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ARENA Human Right to Peace Workshop**

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PEACE IS ALSO A HUMAN RIGHT

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I. INTRODUCTION

Over the past years both the Asian Regional Exchange for New Alternatives (Arena) and the May 18th Foundation have played a major role in Korean political and social research in the field of peace at national and international level.

In this context, the defence of the right to peace and of human rights as an expression of the will of civil society has been a constant of these institutions. The organization in Gwangju, 2008, of the International Forum on the Human

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Right to Peace provides new opportunities to discuss in depth the concept of Peace as a Human Right.

According to paragraph 3 of the Draft Agreement/Decision adopted by the Gwangju International Peace Forum on 17 May 2007, the principal purpose of the network called temporarily *International Movement for Democratization in Asia* is “to promote regional cooperation among democracy advocates, human rights defenders and social movement activists for democratization from below based on people’s rights and empowerment vis-à-vis repeated violence and atrocities inflicted by States , as we experienced in different societies in Asia”.

The 2008 meeting in Gwangju should provide new impetus to the promotion, the strengthening, maintenance and implementation in Asia of a new civil society strategy around the *human right to peace*. The SSIHRL is honoured to contribute positively to the study and analysis of this concept together with other Asiatic human rights experts. The network created after the Gwangju International Peace Forum on 17 May 2007 is appropriate to conduct strategies that could promote the implementation of international human rights law, fundamental freedoms, rule of law, gender equality and *human right to peace* as an integrated whole. Thus, the SSIHRL advocates peace a new and emerging human right, to provide a solid basis to the culture of peace and give fresh impetus to the movement against violence and attitudes based on force, imposition and gender discrimination in Asia as well as worldwide.

II. CRISIS IN INTERNATIONAL RELATIONS

The worldwide crisis produced by the 11 September 2001 tragic events and the reaction against the terrorist attacks on the symbols of the economic, military and political powers of the United States, known by the mass media as the “war against terror”, has produced five main consequences:

Firstly, the adoption of unilateral positions in international relations by the superpower and its allies, interpreting Article 51 of the UN Charter according to national interests, in an attempt to justify on behalf of self-defence *de facto* wars of aggression, unilaterally declared without the compulsory authorization of the United Nations Security Council (Iraq, Kosovo).

Secondly, the biggest setback since 1945 to the maintenance of international standards of human rights law protection, particularly those concerning the rights to life, physical, mental or moral integrity, personal liberty and security, and the principle of non-discrimination.

Thirdly, rearmament, the arms race, nuclear proliferation, as well as multiple armed conflicts and terrorist attacks attributed to Al Qaeda network.

Fourthly, the impoverishment of the Third and Fourth Worlds and the consolidation of economic globalization inspired by the "Washington Consensus". We are inexorably moving away from the Millennium Development

Goals, which had been solemnly proclaimed by the Summits of Heads of State gathered in New York in 2000 and 2005.

And fifthly, the lack of political will of States and the resulting stagnation in the process of consolidation and legal implementation of the "rights of solidarity", which include both individual and peoples rights. These "rights of solidarity" include the human right to peace.

III. HUMAN RIGHT TO PEACE

The Charter of the United Nations agreed in 1945 that the essential purpose of the Organization is the maintenance of international peace and security. To this end, the Charter established a system of collective security articulated on the UN Security Council (Chapters VI and VII), in order to prevent and remove threats to peace, to suppress acts of aggression and other breaches of peace as well as to realise the settlement of international disputes by peaceful means in accordance with international law (Article 1.1 of the Charter). Although quite promising and technically feasible, the system of collective security proved to be ineffective throughout the Cold War and for the last 15 years has continued to be manipulated by the five States with veto power.

Despite the abundant references to peace in the United Nations Charter, the truth is that the international community has yet been unable to adopt an international instrument in which the *human right to peace* be codified as an autonomous human right in terms similar to that now known as the *human right to development*. Both the human rights to development and to peace are not only the result of the demands of international solidarity, but also of the gradual incorporation of these rights into modern international human rights law.

The three international texts that presently enshrine the *right to peace* refer exclusively to "peoples" as the sole holders of the right, while "States" are its debtors. Firstly, the *African Charter on Human and Peoples' Rights* adopted on June 26 1981, Article 23.1 states that "People are entitled to peace and security both at national and in international levels".

