

Spanish Society for the International Human Rights Law
Société Espagnole pour le Droit International des Droits Humains

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The right of peoples to peace

Analytic report

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1. Introduction

On 8-12 August 2011, the meeting room of the Alliance of Civilizations (Room XX) at the Palais des Nations (Geneva) hosted the seventh session of the Human Rights Council Advisory Committee. According to the programme of work, the topics main covered were: the right to food, the promotion of human rights and fundamental freedoms through a better understanding of traditional values of humankind, human rights and international solidarity, promotion of the right of peoples to peace and the enhancement of international cooperation in the field of human rights.

2. Background on the right of peoples to peace

The Human Rights Council has been working since 2008 on the **promotion of the right of peoples to peace**. On 17 June 2010 it adopted resolution 14/3 which explicitly recognized "... the important work being carried out by civil society organizations for the promotion of the right of peoples to peace and the codification of that right"¹; and "supported the need to further promote the realization of the right of peoples to peace". In that regard it requested "the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace, and to report on the progress thereon to the Council at its seventeenth session"².

On 17 June 2011, the HR Council adopted resolution 17/16 by which it "takes note of the progress report of the HRC Advisory Committee on the right of peoples to peace (A/HRC/17/39)..." and it "supports the need to further promote the realization of the right of peoples to peace and, in that regard, requests the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to present a draft declaration on the right of peoples to peace, and to report on progress thereon to the Council at its twentieth session" (in June 2012).

At its seventh session, the *drafting group* submitted the **progress report on the right of peoples to peace**, doc. A/HRC/AC/7/3 of 19 July 2011. After debate within the Advisory Committee, the draft recommendation contained in document A/HRC/AC/7/L.3 was approved without a vote on 12 August 2011 with the sponsorship of the following AC members: Ms Laurence Boisson de Chazournes (France), Mr. Shiqiu Chen (China), Mr. Wolfgang Stefan Heinz (Germany), Mr. Ntundurugu Alfred Karokora (Uganda), Mr. Vladimir Kartashkin (Russian Federation), Mr. Obiora Chinedu Okafor (Nigeria), Ms Anantonia Reyes Prado (Guatemala), Mr. Shigeki Sakamoto (Japan), Mr. Dheerujall

¹Last preambular paragraph of the res. 14/3 cit.

²Ibidem *id.*, operative § 15.

Seetulsingh (Mauritius), Mr. Ahmer Bilal Soofi (Pakistan), Mr. Halima Embarek Warzazi (Morocco), Mr. Jean Ziegler (Switzerland) and Ms Mona Zulfikar (Egypt).

Recommendation 7/3 reaffirmed the composition of the *drafting group* as follows: Mrs. Mona Zulfikar (Egypt, Chairperson), Mr Wolfgang Stefan Heinz (Germany, Rapporteur), Mr. Miguel D'Escoto Brockmann (Nicaragua), Mrs. Chinsug Chung (Korea), Mr. Latif Huseynov (Azerbaijan) and Mr. Shigeki Sakamoto (Japan).

Recommendation 7/3 *took note* of the second progress report submitted by the drafting group to the Advisory Committee at its seventh session (A/HRC/AC/7/3) (paragraph 1); *welcomed* the responses received to the questionnaire sent out in April 2011, and the discussions and statements made during its seventh session (paragraph 2); *welcomed* initiatives by civil society to organize discussions on progress reports of the Advisory Committee with Member States and academic experts (paragraph 3); *encouraged* the various stakeholders to contribute to the work under way (paragraph 4); *requested* the drafting group to submit to the eighth session of the Committee a draft declaration on the right of peoples to peace revised in the light of comments received and discussions held at the seventh session of the Advisory Committee (paragraph 5) and *requested* the Office of the United Nations High Commissioner for Human Rights to provide the drafting group with all the assistance necessary to enable it to accomplish its task (paragraph 6).

The participation of civil society in the general debate of the Advisory Committee on the right of peoples to peace was particularly relevant, highlighting the presentation of the joint written statement entitled "Amendments to the draft Declaration on the Right of Peoples to Peace submitted by the Advisory Committee drafting group"(A/HRC/AC/7/NGO/3 and Corr. 1, 3 August, 2011). It was prepared by the SSIHRL and the IOHRP and supported by 778 civil society organizations.

In the general debate other CSO also delivered oral statements on the human right to peace.

3. General debate on the right of peoples to peace.

On 8 August 2011, the 7th session of the Advisory Committee was opened by the President of the Human Rights Council, President of the Advisory Committee and the Deputy High Commissioner for Human Rights of the United Nations.

