The International Seabed Authority is the governing organization in this field and works “for the benefit of all mankind” (Arts. 136, 137.2 and 140, 153 of the Convention of 1982).

We certainly cannot refer to mankind as a legal subject. It is a notion equivalent to that of “international community” and therefore implies the existence of a community structure in progressive construction, governed by the principle of solidarity. In addition, it is representative of the existence of collective interests and helps to formalize *ius cogens* norms and obligations of all States (*erga omnes*) toward the international community as a whole, beyond own or exclusive interests and aspirations of each State or group of them.²⁵

The clause of non-discrimination in the enjoyment of the human right to peace is stated in very broad terms, by trying to encompass the prohibited factors or grounds for distinction and discrimination, and by providing an open-ended list which includes race, lineage, 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 (Art. 1.2)

²⁵ See Manuel Díez DE VELASCO: *Instituciones de Derecho Internacional Público*, Madrid: Tecnos, 2009, 91 ff.; and Bruno SIMMA and Andreas L. PAULUS: “The ‘International Community’: Facing the Challenge of Globalization”, *European Journal of International Law*, 9 (1998), pp. 266-277.

On the other hand, the rights contained in Articles 2 to 12 confirm that the human right to peace is envisaged as a synthesis of various existing rights which should be applied by incorporating them into international human rights law so that peace *also* progresses in positive sense and not only by exclusion. Its formulation recognizes such rights to individuals (considered individually or as a group) and/or peoples.

B. *The rights of peoples*

In this case, there should not be any technical difficulties to recognize that peoples are entitled to live in peace, such as confirmed by the *Declaration on the Right of Peoples to Peace* of the General Assembly (1984).²⁶ The holders of this right are not only confined to the right of self-determination. It is a broader term, which is in the line of the Preamble of the UN Charter when it expresses the will to use the international machinery to promote the economic and social advancement of *all peoples*. Therefore, the notion included in the *SD* has a broader approach and includes, in line with the 1984 Declaration, “all the peoples of our planet”. Although it is undeniable that the emergence of the concept “people” is linked in international law to situations of domination or foreign exploitation,²⁷ the drafters of the *SD* did not proceed by retaining only this notion. It should be noted that the holders of the human right to peace also are other peoples and human communities, such as indigenous peoples or also religious, ethnic or linguistic minorities which live in one or more States. It follows that the holders of the human right to peace are not only those peoples who have become a State, but also other human communities who have not a majority population in a State. Either as peoples or as groups of people, they are communities that also have the right to peace by being also holders of other human rights.²⁸

The still predominant inter-State dimension of international law can no longer be an excuse to deny this right with regard to those other human communities who have not obtained the statehood. Therefore, we agree with judge and professor

²⁶ Whereas the Preamble refers to “all peoples”, in the first dispositive paragraph the expression used is “peoples of our planet”.

²⁷ Raymond RANJEVA: “Les peuples et les mouvements de libération nationale”, in Mohammed BEDAJOUÏ *et al.*: *Droit International. Bilan et perspectives*, vol. I, Paris: Éditions Pedone/UNESCO, 1991, p. 109.

²⁸ *Cf., inter alia*, Art. 27 of the International Covenant on Civil and Political Rights, the ILO Convention concerning Indigenous and Tribal Peoples (1989), the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (adopted by the General Assembly resolution 47/135 of 18 December 1992) and the most recent UN *Declaration on the Rights of Indigenous Peoples* (Resolution 61/295 of the General Assembly of 13 September 2007).

Cançado Trindade when — after recalling Francisco de Vitoria and his approach to *jus gentium* as a law for all, individuals and peoples as well as States, the law for “every fraction of humanity” — and supports his concurring vote in the *Moiwana v Surinam case* of the Inter-American Court of Human Rights as follows:

It is important to rescue this universalist view in the current process of humanization of international law and of interpretation of the new *jus gentium* of the XXIst century... Human beings, individually and collectively, have emerged as subjects of international law. The rights protected disclose an individual and a collective or social dimension, but it is the human beings, members of such minorities or collectivities, who are, ultimately, the holders of those rights²⁹

The *SD* recognizes thus the following rights to all peoples of our planet — like to individuals —:

- The right to live in an safe and healthy environment (Art. 3.2)
- The right to demand the effective observance of the collective security’s system established in the UN Charter (Art. 3.3)
- The right to development and to the elimination of obstacles to the realization of the right to development (Art. 4.1 and 4.2)
- The right to live in a sustainable and safe environment (Art. 4.3); the right not to be regarded as enemies by any State (Art. 5.1)
- 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 and 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 the *SD* (Art. 6). However, the *SD* didn’t accept as a component of the human right to peace the original proposal included in Art. 6 of the *Luarca Declaration*, based on the Preamble of the *Universal Declaration of Human Rights*, to incorporate the right of rebellion for the same assumptions as in the *SD* explained the right of resistance.

²⁹ Judgment of the Inter-American Court of Human Rights in the case of the *Community Moiwana v Suriname* (Preliminary Objections, Merits, Reparations and Costs) of 15 June 2005. Concurring opinion of Judge A. A. Cançado Trindade, paras. 8 and 10.

- The right to demand from all States that they proceed in a joint and coordinated manner and within a reasonable period of time to a general and complete disarmament, under comprehensive and effective international control in the line of Article 7 of the *SD*.³⁰ States shall urgently eliminate all weapons of mass destruction or of indiscriminate effect and progressively phase out their armies and foreign military bases. As a consequence, all peoples 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.³¹ As stated by the Human Rights Commission, all States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament

³⁰ With regard to nuclear weapons it should be recalled that in 1996 the International Court of Justice affirmed in relation to Art. VI of the Treaty of non proliferation of nuclear weapons (1968) that “there exists an obligation 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”. Even today, as then there “it remains without any doubt an objective of vital importance to the whole of the international community today”. UNITED NATIONS, GENERAL ASSEMBLY (1996): *Advisory Opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons*, doc. A/51/218, 15 October 1996.