Secondly, the United Nations General Assembly Resolution 33/73 adopted on December 15 1978 the *Declaration on the Preparation of Societies to Live in Peace*, which reaffirms "the right of individuals, States and all mankind to live in peace "and" solemnly calls on all States "to observe the duties incumbent upon them to ensure this right"

Thirdly, the General Assembly proclaimed the *Declaration on the Right of Peoples to Peace* Resolution 39/11 on November 12, 1984 coinciding with the threat of nuclear war in the so-called "crisis of euromissiles." The Assembly solemnly proclaimed that "the peoples of our planet have a sacred right to peace" and that the "(protection) of the right of peoples to peace and (the) promotion of its implementation constitute a fundamental obligation of each State."

There is therefore no doubt that the right to peace is a *human right* and as such needs to be codified by the competent bodies of the United Nations. In order to ensure the success of official codification of the *human right to peace*, States should be inspired by the private codification of a universal declaration on the human right to peace, led by human rights specialists in close consultation with international civil society as a whole.

Inspired by this conviction, the SSIHRL started in 2005 a global discussion with experts of the Spanish civil society. At the legal level, a private codification process was initiated in Spain and concluded in 2006 with the adoption of the *Luarca Declaration on the Human Right to Peace*. At the institutional level, the challenge remains to establish the *International Observatory of the Human Right to Peace* in 2010.

IV. The Luarca Declaration on the Human Right to Peace

Private codification was initiated in Spain by national human right experts with the sponsorship of both regional Catalan and Basque Governments. The SSIHRL held extensive consultations with civil society and Spanish experts during 2005-2006, to define the content and scope of the right to peace as an emerging human right into the international human rights law.

A first Expert Meeting was held at the national level in Gernika in November-December 2005. The Agreement of Gernika established the need to initiate the private codification of the *human right to peace*, in close consultation with experts from all disciplines. The SSIHRL subsequently organised regional Expert Meetings in Oviedo (27-28 July 2006), Las Palmas de Gran Canaria (17-18 August 2006), Bilbao (15-16 September 2006), Madrid (21-22 September 2006), Barcelona (28-29 September 2006) and Seville (13-14 October 2006).

These consultations culminated in the Meeting organised in Luarca (Asturias) on 29-30 October 2006 during which a Committee of Experts drafted and adopted the *Luarca Declaration on the Human Right to Peace*. The text of the Declaration and its preliminary study in four languages, as well as the *travaux préparatoires* and a selection of the best studies submitted to the expert regional consultations, were included in the collective book edited by C.R. RUEDA CASTANON and C. VILLAN DURAN, The Luarca Declaration on the Human Right to Peace. Granda (Asturias), Madu Editions, 2007, 529 p.

The *Luarca Declaration* is composed of a Preamble made up of 21 paragraphs, 18 Articles arranged in two Parts and three Final Provisions. Part I concerns the contents of the human right to peace and is composed of two Sections: Section A ("Rights"), includes Articles 1 to 15; Section B ("Obligations") contains Article 16. Finally, Part II is devoted to the "Implementation of the Declaration" and comprises Articles 17 and 18.

A. Preamble

The Preamble to the Declaration begins by recalling the instruments of the United Nations which proclaim the universal value of peace and which constitute the foundation of any attempt to define peace as a human right. So, the Charter of the United Nations itself is cited (paragraphs 1 and 5), in particular the provisions relating to the States' obligations to settle their international disputes by peaceful means and the general prohibition to resorting to threat or use of force; the main United Nations instruments in the field of human rights (paragraph 3); and the Statute of the International Court of Justice (paragraph 9).

The Preamble also contains declarations and resolutions of different bodies which include, although not in an exhaustive way, specific aspects of what would constitute the human right to peace (paragraphs 6,7,and 8). Among these, an important precedent is the Declaration on the Preparation of Societies for Life in Peace, adopted by the General Assembly on 15 December 1978, a resolution which clearly refers to the right to peace in its individual and collective form, when it states that every nation and every human being has the inherent right to life in peace. It is also mentioned the Declaration on the Rights of All Peoples to Peace, approved by the General Assembly on 12 November 1984.

The Preamble echoes the concept of peace which pervades the whole Luarca Declaration, namely, that peace is not limited to the strict absence of armed conflict, but that it has a positive meaning, with a threefold aim: to achieve the satisfaction of the basic needs of all human beings, the elimination of all kinds of violence and the effective respect for all human rights (paragraph 2). Hence paragraph 13 stresses the need to establish a new international economic order which will eliminate the inequality, exclusion and poverty which generates structural violence incompatible with peace on both national and international levels. That new international economic order must, furthermore, be based on environmental protection (paragraph 20).