Mrs. Laura Dupuy, President of the Human Rights Council and Permanent Representative of the Oriental Republic of Uruguay before the United Nations, stressed that the safety, peace, democracy, development and human rights are interlinked and mutually reinforcing, and that without peace there can not fully enjoy human rights. He added that it

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was necessary to be careful with the concepts used in the draft Declaration on the right of peoples to peace and that the concepts of national security and human security are very closely linked among them³.

The same day in the afternoon session the Advisory Committee examined the issue of the draft declaration on the right of peoples to peace, in the light of the second report progress and the first draft declaration prepared by the *drafting group*. The draft declaration was presented by **Mr. Wolfgang Stefan Heinz** (Rapporteur) and **Ms. Mona Zulficar** (Chairperson).

Mr. Heinz (Germany) summarized the main developments since the last session of the AC held in January 2011, namely, *inter alia*: presentation of the Advisory Committee's revised progress report on the right of peoples to peace to the Human Rights Council, in its 17th session; the adoption of resolution 17/16 on the right of peoples to peace; sending the questionnaire by OHCHR to all international stakeholders and the participation of several AC members in two consultations with experts on the human right to peace organized by the SSIHRL and the World Council of Churches (WCC). He announced the intention of the SSIHRL to continue with the organization of other consultations with Member states pertaining to various regional groups within the United Nations.

He indicated that the draft Declaration on the right of peoples to peace elaborated by the drafting group is composed of 13 normative articles and only one on obligations and implementation. He stressed that in regards to the first progress report, it now includes two new standards, one on freedom of thought, conscience, expression, and religion (article 10) and another on refugees and migrants (article 13). Furthermore, at the beginning, the draft Declaration refers to the right of peoples to peace, but subsequently uses the language of the "human right to peace" by recognizing it both individual and collective dimension of the right to peace.

He stressed that the basic approach was to keep the Declaration relatively short and succinct rather than adding many more human rights as elements of a positive peace. He distinguished between standards related to international peace and security as core standards (elements of negative peace, absence of violence), and the areas of peace education, development, the environment, victims and vulnerable groups as elements of a positive peace. Finally, he pointed out that the last article of the draft Declaration proposes a mechanism of follow-up of the human right to peace⁴.

Mrs. Zulficar (Egypt) welcomed the work performed by the Rapporteur and the members of the drafting group. She also acknowledged the value of inputs received from

³Vid. el texto completo de su declaración en el Anexo I.

⁴Vid. el texto completo de su declaración en el Anexo II.

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those international actors whose had responded to the questionnaire on the right of peoples to peace, and particularly acknowledged the work done by NGOs over the past six years in the codification process of human right to peace. She noted that there is currently an international debate in academia and governments on the human right to peace, and foresees that it will be eventually codified because this right is part of the core of human rights. She added that the three pillars of the Charter of the United Nations are peace and security, human rights and development.

Mrs. Zulficar showed the availability of the drafting group to continue working openly with all international players and invited all States and civil society organizations to collaborate with them. He stressed that individuals may become holders of the right to peace, and cited the participation of Egyptian citizens in the peaceful demonstrations that have taken place in recent months.

Finally, Mrs. Zulficar noted that the inclusion of a mechanism of monitoring and implementation in the draft declaration had been discussed within the drafting group and it was still an open question. However, he said that they would propose a mechanism in order to implement the human right to peace in all parts of the world.

In the subsequent discussion several members of the AC showed their reservations about the appropriateness of including an enforcement mechanism in the draft Declaration. Thus, **Mr. Dheerujall Seetulsingh** (Mauritius) said that States are the main holders and debtors of the right to peace. In addition, he showed his reservations to article 14 on the mechanism of implementation contained in the draft Declaration, since according to him, such mechanisms can be only established in the context of international treaties and that the lack of consensus on this issue at the Human Rights Council could hinder its adoption. He recommended that priority should be to define the content of the right to peace.

In continuation, **Mr. Ahmer Bilal Soofi** (Pakistan) congratulated the drafting group for the work done and acknowledged he been unable to follow this issue. However, he openly raised the following issues:

First, he asked the group whether we were facing a constitutive or declarative document, whether its purpose was to reaffirm the existence of the right to peace or on the contrary, to create a new right. The only precedent on the right human right to peace was the Declaration on the right of peoples to peace approved by the General Assembly in 1984.

Second, he expressed that the draft Declaration intends to regulate the relationship between States, as well as, between States and individuals;

Third, he considered that many of the rights included in the draft Declaration are already regulated under other international treaties and the creation of a mechanism of monitoring and enforcement, as proposed, would invade powers of other fora or international human rights instruments, namely: the Conference on Disarmament, the International Criminal Court, the International Covenant on Civil and Political Rights, the Convention on the Status of Refugees or the international law of the environment.

In his view, the draft Declaration should be considered a Charter for Peace and/or a political document, rather than a regulatory instrument. He also indicated that the main holders of human rights are individuals and that they can claim their rights only through the courts (Art. 2.6 of the draft Declaration). Finally, he proposed that the article on private military and security companies should be included in the section on duties and responsibilities of States.