³¹ As indicated in 2004 by the World Commission set up by the ILO to examine the social dimension of globalization, “it would of course be both possible and desirable to generate resources through reallocation of military expenditures to development in both industrialized and developing countries. Total world military expenditure for 2001 has been estimated at US\$ 839 billion. If the 15 largest military spenders agreed to divert just 5 per cent to ODA, this would generate US\$ 30 billion a year. This would surely make a greater contribution to global peace and security than it does through military expenditure”. WORLD COMMISSION ON THE SOCIAL DIMENSION OF GLOBALIZATION (2004): *A Fair Globalization: Creating Opportunities for All*, International Labour Organization, Geneva, 2004, para. 470, p. 105. Note, for example, that in 2011 the United States informed the UN Secretary-General that in the 2010 tax year the effective military expenditure amounted to a total of \$ 700,180 million. The report notes the enormous difference in the amounts of other great powers: the Russian Federation (about \$ 38,819 million), United Kingdom of Great Britain (approximately \$ 61.825 million between March 2010 and April 2011), Germany (about \$ 52.651 million). Cf. united nations, general assembly, *Objective information on military matters, including transparency of military expenditures. Report of the Secretary-General*, doc. A/66/117, 29 June 2011. On the other hand, in 2010 China said they had spent in 2009 approximately \$ 78.613 million for military expenses. *Vid.* UNITED NATIONS, GENERAL ASSEMBLY, *Objective information on military matters, including transparency of military expenditures. Report of the Secretary-General (Addendum)*, doc. A/65/118/Add.1, 28 September 2011. WORLD COMMISSION ON THE SOCIAL DIMENSION OF GLOBALIZATION (2004): *A Fair Globalization: Creating Opportunities for All*, International Labour Organization, Geneva, 2004, pp. 102-105, paras. 460-471.

measures are used for comprehensive development, in particular that of the developing countries.³²

- The right to access and to receive information from diverse sources without censorship in order to be protected from manipulation in favour of warlike or aggressive objectives (Art. 8.1). This is the logical antecedent of 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 and to be protected against any form of cultural violence (Art. 8.2 and 8.3).
- Finally, the *SD* emphasizes all the rights guaranteed to the indigenous people by international human rights law, particularly their territorial and cultural heritage (the right to live on their lands, to enjoy their natural resources and to the effective protection of their cultural heritage) (Art. 12.6), because in most of the cases they are human groups particularly vulnerable and deserve special protection (Art. 12.1).

C. The rights of individuals and groups. Women and peace

In accordance with the *SD* the rights that belong exclusively to individuals, individually or collectively, are the right to education on and for peace and all other human rights (Art. 2); the right to human security (Arts. 3.1 and 3.4); the right to civil disobedience and to conscientious objection, including the labour, professional and tax objection, and the right not to participate in, and to publicly denounce scientific research for the manufacture or development of arms of any kind (Arts. 5.2, 5.3, 5.5 and 5.6); in the case of members of any military or security institution, they have the right not to participate in 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, and the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms (Art. 5.4); the right to seek and to enjoy refugee and the right to voluntary return to one's country or place of origin or residence (Art. 9); the right to emigrate and to participate, individually or collectively, in the public affairs of the country in which they have their residence (Art. 10), and the inherent rights of all victims of human rights violations to seek redress in their proper terms (Art. 11).

³² Para. 4 of the res. 2002/71 ("Promotion of the right of peoples to peace") adopted by the Commission on Human Rights on 25 April 2002.

A specific provision (Art. 12) regulates certain groups in situations of specific vulnerability who deserve special protection. Among them are women (not always, but in particular situations), children, victims of enforced or involuntary disappearances, persons with diverse physical or mental functionality (a term preferred by civil society organizations against the concept used in the Convention on the Rights of Persons with Disabilities of the United Nations), elderly persons, displaced persons, migrants, minorities, refugees and indigenous peoples. The main purposes of this provision are three: (a) to 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 and the recognition of the right of persons belonging to these groups to participate in the adoption of remedial measures (Art. 12.2); (b) to emphasize situations denounced by civil society in different regions of the world, which are particularly serious for freedom, integrity and human security (the conditions and objectives of the deprivation of liberty,³³ especially in the case of minors, and the enforced disappearances of persons)³⁴ (Art. 12.4 and 5); and, particularly, (c) to manage and to promote the effective contribution of women in the realization of the human right to peace (Art. 12.3).

This is based on the recognition that the Preamble to the *SD* makes the contribution of women to peace processes and the importance of their participation in all levels of decision-making, as they have recognized both the General Assembly and the Council Security for over 30 years. Thus, Article 12.3 of the *SD* supports the participation of women at all levels of decision-making (for the prevention,

³³ As indicated by Prof Garcé, “it is absolutely essential that different countries define —and therefore adopt and maintain— crime policies that contribute to the ideal of peace”. Such criminal policies should consider some basic aspects, among them, Prof Garcé criticizes the abuse of preventive detention by saying that “in many countries the deprivation of liberty is the only answer, and in fact, preventive detention operates as an undue advancement of sentence. Accused and convicted prisoners often share the same local prison, without a minimal categorization that provides for different procedural situation. We can not forget that a defendant is innocent on trial, while a convicted has lost, for the specific case and in fair shape, the benefit of the presumption of innocence. The prisons are often populated by an unacceptable number of people incarcerated awaiting the final sentencing, often for years”. ÁLVARO GARCÉ GARCÍA Y SANTOS: “La política criminal como elemento integrante del derecho humano a la paz”, in Carmelo FALEH PÉREZ and Carlos VILLÁN DURÁN (dirs.): *Estudios sobre el derecho humano a la paz*, Madrid: Los Libros de la Catarata, 2010, pp. 242-243.