The Luarca Declaration combines "political peace", which refers to the violence of war, with "social peace", which alludes to the internal social violence in all forms which are incompatible with respect for human rights. In both cases the contents of the right to peace rest on the right of a citizen to the adoption by the State of the legislative and executive measures necessary to prevent and eradicate those forms of violence by introducing lawful pacification procedures (that is to say, procedures based on the rational use of force by means of legal mechanisms), capable of ensuring the personal and legal safety of individuals in the terms laid down by human rights. The right to an effective legal remedy or to have available the means for a peaceful settlement of disputes would form part of this right to social peace. Furthermore, the right to social peace would also have a social dimension which refers not only to what the State must or must not do, but also to what it cannot avoid doing. And what it cannot avoid is to eradicate the social and economic inequality and injustice which are at the basis of social violence (and of political violence in the form of war or terrorism). In this respect peace is connected with the right to equality, solidarity, the right

to development and the fight against extreme poverty, the protection of the environment and of cultural heritage, the obligation to protect the population when human rights abuses are massive. As it is usually the case with third-generation rights, the achievement of social peace in these terms involves the joint action of all social actors, from the individual to the State and the international community, passing through various intermediate public and private organisations.

The Luarca Declaration covers all types of violence, and points out that as the study of conflicts becomes more complex, since violence expands to include everything which, being inevitable, prevents or hinders human development, including therefore, not only direct violence (physical, verbal and psychological), but also the so-called structural violence (poverty, repression, alienation, etc.). And, finally, it must be added the concept of cultural violence to denote everything of which, in the cultural sphere, legitimises and/or promotes both direct violence and structural violence.

Moving on to other ideas, paragraph 10 of the Preamble to the Luarca Declaration describes the human right to peace as an autonomous right, with an universal vocation and intergenerational character. Furthermore, it is emphasized that peace is not only a right, but also a need of individuals and groups (paragraph 12), and that peace has been a constant aspiration throughout the history of mankind (paragraph 21). On these assumptions, the right to peace is clearly located between the so-called solidarity rights which are markedly collective and which, although containing their own elements, rest on individual rights.

Official codification of the human right to peace was tried at UNESCO in the nineties and the reasons of its failure have been meticulously studied by Prof. C. FALEH PÉREZ. In this connection, Prof. A.A. CANÇADO TRINDADE stated that, although it was generally agreed that peace was an universal value and a common good of humanity, some governmental representatives had difficulty in recognising the existence of a true human right to peace with the legal consequences that it entails. Thus, at the end of the 20th century, we found that some Governments were still not ready to assume the legal obligations arising from the formulation of that right. In his opinion, that was regrettable, although perhaps not surprising given the conflictive world in which we live. The States appear to be more worried than the human beings when they consider that what is at stake is not the welfare of the persons whom they represent and whom they are supposed to protect, but what they sense-in their often incongruous practice-as their vital interests, from their holders of power mentality.

The Honourable Douglas ROCHE, commenting on the work of UNESCO, refers to other arguments raised by the detractors of the proposal in relation to the allegedly vague content of the human right to peace. According to him, the human right to peace "is the product of a paradigm shift at the international level. Rights that focus solely on the relationship between the State and the individual are not sufficient in responding to a globalized world in which problems are no longer defined purely in national terms. The same global

circuitry that fuels transportation, information, finance and organization has also increased the power of the arms trader, the warlord, the religious fanatic, the deranged political leader, the human trafficker and the terrorist. There is, thus, a technological burden with which the other two generations of human rights were never designed to cope, and the human right to peace is an attempt to respond to the perils of the modern interconnected world. Dismissing the human right to peace as vague and declaring that it offers nothing new is an exercise that misses the mark. The human right to peace is innovative and addresses a whole swathe of new and interconnected global challenges.

The Preamble to the Luarca Declaration also echoes these observations, as to Articles 1 and 16 of the operative part, when they state that the attainment of peace is not only the responsibility of States. Although States have a fundamental responsibility in this field, other actors, including individuals themselves, international organisations and corporations, must make their contribution to the achievement of peace, in accordance with the positive meaning conferred on the concept of peace which includes the eradication of all kinds of violence (paragraph 4).

Finally, the Preamble refers to a series of principles which are developed in the operative part of the Declaration and which, although already included in other human rights instruments, acquire fresh emphasis here in the light of the aims pursued by the Declaration, such as the right of the victims of violations of human rights and infringements of international humanitarian law to justice, to the truth and to effective redress (paragraph 14); the end of impunity in relation to every military or security institution (paragraph 15); and the eradication of discrimination on grounds of sex, cultural values or religious beliefs (paragraph 17).