Mr. Shigeki Sakamoto (Japan) affirmed that the Human Rights Council and its Advisory Committee were the competent bodies to examine the right to peace in the light of article 28 of the Universal Declaration of Human Rights (UDHR), 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".

He lamented that there is little debate on the conditions in which international human rights law can be realized and focuses on issues that are primarily a matter of State to State relations, in other words global order. He recalled that the celebrated Universal Declaration of Human Rights co-existed with colonialism and was adopted at the time when most Asian and African states were under colonial rule. International society adopted the provision in Article 28. Therefore, international society tried to break down the situation by adopting this article.

Even authoritarian governments have had to come to terms with international human rights law and internalize some of its visions and concerns. Any State flagrantly violating international human rights law stands to be shamed before the international community of States. This can be seen from recent developments in Egypt and other Arab countries, because they were subjected to harsh criticism for their use of force against peaceful protestors. He wished that the draft could appropriately cover this issue as a constituent for peace⁵.

Mr. Vladimir Kartashkin (Russian Federation) considered that what was missing in this Declaration was a more practical approach, as the threat of war not only has not diminished in the world, but has even increased since the adoption of the Declaration on the right of peoples to peace in 1984. States should be obligated to reduce their spending on

⁵Vid. el texto completo de la declaración en el Anexo III.

military affairs, since according to him, it is understandable that there are so many human beings living below the line of poverty and hunger continues to spread throughout Africa, while the States continue spending so much money on weapons. He proposed including an article on the obligation of States to disarm and another on the right of every individual to refuse to join the armed forces. He highlighted that the right to peace is one of the most important rights of the third generation and that an article introducing an innovative monitoring and enforcement mechanism should be included in the draft Declaration.

Mr. Shiqiu Chen (China) asked about the most appropriate mechanism to implement the Declaration and recommended to include an article on this subject. He considered that the most serious threat to the right to peace is war itself, and cited the lethal effects on the civilian population during the First and Second World Wars. The most important objective of the right to peace is to prevent war.

Another serious threat to the right to peace is terrorism. He added that article 14 on obligations and implementation of the draft Declaration should include a paragraph on the obligation of States to settle their international disputes peacefully and the prohibition of the use or threat of force and the resort to war. He considered that other important issues to be considered by the draft Declaration are education and the prohibition of propaganda for war.

Mr. Obiora Chinedu Okafor (Nigeria) showed his general support for the structure and content of the draft Declaration prepared by the drafting group. He considered that the overlapping of the different international instruments is inevitable in the field of international human rights law. He suggested that some standards should be more accurate in the identification of their contents, in case we want to bring cases to the courts. He said that Human Rights Council is the forum to discuss the codification of the right to peace. He wondered whether it was appropriate to include some human rights standards in the draft Declaration, such as, freedom of opinion, the right to development or the right of refugees. He recommended the creation of a system of monitoring and enforcement through existing mechanisms, such as the Universal Periodical Review.

Mrs. Laurence Boisson de Chazournes (France) stressed that the legality of the right to peace should be affirmed in the light of the Charter of the United Nations (Article 2.4). In particular, it should include a section on the obligation of States to settle their international disputes by peaceful means. The relationship between peace and respect of all human rights is very close. Thus, the breach of human rights is a constant source of conflict in the world. Therefore, States are obliged to respect all human rights of all persons to promote the right to peace. She referred to article 28 of the UDHR as the fundamental standard to achieve social justice and promote peace, understood it in a positive sense. She showed her doubts about the need of an enforcement mechanism, because according to her,

the best way to implement the right to peace is through respect of human rights and consequently, the existing mechanism on human rights.

In continuation, **Mr. José Luis Gómez del Prado** (Canada/Spain), member of the UN Working Group on the use of mercenaries, showed his interest in the codification process of the human right to peace, which had culminated with the adoption of the *Santiago Declaration on the Human Right to Peace* (10 December 2010).

Despite the generous wordings enshrined in the UN Charter, wars have not only continued taking other forms besides battles with clear front lines between two countries, but are presently being outsourced to the private sector.

He proposed that article 6.1 of the draft Declaration (private military and security companies) should be amended by introducing in its second sentence the words “In other cases”, before “States...”.

He also proposed that Article 14 on the obligations of the draft declaration should define more clearly the obligations of all States and other international actors in order to effectively realizing the human right to peace. In this respect, he proposed to return to article 13 of the Santiago Declaration, because it addresses key issues that the drafting group has not dealt with, namely: reform of the Security Council, strengthening the role of the General Assembly on issues of international peace and security, effective implementation of the Programme of Action for a Culture of Peace, the prohibition of preventive war or strengthening the role of international civil society in the United Nations, among others⁶.