³⁴ The right of families to know what happened to the victims of enforced disappearance is central to the restoration of peace. As pointed out by the President of the NGO Federation of Associations of Families Missing in Armed Conflict, “no sustainable peace can be achieved until the families of the disappeared in armed conflicts know the truth about the fate of their loved ones. It is the duty of all civil societies to help families in this process to journey together towards rebalancing necessary for lasting peace”. JANE E. DURGOM-POWERS: “Paz sostenible tras los conflictos armados y el derecho de los familiares a información veraz sobre el destino de las personas desaparecidas”, in Carmelo FALEH PÉREZ and Carlos VILLÁN DURÁN (dirs.): *Estudios sobre el derecho humano a la paz*, Madrid: Los Libros de la Catarata, 2010, p. 219.

management and peaceful settlement of disputes, and for building, consolidating and maintaining peace after conflicts) and the increase of the representation and contribution of women in the national, regional and international institutions and mechanisms. The defence of women's unique role in the realization of the human right to peace is not the result of the conviction of their singular willingness to make peace, but rather responds to the following reasons explained by Carmen Magallón:

...often the peace initiatives promoted by women deserve the community greater confidence than those which come from the political elite. To act from exclusion has an enormous potential for change. Being strange to the patriarchal political structures, women are free to propose and implement innovative solutions to conflict. They can find their own words and try not to travel through the mistakes of men.³⁵

It should be stressed that in 1975 the General Assembly recognized “the important role women must play in the strengthening of international peace and security and in the expansion of cooperation among States”.³⁶ Eight years later, the General Assembly adopted the important *Declaration on the Participation of Women in Promoting International Peace and Cooperation*, which proclaims that “increasing participation of women in the economic, social, cultural, civil and political affairs of society will contribute to international peace and cooperation”, and also recognizes the need to adopt “special national and international measures... to increase the level of women's participation in the sphere of international relations so that women can contribute, on an equal basis, with men to national and international efforts to secure world peace”, and in this regard identifies, among other appropriate measures, “to promote an equitable representation of women in governmental and non-governmental functions”(Arts. 3, 5 and 12).³⁷

It should also be noted that resolution 1325 (2000) of the Security Council on women and peace and security reaffirmed:

the important role of women in the prevention and resolution of conflicts and in peace-building,... stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.

³⁵ Carmen MAGALLÓN: “Decidir en los procesos de paz, un derecho de hombres y mujeres. ¿Qué ha aportado la resolución 1325 del Consejo de Seguridad?”, *Papeles de relaciones ecosociales y cambio global*, 109 (2010), p. 47.

³⁶ Res. 3519 (XXX) (“Women's participation in the strengthening of international peace and security and in the struggle against colonialism, racism, racial discrimination, foreign aggression and occupation and all forms of foreign domination”), adopted by the General Assembly on 15 December 1975.

³⁷ Res. 37/63 of the General Assembly, 3 December 1982.

This resolution also urged Member States “to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict”, and expressed the “willingness to incorporate a gender perspective into peacekeeping operations”. In addition, it called on all actors involved, when negotiating and implementing peace agreements, “to adopt a gender perspective, including, *inter alia*: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.”³⁸

Subsequently, the Security Council expressed in resolution 1888 its concern about “underrepresentation of women in formal peace processes... and the lack of women as Chief or Lead peace mediators in United Nations-sponsored peace talks” and recognized that “the promotion and empowerment of women and... support for women’s organizations and networks are essential in the consolidation of peace to promote the equal and full participation of women”. This resolution provides singular attention to the sexual violence that is systematically committed against girls and women in armed conflicts worldwide. To combat this heinous phenomenon, it takes a holistic approach — which the *SD* share fully — by which, among various measures, it reaffirms the need to provide reparations to victims, urging the parties in armed conflict to combat impunity through the investigation of all allegations and prosecution of all those responsible. In addition, it encourages States to increase access to health care, psychosocial support, legal assistance and socioeconomic re-integration services for victims of sexual violence.³⁹ The widest possible recovery of the right of victims to live in peace demands, therefore, a plurality of measures that confirm the need to stimulate and develop the holistic approach to peace as a human right.

Finally, SC resolution 1889 has a broader spectrum, namely: (a) it reiterates the need for “the need for the full, equal and effective participation of women at all stages of peace processes given their vital role in the prevention and resolution of conflict and peacebuilding”, reaffirming “the key role women can play in re-establishing the fabric of recovering society”; (b) it recognizes that persistent obstacles to women’s full involvement in the prevention and resolution of conflicts and participation in post-conflict public life lead to their marginalization, which “can delay or undermine

³⁸ Res. 1325 (2000) adopted by the Security Council on 31 October 2000.

³⁹ Resolution 1888 (2009) (Women and peace and security), adopted by the Security Council on 30 September 2009.

the achievement of durable peace, security and reconciliation”; and (c) it encourages Member States in post-conflict situations “to specify in detail women and girls’ needs and priorities and design concrete strategies, in accordance with their legal systems, to address those needs and priorities, which cover *inter alia* support for greater physical security and better socio-economic conditions, through education, income generating activities, access to basic services, in particular health services, including sexual and reproductive health and reproductive rights and mental health, gender-responsive law enforcement and access to justice, as well as enhancing capacity to engage in public decision-making at all levels”.⁴⁰ Again, the Security Council confirms in this resolution the integrative approach for the elaboration of the human right to peace.