B Contents of the human right to peace

1. Rights

The Declaration defines the human right to peace according to the rights and obligations it proclaims. With regard to the former, it contains a long list which includes both individual and collective rights. At first sight it seems that these rights have already been included in existing instruments and, indeed, many analysts describe the human right to peace as "synthesis right".

However, not all the rights contained in the Declaration appear in other instruments either expressly or implicitly. Just to mention inter alia the right to civil disobedience and conscientious objection, the right to resist and oppose Barbary, or the right to disarmament.

On the other hand, the rights which we might consider already codified in other instruments are included here from a new, collective perspective: that of the need to attain them in order to eliminate violence and move towards peace, in view of the current situation and the challenges the world faces nowadays. Moreover, the inclusion of rights already codified in other instruments only reinforces the universality, indivisibility and interdependence of all human rights,

an idea which is also strongly present in other "solidarity rights", such as the right to development.

The Declaration gives great importance to the "right to education on peace and human rights". Its position as Article 2 is not fortuitous. It conveys the idea that peace is something which can be learnt, and that its learning must provide each individual with the tools necessary to claim the effectiveness of all the rights and obligations listed subsequently.

ARTICLE 2 reflects the spirit of the many instruments and texts of different nature elaborated at the United Nations and of regional bodies, which affirm the strong links prevailing between peace and education, advocating for the States to take measures to encourage the establishment of a culture of peace, the basis on which the right to education on peace and human rights must be settled.

The purpose of the education is defined as follows: education on this right [peace] will be linked to the education to satisfy the basic needs of all human beings, which will face up to universal and local, economic and relating to the personal and collective identity, inequalities. In this regard, an universal and local mobilisation must take place as soon as possible; one in which education on peace as education on the human right to peace teaches us to take steps to claim from the political representatives to fulfil the undertakings assumed in so many statements and from ourselves as persons we are, to put into practice the principles about which we boast.

The need to educate citizens capable of asking the fulfilment of undertakings made by the public authorities in favour of peace, is very important in the context of the Luarca Declaration. It is also a fundamental component of the need for "a new way of approaching human relationships" proposed in Article 2. At the same time, the reference to the peaceful settlement of disputes includes the need for the States to encourage the establishment of procedures to mediate in and settle disputes.

Meanwhile, the need to "generate social processes based on trust, solidarity and mutual respect" includes the concept, beloved of educators on peace, of respect for cultural diversity. Education on the human right to peace must not be implemented using only the formulations and traditions of the West and the rich northern part of the world created by white adult male human beings, but must be imbued with intercultural education and talks between civilisations and beliefs.

ARTICLE 3 of the Declaration concerns the right to human security, a term which, as the United Nations Commission on Human Security pointed out, is clearly different from "national security" and makes the human being the focus of concerns to find integrated political and institutional solutions to the problems generated by violent conflict and social and economic deprivation. The Commission on Human Security identified, in particular, six critical areas relating to conflicts and poverty which affect human security: protecting people in violent conflict; protecting and empowering people on the move, protecting

and empowering people in post-conflict situations; economic insecurity; health for human security; knowledge, skills and values.

Article 3 captures the essence of this analysis. It also includes the concept of enjoyment of a life in decent living conditions, which completes the traditional concept of right to life. The new consideration of the right to life which is fortunately finding support both in international case law and in doctrine, involves not only the prohibition of arbitrary deprivation of life or the questions which affect bioethical problems related to, for example, abortion or euthanasia, but also includes deprivation of the human right to live with dignity. This was the view expressed by the Inter-American Court of Human Rights in its judgment of 17 June 2005 in *Indigenous Community Yakye Axa v Paraguay* :

161. *“This Court has held that the right to life is a fundamental element in the American Convention, because the realisation of the remaining rights depends on the protection of the right to life. If the right to life is not respected, all the other rights disappear, because their holder dies. Because this is a fundamental right, no approach which limits it may be accepted. In essence, this right includes not only the right of every human being not to be deprived of life arbitrarily, but also the right not to be subject to conditions which prevent him leading or make it difficult for him to lead a life worthy of dignity.*

162. *One of the State's unavoidable obligations as guarantor, with the aim of protecting and ensuring the right to life, is to provide minimum living conditions consistent with human dignity and not to create conditions which make it difficult or prevent it. In that regard, the State has the obligation to adopt specific, positive measures designed to satisfy the right to a life worthy of dignity, especially in the case of persons who are vulnerable and at risk, who must be made a priority.*

The right to live in a safe and healthy environment, enshrined in ARTICLE 4 of the Declaration, has to do with certain aspects of social peace, to which we have already referred in the commentary on the Preamble, and protection against all kinds of violence. It has the special feature of referring not only to violence perpetrated by the State but also to other kinds of violence, including, therefore, terrorist acts.