The representative of the **United States of America** stressed that although her country had consistently voted against the resolutions on the right to peace, their will was to continue a constructive and open dialogue with Mr. Heinz and representatives of civil society. The United States upholds international peace as an ideal and a fundamental objective.

Nevertheless, they showed their concerns about many of the report's proposed standards, namely: it inappropriately assigns human rights to groups or "peoples", rather than to individuals; it attempts to treat issues addressed in other areas.

The United States therefore continues to question the value of working toward a declaration on the "right" of peoples to peace. According to the speaker, this proposed right is neither recognized nor defined in any universal, binding instrument, and its putative parameters would be entirely unclear. All resolutions on this topic in UN bodies, including

⁶Vid. el texto completo de la declaración (en inglés) en el Anexo IV.

the General Assembly, the Commission on Human Rights, and the Human Rights Council, have been adopted only against significant numbers of dissenting or abstaining votes.

Finally, she proposed to those civil society organizations and delegations that support the right to peace initiative that these efforts would be far better spent seeking to implement many of the worthy goals they have enumerated within the right to peace through existing mechanisms⁷.

Ms Maysa Ureña, Counsellor of the Permanent Mission of Bolivia before the United Nations, said that the Constitution of her country recognizes that Bolivia is a pacifist state that promotes the culture of peace and the right to peace, as well as, cooperation among peoples of the region and the world. She said that her country has been a traditional co-sponsor of the resolution on the right of peoples to peace and has responded to the questionnaire received by the Secretariat. She added that they give a high importance to the progressive development of human rights. For this reason they support the preparation of a Declaration on the right of peoples to peace.

As for the draft Declaration she stressed their concern about the non-reference to indigenous peoples not only in article 12, but also in other articles of the text. She pointed out that they would support the establishment of a special procedure for the respective monitor in the field of human rights⁸.

Mr. Carlos Villán Durán (Spain), President of the SSIHRL, made his oral statement on behalf of the International Association of Peace Messenger Cities, the SSIHRL, the IOHRP and 778 civil society organisations around the world, which endorsed the joint written statement entitled "Amendments to the draft Declaration on the Right of Peoples to Peace, submitted by the Advisory Committee drafting group". It has circulated as an official document of the session (A/ HRC/AC/7/NGO/3 and Corr 1).

He stressed that the Drafting Group's progress report (doc. A/HRC/AC/7/3) affirmed in paragraph 6 of the report that "...the draft declaration refers to the right of peoples to peace, but subsequently uses the language of the "human right to peace", which was found to be more appropriate".

He drew the attention to the Advisory Committee article 14 of the draft declaration, entitled "Obligations and Implementation". According to the speaker, this article should be divided into three Articles, namely: art. 13 ("Obligations for the realization of the human right to peace", 14 ("Establishment of the Working Group on the Human Right to Peace")

⁷Vid. el texto completo de la declaración (en inglés) en el Anexo V.

⁸Vid. el texto completo de la declaración en el Anexo VI.

and article 16 ("Functions of the Working Group") of the *Santiago Declaration on the Human Rights to Peace*, of 10 December 2010.

In regards to paragraph 7 of the drafting group's report, in the line with article 14.5 of the draft Declaration, only proposes that the Human Rights Council sets up a mechanism of follow-up similar to the Forum on Minorities or the Expert Mechanism on the Rights of Indigenous Peoples. In his opinion, these fora are not appropriate models because they have not recognized functions of monitoring.

On the other hand, the system of special procedures of the Human Rights Council provides abundant examples of extra-conventional mechanisms set up for the protection of human rights. It has also assumed functions of implementation of several declarations adopted by the General Assembly, namely: torture, enforced disappearance, human rights defenders, or violence against women.

In the case of the human right to peace, the General Assembly should set up a new special procedure to ensure the promotion and protection of the human right to peace, as defined in the Declaration to be approved by the General Assembly. Its functions, which are described in article 15 of the Santiago Declaration, reproduce the best practices of the special procedures of the Human Rights Council⁹.

Mr. Juan Antonio Quintanilla, Counsellor of the Permanent Mission of Cuba before the United Nations, thanked the Advisory Committee for the work done on the right of peoples to peace, and in particular to the drafting group for elaborating the draft Declaration. Cuba gives great importance to peace as an essential condition for the enjoyment of human rights, above all the right to life. Peace is a prerequisite for the promotion and protection of all human rights for all.

The content of the right of peoples to peace includes the reaffirmation of the obligation of all States to settle their international disputes by peaceful means and not to endanger international security. He recalled that the first article common to the International Covenants on Human Rights states that all peoples have the right to self-determination of peoples, by virtue of which they can freely determine their political status and pursue their economic, social and cultural development.