Other provisions have particular relevance and were much discussed in the various stages of the codification process carried out by the civil society organizations, such as the right to education on and for peace and all other human rights, the rights of refugees and the right to emigrate.

The first one occupies a crucial position in the *SD* that is no fortuitous. It is the first of the rights mentioned after the identification of the holders of the human right to peace, in order to achieve the goal of “unlearning war and building identities disentangled from violence” and to “lead to a new way of approaching human relationships within the framework of a culture of peace”. As stated by José Tuvilla:

It is precisely through education that societies achieve higher levels of human development, overcome prejudices and stereotypes that segregate and separate ones from each other, establish relationships based on cooperation and participation, learn and understand the diverse and plural world, develop the abilities and skills to communicate freely, promote the respect of human rights and learn strategies to resolve conflicts peacefully.⁴¹

That is largely a projection of the obligation of States parties to the Convention on the Rights of the Child (1989) to direct the education to “the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin” (Art. 29. d). The education on and for peace and all other human rights, received on equal treatment and incorporating a gender perspective, should also “generate social processes based on trust, solidarity and mutual respect”. But this is not so according to a

⁴⁰ Resolution 1889 (2009) adopted by the Security Council on 5 October 2009.

⁴¹ José TUVILLA RAYO: “El Derecho Humano a la paz en la educación: construir la cultura de la paz”, in Carmen Rosa RUEDA CASTAÑÓN and Carlos VILLÁN DURÁN (eds.): *Luarca Declaration on the Human Right to Peace*, 2nd ed., Granda-Siero: Madú, 2008, p. 343.

strict vision on the curriculum or on formal education, but as something that is permanent because, according to the *SD*, a person should be able to demand and to obtain the competences needed to participate in the creative and non-violent transformation or prevention and resolution of conflicts. In sum, contribute to a culture of peace, as proposed by Francisco Jiménez, structured by the respect for life and human dignity, the respect for human rights, love, social justice and freedom; the recovery of utopia and solidarity to work for a better world.⁴²

The other two rights can be dealt with jointly since, after all, they are manifestations of the right to freedom of movement, in connection with the right of every person to enjoy personal security and to live in a healthy and safe environment. With regard to the right to seek refuge, the lack of personal security stems from persecution originated on the grounds that have already been characterized by the 1951 Convention on the Status of Refugees (race, religion, nationality, membership of a particular social group or political opinion); but the *SD* incorporates further grounds (gender or sexual orientation, civil or any other personal status, involvement in activities to promote peace or human rights or to claim the right to conscience objection) for persecution by State or non-State agents. Moreover, the *SD* also includes those situations where there is no individualized persecution, but in which the person seeking refuge flees his/her place of origin because his/her life or freedom are threatened in situations of grave public order disturbances, such as in cases of generalized violence, foreign aggression, internal conflict or massive human rights violations. For international civil society, the common denominator in all those cases is that it would be ethically unacceptable to deny refuge to those who are under such threats to their lives or to their security. Therefore, the *SD* adds important *de lege ferenda* elements to the configuration of the right to seek refuge, some of which have already been incorporated by national legislation in the countries which have gone beyond the criteria that had been specifically identified by the 1951 Convention.⁴³

⁴² FRANCISCO JIMÉNEZ BAUTISTA: “Cultura de paz, educación y valores”, in Carmen Rosa RUEDA CASTAÑÓN and Carlos VILLÁN DURÁN (eds.): *Luarca Declaration on the Human Right to Peace*, 2nd ed., Granda-Siero: Madú, 2008, pp. 310-314.

⁴³ Cf. with regard to Spain, Arts. 3 and 4 of the Law 12/2009, of 30 October, which regulate the right to asylum and the subsidiary protection. As noted by Prof Theodor van Boven during the Congress of Santiago, “Art. 10 (Right to Emigrate and to Participate) makes quite rightly an explicit link to Art. 3 of the present Declaration which affirms the right to human security and to live in a safe and healthy environment. The present Article is a logical sequence of Art. 9 concerning the right to refugee status. Thus Art. 10 may be considered as a contribution to progressive development of international standard-setting”. In Carmelo FALEH PÉREZ and David FERNÁNDEZ PUYANA: “The International Congress on the Human Right to Peace” (Santiago de Compostela, Spain, 9 and 10 December 2010). *Report cit. supra*, pp. 39-103.

In the case of the right to emigrate, it would be appropriate to start by saying that the equivalent provision in the *Luarca Declaration* had a broader scope because it enunciated the right of everyone “to emigrate and to settle peaceably, and also to return to his/her country of origin” (Art. 8.1). However, the *SD* recognizes the right of everyone “to freedom of movement and to emigrate if their right to human security or to live in a safe and healthy environment... is seriously threatened” (Art. 10.1). It connects to the right to emigrate in individual situations in which the right to human security or to live in a safe and healthy environment is in danger. In this sense, it is more restrictive than Art. 13 of the *Universal Declaration of Human Rights*, which proclaims the right of everyone “to freedom of movement and residence within the borders of each State” and “to leave any country, including his own, and to return to his country” (Art. 13). In the *Luarca Declaration* —that was drafted exclusively by the Spanish civil society— the largest scope of *ius migrandi* was justified by the belief that mass migrations are forced migrations, caused by wars, racial or religious hatred, dictatorships, underdevelopment, natural disasters, desertification, etc. Given that they are not voluntary migrations, they do not correspond to a free and individual choice of a person to change his/her place of living and working, which has been a characteristic in human history until relatively recently.⁴⁴ Since there was not a consensus among world civil society to keep the right to emigrate in the line of the *Luarca Declaration*, it was chosen to safeguard the inalienable core of the right to emigrate, linking it with the rights recognized in Art. 3 of the *SD*: the right to human security and to live in a safe and healthy environment. In the case that these rights are seriously threatened, everyone has the right to move freely and to emigrate. Furthermore, the *SD* recognizes the right for all migrants to participate in the public affairs of the country of regular residence, which should lead to social inclusion and the eradication of social exclusion and structural violence.