The right to civil disobedience and conscientious objection for peace is the subject of regulation in ARTICLE 5, and refers both to disobedience in the military sphere (the right of the members of any military or security institution to disobey unlawful orders) and in the civil one. The latter category includes various types of activity which constitute a threat to peace, in respect of which the right to disobedience may be exercised. The innovation represented by this Article in relation to existing instruments is undeniable and has extensive scope.

Like the exercise of the human right to peace, the “civil disobedience” is a transgression which seeks the collective good. It is a transgression which in a

lawful democratic State calls for the exercise of fundamental human rights which, in some way, have been violated by current legislation. It is pointed out that every Member State of the United Nations is required to comply with the Charter and, therefore, if it fails to do so, not only must the international community respond by claiming of international responsibility, but also its citizens may claim their individual right to refuse participating in situations of war which violate basic principles of international peace and security, and the right to free development of personality. The right to conscientious objection has been recognized in the jurisprudence of the Human Rights Committee as being protected under article 18 of the International Covenant on Civil and Political Rights.

ARTICLE 6 of the Declaration concerns the right to resist and even the right to rebellion against barbarity, already proclaimed in the Preamble to Universal Declaration of Human Rights (1948). In a more up-to-date interpretation those rights must be extended to resistance against systematic violations of human rights, including the right to self-determination enshrined in Article 1 of both International Covenants on Human Rights and widely accepted by the international community.

ARTICLES 7 and 8 relate to the subject of the movement of persons. The former does so from the perspective of a person obliged to move as a consequence inter alia of war (the right to refugee status), and introduces various innovations in relation to the current international legislation on refugees. Firstly, as circumstances for obtaining refugee status it includes persecution by agents of the State or by non-State actors on grounds of race, sex, religion, nationality, membership of a particular social group or political opinion, and also enforced displacement, international or national, occasioned by any kind of armed conflict, or environmental disaster. Secondly, it includes among rights associated with refugee status the right of victims to obtain redress for the human rights' violations suffered.

Article 8 concerns the right to emigrate, to settle peacefully in the territory of another State and to participate in the public affairs of the country of habitual residence. In the formula proposed in Article 8, the individual and collective dimensions of the right to emigrate coexist. The latter is reflected in paragraph 2, which refers to the right to emigrate if the right to human security or the right to live in a secure and healthy environment are in danger or under serious threat, which in this case means enforced migration. The link between security of the individual and the movement of persons were stated in the final report of the United Nations Commission on Human Security, which suggested to investigate the feasibility of establishing a framework for international migration which would take into consideration the need to achieve a balance between the States' security and development needs and the human security of the persons who are forced to move.

ARTICLES 9 and 10 concern civil rights, firmly anchored, at least in outline, in international human rights law and the case-law of the bodies entrusted with its implementation: the right to freedom of thought, conscience and religion on the one hand and the right to an effective remedy on the other.

They are included in the Luarca Declaration because they are undeniably important in ensuring lasting peace on the firm foundations giving special attention to the rights of the victims of human rights' violations, among them the right to justice, the right to the truth and the right to obtain redress, compensation and guarantees that the violation will not be repeated.

The right to disarmament stipulated in ARTICLE 11 is a logical precondition to the enjoyment of the right to peace and is linked to the "right to political peace", which consists in protecting the individuals against war. This citizen's right not to be involved in armed conflicts, also implies a radical reversion of traditional humanitarian international law (Law of the Hague and of Geneva) as *ius in bello* whose usual conventional rules are limited to governing the methods and means used in war by protecting individuals in their position as "enemies" or contenders".

The second essential element of the right to political peace is the right to disarmament or the right of the individual to require from the State the universal abolition of armies and armaments. I. Kant stated that: "Armies represent a constant threat of war, because they generate an escalation of arms and, as a result, themselves become the cause of fresh offensives".

Article 11 does not go so far as to require the abolition of armies but it does echo those who, from different perspectives within the United Nations, have spoken of the need for disarmament and of the dangers posed by the arms race. The former Secretary General Kofi Annan stressed the need to find "a new security consensus, the first article of which must be that all are entitled to freedom from fear, and that whatever threatens one threatens all". He went on to say, "We must strive just as hard to eliminate the threat of small arms and light weapons as we do to eliminate the threat of weapons of mass destruction". In relation to the former, he said that "the accumulation and proliferation of small arms and light weapons continues to be a serious threat to peace, stability and sustainable development".