He stressed that the rules of international law regulate the obligation of all States to refrain in their international relationships from the use or threat of force against the territorial integrity or political independence of any State, or any other manner inconsistent with the purposes of the United Nations.

⁹Vid. el texto completo de esta declaración oral en el Anexo VII.

In regards to the practical content of the right of peoples to peace, he agreed with several of areas identified in the draft Declaration, namely: development, disarmament and the environment. However, other aspects deserve a more detailed review and analysis. For example, article 2 on human security, and in particular paragraph 3, may lead to misinterpretation and association with the "responsibility to protect". He added that other issues, such as responsibility or accountability and the International Court of Justice, should also deserve further reflection. Moreover, article 10 on freedom of thought, conscience, expression and religion, seems to be isolated in the draft declaration¹⁰.

Mr. Alfred de Zayas (USA), representative in Geneva for the International Society for Human Rights, congratulated the Drafting Group for its draft Declaration. However, he invited the Advisory Committee to consider the following amendments to the draft Declaration, namely: to change the title for draft "Declaration on the Human Right to Peace"; to complement the Preamble in the light of the preamble of the Santiago Declaration on the Human Right to Peace (2010); to replace article 1.1 on principles of the human right to peace and create two new paragraphs; to include a new paragraph 7 bis in article 2 on the right to human security; to insert a new paragraph on the recognition of gender, the environmental agreements on disarmament and arms limitation on the right to disarmament; to add the gender perspective in peace education, racism and xenophobia and the relationship between peace education and children in the right to education and training on peace and human rights; to expand the article on the right to civil disobedience and conscientious objection, resistance against oppression, the right to development, freedom of thought, conscience, expression and religion; to split the article on the right to environment in two separate articles, the rights of victims and vulnerable groups in accordance with the Santiago Declaration, and to add a paragraph 2 in the article on the right to shelter and migration¹¹.

Mrs. Mariam Aftab, Counsellor of the Permanent Mission of Pakistan before the United Nations, indicated that Pakistan attached a great importance to the subject under discussion. She affirmed that this right can be realized by a) identifying and addressing the root causes of issues that continue to thwart international peace and security, b) respecting the sovereignty, territorial integrity and political independence of all States, c) refraining from acting in any other manner inconsistent with the purposes of the United Nations, d) creating an enabling environment with greater participation of developing countries in international political, economic and financial decision making and e) implementing UN resolutions to ensure peace and security.

Nevertheless, she recorded some preliminary observations, mainly: article 2.3 on the "responsibility to protect", article 2.9 on the International Criminal Court and article 13 by

¹⁰Vid. el texto completo de la declaración en el Anexo VIII.

¹¹Vid. el texto completo de la declaración en el Anexo IX.

grouping two distinct categories i.e. refugees and migrants. She missed some reference to religious intolerance, negative stereotyping, stigmatization of and discrimination, incitement to violence, and violence against persons based on religion or belief¹².

Mr. Akira Maeda (Japan), representative of the Japanese Workers Committee for Human Rights, welcomed the resolution of Human Rights Council 17/16 on Promotion of the right of peoples to peace and the Progress Report prepared by the drafting group of the Advisory Committee. He affirmed that the right of peoples to peace is the fundament of civil, political, economic, social and cultural rights. Article 9 of Japanese Constitution proclaims the renouncement of war and renunciation to having an army. He recalled that the Preamble to the Constitution reads: "We, Japanese people, recognize that all peoples of the world have the right to live in peace". He added that on 17 April 2008, the Nagoya High Court found that the right to live in peace is a concrete right. He proposed a new paragraph on "peace zones" to article 3 of the draft declaration on disarmament¹³.

Mr. Christian Guillermet, Deputy Ambassador of the Permanent Mission of Costa Rica before the United Nations in Geneva, congratulated all members of the drafting group for their work. He encouraged all States to participate in the codification process of the right to peace and respond to the questionnaire. He acknowledged that the claim of the human right to peace by civil society was important and clear. The right to peace is the backdrop of the Charter of the United Nations and the UDHR. He supported the process and the need for a non-polarized reflection on the subject.

He highlighted the following comments made by AC members, namely: peace and human rights are inextricably linked (Mrs. Boisson); there are several possibilities and suggestions on the mechanism of monitoring of the human right to peace (Mr. Okafor or civil society); the Human Rights Council is the appropriate forum to discuss the right to peace (Mr. Sakamoto); the importance of education as a means to prevent war (Mr. Cheng).

He showed his disagreement with Mr. Soofi, who had said that the right to peace overlaps with other human rights, because, according to Mr. Guillermet, all legal instruments adopted by the United Nations always overlap. He gave the example of the right to development as an overlapping with other human rights already recognized.