3. Subjects and obligated actors

Besides some references in the Preamble, there are two main provisions of the *SD* which deal with the obligations of States and international organizations as main duty bearers and duty holders. Indeed, in accordance with Article 1.2, States are the main duty-holders for the realization of the human right to peace, and its implementation, either as a whole (collectively), either individually or as members of multilateral international organizations. However, in order to achieve the effective realization of this right, Article 13 recognizes other subjects whose subjectivity in international law has not yet been recognized or, if it has, then such recognition is only limited. With regard to this latter case — obligated subjects with limited (not full) subjectivity — Art. 13.1 identifies

⁴⁴ Ángel CHUECA SANCHO: “El contenido de la dimensión colectiva del derecho humano a la paz”, in Carmen Rosa RUEDA CASTAÑÓN and Carlos VILLÁN DURÁN (eds.): *Luarca Declaration on the Human Right to Peace*, 2nd ed., Granda-Siero: Madú, 2008, pp. 496-497.

international organizations, individuals⁴⁵ and peoples. Some of them have a degree of recognized restricted international subjectivity or very heterogeneous and uneven. On the other hand, civil society, companies and media do not have, albeit limited, recognized international law subject status. They are actors whose presence and influence in the international social field is very unequal. The international community, noted in the same provision, does not have such recognized status. According to Prof Jaume Saura, the existence of different right-holders and duty-bearers deserves a positive assessment:

It has the virtue to stress the responsibility of any subject of law in the respective level: States and international organizations can and should answer at the national and international level. Companies, individuals and other social actors, not being subjects of international law, will do it at the domestic level, except for individuals who commit crimes against peace, whose responsibility may also be claimed at the international level. This diversity of subjects and actors, with their respective degrees of responsibility, should be taken into account in the process of codification, already started.⁴⁶

Nevertheless, Article 13.2 of the *SD* assigns to States and to the United Nations the main responsibility for preserving peace and protecting the human right to peace. In connection with the latter, the UN Charter aimed to convert the new international organization in a centre for harmonizing the actions of nations in the attainment of the common ends (Art. 1.4 of the Charter). Since peace is the main purpose and the *raison d'être* for the United Nations, it should be in this framework where States should cooperate for its effective realization. These measures encompass various fields (environmental protection, construction and consolidation of peace after conflicts, planning of strategies for disaster prevention and effective prevention and protection in case of violations of human rights) and urge the strengthening and full involvement of the United Nations. Nevertheless, the *SD* includes various safeguards and precautions: the prohibition of interventions in the territory of other States, as well as military actions outside the Charter, including the so-called *preventive wars*, that qualifies as a crime against peace. Any military action outside the framework of the UN Charter, including the so-called *preventive war*, constitutes a crime against peace.

⁴⁵ In the case of individuals, it should be noted the precedent of the *Declaration on the Right to Development* (General Assembly, 1986), which states that “All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development” (Art. 2.2).

⁴⁶ Jaume SAURA ESTAPÀ: “El derecho humano a la paz en perspectiva internacional”, in M.^a Isabel GARRIDO GÓMEZ (ed.): *El derecho a la paz como derecho emergente*, Barcelona: Atelier, 2011, p. 65.

It follows that the Security Council has the fundamental responsibility to preserve international peace and security.

However, civil society urges that the composition, procedures and the working methods of the Security Council are revised so that it is fully representative of an international community that is radically different from that of 1945. Moreover, its review could allow for greater transparency in its work and an increase of significant participation by civil society and other actors. Today, international society is universal and the number of Member States of the United Nations amounts to 193. The organization is different from that created by 51 States, which signed the Charter of San Francisco in 1945. Because of its vocation and its composition, it is still universal, but the current challenges and needs are much more complex in the age of globalization. For this reason, the UN constitutive treaty, and in particular the reform of the Security Council, should be seriously addressed. In addition, the *SD* shares the affirmation by Kofi Annan who, referring to the fundamental responsibility entrusted to the Security Council in accordance with the Charter, also stated that «it is therefore of vital importance, not only to the Organization but to the world, that the Council should be equipped to carry out this responsibility and that its decisions should command worldwide respect». As stated by the Secretary-General:

...a change in the Council's composition is needed to make it more broadly representative of the international community as a whole, as well as of the geopolitical realities of today, and thereby more legitimate in the eyes of the world. Its working methods also need to be made more efficient and transparent. The Council must be not only more representative but also more able and willing to take action when action is needed⁴⁷

To reach this goal, the reform of the Security Council should meet the following principles, proposed by the High Level Panel on Threats and Challenges, so that the Council be an efficient and credible body: (a) it should increase the involvement in decision-making of those who contribute most to the United Nations; (b) it should bring into the decision-making process countries more representative of the broader membership, especially of the developing world; (c) it should not impair the effectiveness of the Security Council; and (d) it should increase the democratic and accountable nature of the body.⁴⁸

⁴⁷ UNITED NATIONS, GENERAL ASSEMBLY (2005): *In larger freedom: towards development, security and human rights for all. Report of the Secretary-General*, doc. A/59/2005, 21 March 2005, pars. 167-168, p. 42.