The Declaration on the Right to Development adopted by the General Assembly on 4 December 1986 reaffirms the close relationship between development and disarmament and, in Article 7, proclaims that "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 measures are used for comprehensive development, in particular that of the developing countries".

For its part, the United Nations Commission on Human Development maintained that citizens must have the opportunity to assess the priorities of the States in respect of security, and in particular the opportunity to express their views on military expenditure in relation to expenditure in priority areas which affect human security. Moreover, it proposes that the States should act with greater transparency in relation to military expenditure and armament systems.

Finally, we should point out General Comment No 14 of 1984 of the UN Human Rights Committee in relation to Article 6 (right to life) of the International Covenant on Civil and Political Rights. In paragraph 3 of that Comment, the Committee associated itself with the concern expressed by the General Assembly "at the development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all". In paragraph 6, the Committee proposes that "The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity". Finally, in paragraph 7, the Committee, in the interest of Humanity, calls upon all States, whether Parties to the Covenant or not, "to take urgent steps, unilaterally and by agreement, to rid the world of this menace".

ARTICLE 12 of the Declaration reiterates the human right to development as an individual and collective right, in accordance with the definition of contained in the 1986 Declaration on the Right to Development. It also refers to the right to the elimination of the obstacles to the realisation of the right to development, in particular the service of the foreign debt and the maintenance of an unjust international economic order which generates poverty and social exclusion. In this connection, Article 3 of the 1986 Declaration on the Right to Development formulates the States' obligation to promote a new international economic order.

Just as Article 12 acknowledges the link between peace and development, ARTICLE 13 establishes a link between peace and a sustainable environment. The close relationship between the three concepts is undeniable, and nowadays, it is impossible to claim the right to peace without taking into account that, in the words of the Secretary General, the "efforts to defeat poverty and pursue sustainable development will be in vain if environmental degradation and natural resource depletion continue unabated".

ARTICLE 14 draws attention to persons belonging to vulnerable groups, and establishes their right to the adoption of special measures in respect of their situation as victims of a particular form of violence, and their right to participate in the adoption of those measures. As a precedent for measures of this kind, we may mention those contained in the United Nations Declaration on the Elimination of Violence against Women, proclaimed by the General Assembly on 20 December 1993, which refers inter alia to the elaboration of national plans of action to promote the protection of women against all forms of violence, to promote preventive approaches, to adopt measures in the education sector to modify social and cultural patterns, etc.

ARTICLE 15 refers to the right of individuals and peoples to demand that the States actually achieve peace. Furthermore, it lists some means by which they may channel that demand: they may require the States to implement the Charter of the United Nations; denounce any act which threatens or violates the human right to peace; require objective information in case of conflict; and participate by any peaceful means in activities relating to the human right to

peace. In short, Article 15 supplements the rights contained in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, of 9 December 1998. It is also a safeguard against possible attacks on freedom of expression, which must be exercised in accordance with the current international law. Thus it refers, in paragraph 1, to compliance with the rules of international human rights law and international humanitarian law.

2. Obligations

The Luarca Declaration considers the question of obligations in relation to the human rights to peace in ARTICLE 16. Although the States have the fundamental responsibility and duty to protect, promote and implement all human rights, including the human right to peace, individuals, groups and other elements of society also have duties and obligations. This is proclaimed by the Preamble to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Human Rights and Fundamental Freedoms, when it recognises "the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms".

Moreover, Article 18 of that Declaration provides:

"2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized".

The UN Declaration on the Right to Development also contains a provision on responsibility other than that of the State. It is stated in Article 2.2: 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.

Paragraphs 2 and 3 of Article 16 of the Luarca Declaration include what is known as "the collective international responsibility to protect". The responsibility to protect, in the words of the Secretary General, "lies, first and

foremost, with each individual State, whose primary *raison d'être* and duty is to protect its population. However, if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations. When such methods appear insufficient, the Security Council may out of necessity decide to take action under the Charter of the United Nations".

Paragraphs 4 to 7 of Article 16 of the Luarca Declaration are based *inter alia* on Paragraph 9 of the United Nations Millennium Declaration (2000), which includes an undertaking "to make the United Nations more effective in maintaining peace and security by giving it the resources and tools it needs for conflict prevention, peaceful resolution of disputes, peace-keeping, post-conflict peace-building and reconstruction".