In regards to the reflection by Mr. Kartashkin on the abolishment of armies, he added that we can be bold and creative in this area and, furthermore, promote the right to peace by adopting a declaration. He recalled that Costa Rica had abolished the army and concluded his statement by stating that in this issue we need to build bridges so that all views are taken duly into account.

¹²Vid. el texto completo de la declaración (en inglés) en el Anexo X.

¹³Vid. el texto completo de la declaración (en inglés) en el Anexo XI.

Mr. Jun Sasamoto (Japan), representative of the International Association of Democratic Lawyers, pointed out the importance of the codification process of the right to peace. To expand and strengthen the right to peace as a human right, each State should do more for peace in order to realize international peace and security. He indicated that it should be underlined that one of the most suitable fora within the UN to discuss these matters should not be limited to the Security Council or the Conference on Disarmament, but could also be the Human Rights Council and the Human Rights Council Advisory Committee. He considered that the draft declaration would be strengthened if it contained words such as phasing out foreign military bases on the territory in light of article 7, paragraph 1, on the right to phase out foreign military base of the *Santiago Declaration on the Human Right to Peace* (2010). He recommended that Japan should revise its policy on nuclear energy. He recommend therefore a right to peace free from radioactive dangers to be incorporated into article 11 on environmental right¹⁴.

After congratulating the drafting group for their work, **Mrs. Selma Malika Hendel**, Counsellor of the Permanent Mission of Algeria before the United Nations, raised some doubts on the draft declaration, namely: article 2.3 on the "responsibility to protect" and article 9 on the inclusion of the International Criminal Court. He recommended including some reference to the prohibition of foreign occupation and the inclusion of the internally displaced persons and persons under foreign occupation in the article on vulnerable groups (article 13 of the draft Declaration). He considered that it is essential to mention the principles of the Charter of the United Nations in article 2 and that there should be a clear balance between the individual and the collective perspective of the right to peace.

Mr. Derek Brett (Switzerland), representative of the *Conscience and Peace Tax International*, welcomed to the drafting group for including the concept of the human right to peace as cornerstone of the Declaration. He proposed that article 5 ought to be entitled "Conscientious objection to military service". The conscientious objection to military service has special recognition in the jurisprudence of the Human Rights Committee in its General Comment no. 22 on freedom of thought, conscience or religion. Finally, article 5.2, although excellent, is actually about disobedience to illegal orders and linked issues, which is not directly a matter of conscientious objection¹⁵.

Mrs. Grisselle Rodriguez, representative of the Oriental Republic of Uruguay before the United Nations, welcomed the progress report elaborated by the drafting group on the right of peoples to peace. In regards to the content of the draft declaration, he made only some preliminary comments and raised some questions, namely: national security and human security are two interrelated concepts (article 2 on human security); to include

¹⁴Vid. el texto completo de la declaración (en inglés) en el Anexo XII.

¹⁵Vid. el texto completo de la declaración (en inglés) en el Anexo XIII.

discrimination as a source of structural violence (article 2.7); she asked the members of the drafting group how it is possible to achieve a fair distribution of natural resources (article 3 on disarmament); reference to the concept of tolerance and the right to education (article 4 on peace education and training); she asked members of the drafting group about the meaning of conscientious objection for the purposes of the draft Declaration (article 5 on conscientious objection); reference to civil and political rights and fair working conditions (article 9 on development); reference to the beliefs (article 19 on freedom of thought, conscience, expression and religion); reference to the impact of conflict or international conflicts in environmental matters (article 11 on the environment); reference to the causes and effects on vulnerable groups (article 12 on the rights of victims and vulnerable groups); and the conformity of refugee status with the Cartagena Declaration (article 13 on refugees and migrants)¹⁶.

Mr. Mohamed Achgalou, Counsellor of the Permanent Mission of Morocco before the United Nations, proposed that the draft declaration ought to include concepts as dialogue, tolerance, acceptance of other cultures and the obligation of States to settle their international disputes peacefully. He considered that the inclusion of peace education and training was essential to promote peace. He also suggested that the concept of self-determination of peoples be removed from Article 1.4 of the draft declaration or, alternatively, a reference to the principle of sovereignty would be welcome.

Mr. Wallace Fox, representative of the Indian Council of South America, invited the Advisory Committee to consider strengthening the Declaration by referring to the links between historical truth and peace. He referred to document A/HRC/9/NGO/47 of 1 September 2008, which recalls that the right to peace as a fundamental human right has been recognized in the United Nations Declaration on Rights of the Indigenous Peoples by indicating that the indigenous peoples have the right to live in freedom, peace and security. The Working Group drafting the former Declaration recognized that the right to peace is a collective right with an individual dimension. The Program of Action of the International Conference on Population and Development held in Cairo in 1994 recognized that indigenous peoples are often characterized by discrimination and oppression. On the other hand, the Beijing Declaration and Platform for Action of the Fourth UN World Conference on Women of 1995 recognized the need to ensure full respect for the human rights of all women in general, including Indigenous women. He added that the Sub-Commission Report on Treaties with Indigenous Peoples also refers to this peace dimension¹⁷.