⁴⁸ UNITED NATIONS, GENERAL ASSEMBLY (2004): *Report of the High Level Panel on Threats, Challenges and Change. A more secure world: our shared responsibility*, doc. A/59/565, 2 December 2004, para. 249, pp. 66-67.

4. The promotion and monitoring mechanism of the human right to peace

Certainly, it should be noted that the *SD* does not limit itself to promote the codification of the human right to peace in an exercise that, as was stated, combines the codification and the progressive development of international human rights law. In 2010, during the Santiago Congress, the international civil society agreed with the initial proposition from the *Luarca Declaration* which consisted in completing the substantive section with an independent procedural mechanism that allows some degree of promotion and monitoring or supervisory control. As noted by Prof Carlos Villán, the *Luarca Declaration* was innovative because, by inspiring itself in the various working groups set up as special procedures by the former Human Rights Commission and also the current HR Council, it proposed the establishment of a working group of independent experts, elected by the General Assembly⁴⁹. This agreement remains in the *SD* and is also included in the implementation mechanism of the future declaration, which was supported by 1,795 civil society organizations world-wide at the eighteenth session of the HR Council.⁵⁰ Prof Saura also defends the convenience of establishing a monitoring mechanism as proposed by the *SD*.⁵¹

The proposed mechanism is in line with the conventional instruments (treaties) adopted by States, rather than the Declarations approved by the General Assembly. But there exist various precedents in which special committees or working groups of intergovernmental composition have been entrusted to supervise the implementation of such instruments.⁵² Among the special procedures inherited from the former Human Rights Commission and created or kept by the current HR Council, it should be noted that there are examples of thematic mandates which supervise regularly the implementation of Declarations of international human rights law adopted by the General Assembly. This is the case of the Working Group on Enforced or Involuntary Disappearances established in 1980, the mandate of which is to supervise the implementation of the *Declaration on the Protection of All Persons from Enforced Disappearance* adopted by the General Assembly on 18 December 1992. In 2004 the former Commission on Human Rights extended by consensus the WG's mandate for another three-year period. In addition, it invited the Working Group to assist States in the implementation of the

⁴⁹ Carlos VILLÁN DURÁN, (2009): “La Declaración de Luarca sobre el Derecho Humano a la Paz”, in Federico MAYOR ZARAGOZA *et al.*: *Hacia la paz desde los derechos humanos. Reflexiones sobre el derecho humano a la paz*, Bilbao: UNESCO Etxea, 2009, p. 51.

⁵⁰ Cf. UNITED NATIONS, GENERAL ASSEMBLY: *The human right to peace as part of the right of international solidarity. Amendments to the draft declaration submitted by the Advisory Committee Drafting Group*, doc. A/HRC/18/NGO/76, 12 September 2011, pp.10-11.

⁵¹ Jaume SAURA ESTAPÀ: “El derecho humano a la paz en perspectiva internacional”, in M.^a Isabel GARRIDO GÓMEZ (ed.): *El derecho a la paz como derecho emergente*, Barcelona: Atelier, 2011, p. 65.

⁵² See the examples mentioned by Prof VILLÁN DURÁN in “La Declaración de Luarca sobre el Derecho Humano a la Paz”, *loc. cit.*

Declaration and it also requested States to promote and give full effect to its provisions.⁵³ The HR Council has gone very far since, in the last extension of the mandate, it has requested States “to provide the Working Group with concrete information on the measures taken and the obstacles encountered in preventing enforced and involuntary disappearances and in giving effect to the principles set forth in the Declaration”.⁵⁴

Another example of political and institutional will to promote the respect of the fundamental rights and freedoms included in Declarations proclaimed by the General Assembly is the Working Group on Arbitrary Detention. When in 1991 the HR Commission decided to establish this working group composed of five independent experts, it entrusted the working group to investigate cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the *Universal Declaration of Human Rights* or in the relevant international legal instruments accepted by the States concerned. Over the time, the working methods of this special procedure have referred to different regulatory standards or parameters which guide the implementation of its mandate. Among these there are several resolutions adopted by the General Assembly.⁵⁵ The HR Council has also endorsed the practice and methods of this group, as showed by the latest extension of its mandate.⁵⁶

The HR Council has set up mechanisms to promote the implementation of unconventional instruments, which are the subject of an even more softer regulation than that recognized to the General Assembly resolutions. This is the case of the Working Group on the issue of human rights and transnational corporations and other business enterprises established in 2011 by the Council, again by consensus, in order to promote the dissemination and the effective global implementation of so-called “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”. These principles were presented earlier by John Ruggie, Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, who claimed that these principles were based on:

⁵³ *Vid.* para. 3.h) and 5.a) of the res. 2004/40 adopted by the Commission on 19 April 2004.

⁵⁴ Para. 8 of the res. 7/12 of the Human Rights Council.

⁵⁵ Among others, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by the General Assembly in its resolution 43/173, on 9 December 1988), the United Nations Rules for the Protection of Juveniles deprived of their Liberty (General Assembly resolution 45/113 of 14 December 1990) or the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also called “Beijing Rules”, adopted by the GA in its resolution 40/33, on November 28, 1985). *Cf.* para. 7 of the method of work reviewed and published by the Working Group in United Nations, General Assembly, *Report of the Working Group on arbitrary detention*, doc. A/HRC/16/47, 19 January 2011, Annex, pp. 21-28.