The High-Level Panel on Threats, Challenges and Change, appointed by the Secretary General, stated in its report that the Charter, rightly applied, constitutes the appropriate legal framework to act in every situation in which to protect from a threat to peace and security. It also proposed the establishment of criteria to recognize Security Council intervention as lawful:

204. The effectiveness of the global collective security system, as any other legal order, depends ultimately not only on the legality of decisions, but also on the common perception of their legitimacy — their being made on solid evidentiary grounds, and for the right reasons, morally as well as legally.

(...) in deciding whether or not to authorize the use of force, the Council should adopt and systematically address a set of agreed guidelines, going directly not to whether force *can* legally be used but whether, as a matter of good conscience and good sense, it *should* be.

(...)

207. In considering whether to authorize or endorse the use of military force, the Security Council should always address — whatever other considerations it may take into account — at least the following five basic criteria of legitimacy:

- a) Seriousness of threat (...)
- b) Proper purpose (...)
- c) Last resort (...)
- d) Proportional means (...)
- e) Balance of consequences."

The Secretary General endorsed these proposals and said that "by undertaking to make the case for military action in this way, the Council would add transparency to its deliberations and make its decisions more likely to be respected, by both Governments and world public opinion".

Finally, paragraphs 5-7 of Article 16, inspired by the negative precedent of Iraq, confirm the existing international law in the sense that any unilateral

military intervention, without the previous authorisation of the Security Council, constitutes a very serious violation of the purposes and principles of the Charter of the United Nations, indeed a crime against peace within the meaning of the Nuremberg Tribunal. Moreover, the authority of the Security Council can only be enhanced at international level if its composition is expanded to become more democratic, its working methods are transparent and civil society is allowed to participate into its work.

V. The international phase of the private codification

Taking into account the holistic dimension of the Luarca Declaration on the Human Right to Peace, the SSIHRL is convinced that the Declaration represents genuine aspirations of the society and the people of Spain to establish the foundations for a new society based on the universal value of peace.

Since the adoption of the Luarca Declaration (30 October 2006), the SSIHRL is conducting a worldwide campaign of three years (2007-2009) to promote human right to peace through the organization of expert meetings with the support of civil society and NGO in all regions of the world. In 2007 expert meetings were held in Mexico, Colombia, Venezuela, Dominican Republic, Santa Fe-USA-, Addis Ababa, Nairobi and Washington. In 2008 the SSIHRL has co-organized with other NGO expert meetings in New York, Geneva, Dakar, Rome and today in Gwangju (Republic of Korea)

Additional regional expert meetings on the human right to peace will be organised in the coming months and years with the sponsorship of the regional Governments of Catalonia and Basque Country in Spain, at the following locations: Argentina, Brazil, Geneva, Uruguay and Paris; Africa (Francophone countries of Central Africa, Arab countries of Northern Africa, Southern Africa), Asia (countries of South Asia, East Asia and Central Asia) and Europe (Bosnia and Herzegovina, Azherbaiyan and Geneva).

The world campaign will culminate in February 2010 with the organization of a NGO World Conference in Geneva on the human right to peace. The Conference will be invited to discuss and eventually adopt a final draft of Universal Declaration on Human Right to Peace. The final draft should reflect the aspirations of the international civil society as a whole. Thus, the project initially approved in Luarca will be enriched with new regional inputs, responding to different cultural sensitivities.

Once adopted the Declaration by the NGO Conference, the SSIHRL and its NGO partners will submit it to the competent United Nations human rights bodies to urge Member States to start the official codification of a draft universal declaration on the human right to peace on the basis of the draft submitted by the international civil society. The SSIHRL also undertakes to accompany the process of official codification within the United Nations, from the Human Rights Council to the General Assembly and eventual expert bodies.

The SSIHRL is aware that the final decision concerning the official codification belongs to the United Nations Member States. But the SSIHRL will promote before the relevant United Nations codification bodies the draft declaration adopted by the international civil society. Besides, the SSIHRL is convinced that the will of the people in achieving a just, sustainable and lasting peace, will prevail sooner than later in the international relations.

Given the difficulties expected to hamper international codification of human right to peace, the SSIHRL has designed a four-point strategy to increase the political will of States in favour of the codification:

Firstly, the SSIHRL has established a global platform of NGO that support the need for international codification of the human right to peace. Thus, recent written statements submitted to the Human Rights Council, have been co-signed by a hundred NGO around the world with consultative status with the ECOSOC. In these statements the international civil society reiterated the need to codify the human right to peace.