Mr. José Antonio Bengoa Cabello (Chile) stressed his satisfaction for having participated in one of the most interesting debates since the creation of the Advisory Committee. In addition, he stressed the significant contribution of civil society in this

¹⁶Vid. el texto completo de la declaración en el Anexo XIV.

¹⁷Vid. el texto completo de la declaración (en inglés) en el Anexo XV.

matter, which had presented valuable amendments to the full text. He proposed to incorporate in the draft declaration on the right of peoples to peace the mechanism of monitoring laid down in the *Santiago Declaration*. He endorsed the amendments of civil society and proposed that these be distributed among all members of the Advisory Committee and that the drafting group takes them into account to prepare a new Declaration to be submitted to the Advisory Committee for discussion on Friday 12 August.

Mr. Latif Huseynov (Azerbaijan, Chairperson) thanked all the participants who had taken the floor, and particularly members of civil society.

Mr. Vladimir Kartashkin (Russian Federation) thanked the civil society organizations for their active participation and recognized that the role of Mr. Heinz was very difficult, as he should incorporate all comments in the draft statement.

Mr. Dheerujall Seetulsingh (Mauritius) recommended that the draft Declaration, to be amended after the discussion, should be as short and accurate as possible, in order to avoid further discussions.

Mr. Wolfgang Stefan Heinz (Germany) did not accept the proposal by Mr. Bengoa, citing procedural issues and stressing that in February 2012 the drafting group will present a new draft declaration, which will take into account the amendments and comments collected.

In regards to the questions, doubts and suggestions arisen, Mr. Heinz had the following answers: 1° The nature of the document to be prepared is a declaration and not a convention; 2° Indigenous peoples are included in the article on vulnerable groups; 3° He appreciates that the United States takes note of the progress report; 4 The language used in the article on education comes from UNESCO; 5° There exists a prohibition of war propaganda and the glorification of violence; 6° Recently the United States has accepted the UN Declaration on the rights of indigenous peoples, which recognizes both individual and collective rights; 7° There is still a debate within the drafting group about the inclusion in the draft declaration of a mechanism of monitoring; 8° He indicated that the debate about the responsibility to protect and the International Criminal Court should continue; 9° The issue of foreign occupation should be taken into account in the draft declaration; 10° All articles proposed in the draft declaration have a clear linkage to the international human rights law.

After asking the Secretariat to compile all comments and suggestions, **Mr. Latif Huseynov** (Azerbaijan, Chairperson), closed the general debate on the right of peoples to peace.

4. Annex.

I. Oral statement by Ambassador Laura Dupuy, Chairperson of the HR Council and Permanent Representative of the Oriental Republic of Uruguay.

".... Respecto a vuestro trabajo hacia futuro, se espera de este órgano contribuciones en varios mandatos: en el área de la discriminación en el contexto del derecho a la alimentación, el derecho de los pueblos a la paz, la cooperación internacional y la solidaridad internacional.....

... Permítanme recordar que la seguridad, la paz, la democracia, el desarrollo y los derechos humanos están interrelacionados y se refuerzan mutuamente. Evidentemente sin paz no se pueden disfrutar plenamente los derechos humanos. El trabajo que ustedes tienen ante sí de reflexionar sobre las lagunas en esta materia y las formas de enfrentar tales desafíos, debe mantener una perspectiva de derechos humanos y aportar una visión realizable, que se funde en los acuerdos ya alcanzados en los diversos foros multilaterales. Tratándose de un proyecto de Declaración, corresponde velar cuidadosamente por los conceptos empleados. Solo a vía ejemplo permítanme decirles que no podemos ver la seguridad nacional y la seguridad humana como dos conceptos separados, por cuanto la seguridad nacional solo tiene o puede tener por fin cuidar del interés general teniendo al ser humano en su centro y nunca ir en contra de los derechos humanos y libertades fundamentales".

II. Oral statement by Mr. Wolfgang Stefan Heinz, Rapporteur of the Advisory Committee *Drafting Group* on the right of peoples to peace.

I present the second progress report of the drafting group on the Right of Peoples to Peace, which includes a first draft Declaration.

Major developments since the last meeting in January 2011 included:

- The revised progress report was submitted to the 17th session of the HRC.