⁵⁶ In its res. 15/18, adopted without vote on 30 September 2010, the Human Rights Council invited States to take appropriate measures to ensure that their legislation, regulations and practices remain in conformity with relevant international standards and the applicable international legal instruments (para. 4).

extensive discussions with all stakeholder groups, including governments, business enterprises and associations, individuals and communities directly affected by the activities of enterprises in various parts of the world, civil society, and experts in the many areas of law and policy that the Guiding Principles touch upon.

Although they do not have the legal support of the General Assembly, the HR Council endorsed these principles and achieved the necessary agreement to set up a new mandate to promote the effective and global implementation of an instrument which cannot yet be qualified as *soft law*.⁵⁷

As previously indicated, what is most important is to reproduce again the consensus as a technique for the adoption of decisions and to gather the political and institutional will for the promotion and respect of the human right to peace by creating a monitoring mechanism in which governmental representatives are not included. In the *SD*, the civil society has considered that it is not enough to cover the substantive or material standards when these are not completed with the establishment of a promotion and monitoring mechanism. In this case, there is a clear innovation if we compare it with other Declarations previously approved by the General Assembly. Indeed, the *SD* proposes the establishment of a working group on the human right to peace (WGHRP), composed of ten people (independent experts), elected directly by the General Assembly — from a list of candidates proposed by the Member States and by civil society organizations — in order to ensure a balanced gender representation, equitable geographical distribution, the representation of the different forms of civilization and of the main legal systems of the world (Article 14 of the *SD*). The WGHRP, financed as part of the regular budget of the United Nations, shall have its seat in New York and shall hold three ordinary sessions per year, as well as any extraordinary sessions to be determined in accordance with its working methods.

The functions of the WGHRP are not subordinated to the sovereignty of States. If one reads carefully each provision of Article 15 of the *SD*, one could conclude that it will help fostering cooperation through the observance and implementation of its provisions by following the holistic approach that inspires transversely their content. It follows that the first and the most basic function is:

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;

[Art. 15.1.a)].

⁵⁷ Cf. the res. 17/4 adopted by the Human Rights Council on 16 June 2011, and UNITED NATIONS, GENERAL ASSEMBLY, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, doc. A/HRC/17/31, 21 March 2011, para. 10, p. 4.

The other functions that the Art. 15 of the *SD* attributes to WGHRP are inspired by the special procedures and have different aims:

- Functions of *protection*. The WGHRP can 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. Furthermore, it can carry out *in loco* investigations concerning violations of the human right to peace and to report to the pertinent bodies, and provide, 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. Finally, it can 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 [paragraphs b), c), d) and i)].
- Functions of *information and prevention*. The WGHRP will prepare and present to the General Assembly, the Security Council and the HR Council an annual report of its activities. In addition, the WGHRP will 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 [paragraphs e) and f)].
- Functions of *promotion and progressive development*. The *SD* also assigned to the WGHRP the task to draft an international convention on the human right to peace and the function to contribute to the elaboration of definitions and norms concerning the crime of aggression and the limits of legitimate self-defence [paragraphs g) and h)].
- *Function of self-organization*, namely the approval of the working methods for the regular functioning of the WGHRP and in particular for the adoption of decisions [paragraph j)].

5. Conclusions

The *SD* is the result of the will and the consensus obtained by the international civil society organizations, after a true, long and complex process of negotiation and consultation in order to submit to the HR Council a proposition for a draft declaration aimed at renewing international human rights law and promoting decisively its progressive development. The draft incorporates the core elements considered as necessary by the international civil society to define peace as a human right with a

double dimension, individual and collective. In addition, the draft recognizes the right of the individuals and groups, peoples and mankind to the *right to peace* but also *the right to live in peace*. The *SD* conciliates the two dimensions of peace: the *negative peace*, understood as the silence of the guns, and the *positive peace*, which include those rights belonging to holders of the right to peace. Once these rights are recognized then conflicts and violence will not find any fertile ground within or outside of States. The General Assembly declared in 2005 that “the deep fault line that divides human society between the rich and the poor and the ever-increasing gap between the developed and developing worlds pose a major threat to global prosperity, peace and security and stability”.⁵⁸

As indicated by Nastase, peace is the result of an organization process of the international interdependencies in a harmonious whole, which will ensure and protect the security and well-being of all peoples and individuals, achieved through the vigorous assertion of the common values, the establishment of appropriate means of cooperation, the peaceful settlement of disputes without the use of direct or structural violence and the training, through the education, of a state of mind which encourages the rapprochement between peoples and individuals. Peace, as a human right, should be understood in its internal and international dimension, without subdivisions because it is indivisible and should be necessarily directed to the world peace.⁵⁹ In this line, a dynamic view of the right to peace —understood beyond the strict absence of war—, requires its close connection with the right to development.⁶⁰

Taking into account these goals, Prof Alemany suggests that civil society is taking over the States in the defence and the promotion of the rights of solidarity:

⁵⁸ Para. 2 of Resolution 60/163 (“Promotion of peace as a prerequisite for the full enjoyment of all human rights for all”) adopted by the General Assembly on 16 December 2005 with 116 votes in favour, 53 votes against and 8 abstentions (14 States did not participate).

⁵⁹ Adrian NASTASE: “Le droit à la paix”, in Mohammed BEDAJOU: *Droit International. Bilan et perspectives*, vol. 2, Paris: Éditions Pedone/UNESCO, 1991, pp. 1294-1295.