Secondly, the SSIHRL and its NGO partners are present at all sessions of the Human Rights Council to submit written and oral statements in which the international community is informed on progress performed within the world campaign for the official codification of the human right to peace.

Thirdly, the SSIHRL and its partners organize parallel meetings during the Human Rights Council's sessions, in which international experts are invited to discuss specific rights that are part of the human right to peace (development, disarmament, fight against extreme poverty, gender approach, education on peace and human rights) before a selected audience, composed of international actors attending the Human Rights Council's sessions (States, international organizations, NGO and other international civil society's organisations).

And fourthly, the SSIHRL expects to increase the awareness of the need of international codification at the Human Rights Council. In this sense, the SSIHRL encouraged in November 2007 the establishment in Geneva of the Group of States Friends of the codification process of the human right to peace. Senegal and Malaysia were the first States to formally join the Group. We hope that the Republic of Korea will soon join the Group and support the international initiative in favour of the human right to peace's codification.

VI. IMPLEMENTATION OF THE HUMAN RIGHT TO PEACE

Usually, the United Nations declarations in the field of human rights do not include the establishment of mechanisms to monitor their implementation. This task has been traditionally left to the core treaties dealing with fundamental human rights.

However, the Luarca Declaration represents an innovation in this respect, since it proposes the constitution of a Working Group on the Human Right to

Peace, composed of 10 independent experts selected by the General Assembly.

There are some precedents of bodies which have certain similarities with the proposed Working Group in the Special Committee on the implementation of the Declaration on the granting of Independence to Colonial Countries and Peoples, set up by the General Assembly in 1961 to promote the implementation of the Declaration on the granting of Independence to Colonial Countries and Peoples [resolution 1514 (XV)]. However, the composition of this Committee is inter-governmental.

The inter-governmental composition also prevailed with other subsidiary human rights protection bodies set up by the General Assembly, namely, the Special Committee against Apartheid (1962-1995); the United Nations Council for Namibia (South West Africa) (1967-1990); the Special Committee to investigate Israeli practices affecting the human rights of the population of the occupied territories, established in 1968 and still working; or the Group of Governmental Experts on International Cooperation to avert new flows of Refugees (1981-1982).

The proposed Working Group made up of independent experts and not governmental experts, finds its inspiration in working groups established by resolutions of the former Commission on Human Rights (now the Human Rights Council) and its late Sub-Commission on the Promotion and Protection of Human Rights, to monitor situations e.g. relating to arbitrary detention, enforced disappearances, minorities or mercenary activities.

As regards to its composition, it is envisaged that the Working Group on the Human Right to Peace will be made up of 10 members to be selected according to certain criteria which recall the working groups of the former Commission on Human Right or, even, the bodies set up in human rights treaties (Committees), such as competence, impartiality and integrity, equitable geographical distribution and balanced gender representation. The selection of members by secret ballot of the General Assembly is similar to that of experts members of treaties bodies who are elected by the assembly of States which are Parties to each treaty.

Finally, Article 18 of the Declaration contains a long list of functions entrusted to the Working Group on the Human Right to Peace which may be classified as functions to promote, to protect and to inform. Among the first of these, formulated in very broad terms, it is the competence "to promote worldwide observance and awareness of the human right to peace", and to prepare a draft international convention which will include the human right to peace. Among the protection activity, it is the competence to gather, assemble and respond to any information on matters relating to the implementation of the Declaration, and to address recommendations and appeals to States in accordance with the information available to it. Finally, among the information functions, the Working Group should have the competence to submit *ad hoc* reports to the General Assembly, the Security Council or the Human Rights Council in the event of an imminent threat to or serious violation of the human

right to peace, and to submit an annual report of its activities to those bodies; also, to submit to the relevant international criminal courts or tribunals information about any situation in which it appears that violations of this Declaration which fall within the jurisdiction of those courts or tribunals.

Since the official codification is uncertain, the international civil society should be soon provided with its own monitoring body to promote compliance of the States with the human right to peace. With the support of the 2010 NGO World Conference, the SSIHRL will promote the establishment of the *International Observatory of the Human Right to Peace* as a permanent institutional mechanism. The new non-governmental organization will conduct studies in the field; prepare reports on situations of grave violations of the human right to peace, which will be submitted to the relevant bodies of the United Nations; and will develop indicators to measure the compliance degree of this right by States. The applicable standards will be those contained in the Universal Declaration on the Human Right to Peace that will be adopted in 2010 by the NGO World Conference.

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