⁶⁰ As stated by Manuel BECERRA RAMÍREZ, “peace and development are two concepts that are mutually conditioned: no development without peace and no peace without development. So we can think in a peace... creative, dynamic, coupled linked to the development concept. Peace and development together constitute one of the fundamental goals of humanity. But understanding the development not merely as economic development, but as a social, cultural and political development of the individual, the State and humanity. (...) International law of development is a finalist right, as is provided for a specific purpose that is the development, which is added to the general idea of peace”. Manuel BECERRA RAMÍREZ: “El derecho a la paz y el derecho internacional del desarrollo”, in VV. AA.: *Congreso internacional sobre la Paz*, vol. 1, Mexico City.: Instituto de Investigaciones Jurídicas, UNAM, 1987, pp. 13-14. This relationship between peace and development has been included in the Preamble of the *Declaration on the Right to Development*, where the General Assembly considered that “international peace and security are essential elements for the realization of the right of development” (Declaration adopted by the General Assembly on 4 December 1986, in its resolution 41/128).

Civil society has gradually taken over the States in the defence and promotion of some rights that they are reluctant to legally ensure. The human rights of the third generation are built on the values recently promoted by some NGOs and the defence of these rights has caused a huge social mobilization. Peace, cooperation in development, environmental sustainability, the defence of the common heritage of mankind and humanitarian aid are various aspects of the same claim of solidarity, which begin in the civil society and some of them devote their energies to new ways of voluntary participation. A greater sensitivity of governments would be desirable in relation to the meaning of this phenomenon, in order not to increase the distance between States and peoples, which are the real actors in the UN Charter.⁶¹

Once again, civil society has pre-empted the task of States, which failed when they tried codification at UNESCO. Nevertheless, it should be noted that at the Consultation held in Paris in 1997, hosted by UNESCO to review a draft declaration, the 117 governmental participant experts admitted that:

The commitment to peace is a general principle, in accordance with the paragraph 1 c) of the Article 38 of the Statute of the International Court of Justice, which is inherent to the human being and constitutes, together with the respect for all human rights, the foundation of the culture of peace. This principle must be recognized, respected and implemented without any discrimination, at both national and international levels.⁶²

Now the role of the HR Council and its Advisory Committee is to complete the task of codification, taking into account the legitimate aspirations of the international civil society expressed in the *SD*, which —as stated by Prof Carlos Villán— is undoubtedly the most important contribution of civil society in the ongoing official codification process.⁶³ In the first progress report, the drafting group composed of six experts of the Advisory Committee presented a draft declaration on the right of peoples to peace which includes a number of general principles on the right of individuals and peoples to peace (joining the individual and collective dimensions), some provisions which regulate both international peace and security as fundamental standards of the negative peace and peace in the positive meaning

⁶¹ Jesús María ALEMANY BRIZ: “El derecho humano a la paz”, in Carmen Rosa RUEDA CASTAÑÓN and Carlos VILLÁN DURÁN (eds.): *Luarca Declaration on the Human Right to Peace*, 2nd ed., Granda-Siero: Madú, 2008, p. 221

⁶² Carmelo FALEH PÉREZ: “El proyecto de declaración sobre el derecho humano a la paz elaborado en el seno de la UNESCO”, in Carmen Rosa RUEDA CASTAÑÓN and Carlos VILLÁN DURÁN (eds.): *Luarca Declaration on the Human Right to Peace*, 2nd ed., Granda-Siero: Madú, 2008, pp. 180 and 203.

⁶³ Carlos VILLÁN DURÁN: “Civil Society Organizations Contribution to the Human Right to Peace”, *International Journal on World Peace*, XXVIII, No. 4 (2011).

(human security, disarmament, education and training for peace, conscientious objection to military service, private military and security companies, resistance and opposition against the oppression, peacekeeping, development, environment, rights of victims and vulnerable groups, refugees and migrants) and the obligated subjects.⁶⁴ With regard to the implementation system envisaged in the *SD*, Art. 13 of the draft only invites the HR Council to set up a mechanism in order to continue the debate on the right to peace and to monitor it, as well as to present reports to the competent bodies of the United Nations. In any case, we observe the influence that the *SD*, adopted by civil society, is undoubtedly having in the work of the Advisory Committee. In fact, the draft declaration on the right to peace submitted by the Advisory Committee on 16 April 2012 to the HR Council included 85% of the standards proposed by the *Santiago Declaration*. Therefore, CSOs asked the HR Council to take into consideration the remaining 15% of standards. Furthermore, as indicated in the General Introduction, the HR Council adopted on 5 July 2012 resolution 20/15 that welcomed the important work being carried out by civil society organizations for the promotion of the right to peace and their contribution to the development of this issue. The HR Council also established an open-ended working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace on the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views and proposals.⁶⁵

Until now, the work of experts shows that there are no insurmountable legal difficulties for States to finish the codification in progress, as demanded by civil society organizations. The obstacles can be found in the political and institutional order, the fear of different States to recognize peace transformed into individual and collective rights and the strength that peace would give to multiple and just claims that peace holds inside it.

Las Palmas de Gran Canaria, 24 December 2012.

⁶⁴ Cf. UNITED NATIONS, GENERAL ASSEMBLY: *The right of peoples to peace. Progress report prepared by the drafting group of the Advisory Committee*, doc. A/HRC/AC/8/2, 12 December 2011, 9 pp. The notion of peace (positive and negative) was particularly included in the principle contained in paragraph 6 of Article 1 (principles): “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”.

⁶⁵ Resolution 20/15 (Promotion of the right to peace), adopted by the HR Council on 5 July 2012, doc. A/HRC/RES/20/15, 17 July 2012, 2 p. See full text of the resolution *infra*, Annex X.