In resolution 17/16 the Council stated:

14. *Takes note* of the Progress report of the Human Rights Council Advisory Committee on the right of peoples to peace (A/HRC/17/39) that includes more than 40 possible standards for inclusion in the draft declaration on right of peoples to peace;

15. *Supports* the need to further promote the realization of the right of peoples to peace and, in that regard, requests the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to present a draft declaration on the right of peoples to peace and to report on progress thereon to the Council at its twentieth session;

- A questionnaire was sent by the OHCHR to all relevant stakeholders, as envisaged in Human Rights Council resolution 14/3. Responses from 8 member States, the European Union and the Holy See were received, as well as from three international organisations and 24 NGOs, one of them supported by several hundreds of CSOs. In the responses to the questionnaire prepared by the Advisory Committee, considerable support was expressed for the basic approach and standards proposed by the Committee, as were certain criticisms and suggestions to change the proposed standards and to add others.

The HRC requested in Resolution 17/16 to retransmit the questionnaire prepared by the Advisory Committee in the context of its mandate on the issue of the right of peoples to peace, seeking the views and comments of Member States, civil society, academia and all relevant stakeholders;

- On 16 May 2011, on invitation by the International Observatory on the Human Right to Peace and the Spanish Society for International Human Rights Law a Consultation for member States from the Western and Eastern European Groups was held in Geneva which allowed a lively exchange on the right to peace, and our proposals in the progress report for the 17th session of the HRC. I found this an encouraging meeting.

- On Sunday the 7th August, before this week started, on the invitation by the Spanish Society for International Human Rights Law and the World Council of Churches we had a new Consultation here in Geneva, attended by a number of Advisory Committee members, invited academics and experts. I found the meeting very useful for our discussions.

- I understand the Spanish Society for International Human Rights Law, the International Observatory on the Human Right to Peace and the World Council of Churches are planning additional meetings in Autumn with members of several regional groups.

Now I turn to the second progress report before you:

In its first progress report, the Advisory Committee had listed more than 40 different standards to assist discussions and to clarify the focus on priorities. It included a discussion of hard and soft law and justification for these standards.

The first draft Declaration on the right of peoples to peace, to be discussed by the Advisory Committee in these days, is annexed to the present report.

The draft Declaration on the right of peoples:

A Declaration for the Human Rights Council and subsequently the General Assembly clearly cannot accommodate all the standards mentioned in the first progress report of the Committee submitted to the Council, including in their full scope, but many were taken up in the draft Declaration.

In the draft Declaration we follow the progress report and suggest 13 standards plus Article 14 dealing with obligations and implementation. With reference to the first progress report, we include two new standards regarding Freedom of Thought, Conscience, Expression, and Religion (Article 10) and refugees and migrants (Article 13).

At the beginning, the draft Declaration refers to the right of peoples to peace, but subsequently uses the language of the "human right to peace", which was found to be more appropriate. General Assembly resolution 39/11 which was adopted more than 25 years ago (1984) has a strong focus on the collective dimension. In the draft Declaration, the rights of the individual have also been included. Generally, States and international organizations are identified as the duty-bearers, and individuals and peoples as rights-holders.

The basic approach was to keep the Declaration relatively short and succinct rather than adding many more human rights as elements of a positive peace, given that they are



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already covered in treaties and declarations of the General Assembly and the Human Rights Council. Their mere repetition would not appear to help conceptual clarification.

We focus on standards relating to international peace and security as core standards (elements of negative peace, absence of violence), and include standards in the areas of peace education, development, the environment, victims and vulnerable groups as elements of a positive peace.

Finally, with regard to monitoring of State practice, various Declarations of the General Assembly on human rights do not mention a specific monitoring mechanism. The Human Rights Council has, however, created such special mechanisms as the Forum on Minority Issues and the Expert Mechanism on the Rights of Indigenous Peoples. In the final Article of the draft Declaration, a proposal is made that the Council set up a mechanism to continue the discussion on and monitoring of the human right to peace.

With this, I end my presentation.

Thank you for your attention.

III. Oral statement by Mr. Shigeki Sakamoto, member of the Advisory Committee *Drafting Group* on the right of peoples to peace.

Thank you very much, Chairperson.

Before starting my comment, I would like to express my heartfelt gratitude to the people in the international society for the great help to the Japanese people suffered by the unprecedented earthquake and tsunami on March 11th and the subsequent accident to a nuclear reactors site in Fukushima. It is very sad that many people are still not able to recover from the damage of the disaster, but I m sure that, before long, Japan will rebuild from devastation.

Please let me comment on the Right of People to Peace. Some states strongly oppose to the idea that Human Rights Council should discuss this subject. Their basic point is that Security Council is more appropriate forum than Human Rights Council is, when it comes to discussing this subject. I, however, disagree. I think HRC is the right forum for discussing this subject.

Consideration of this issue requires us to recall the following Article 28 of the Universal Declaration of Human Rights: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". However, as Professor Chimni, famous Indian international lawyer has rightly pointed out, language of global justice has receded into the background. There is little debate on the conditions in which international human rights law can be realized. Certainly, the progress report focuses on issues that are primarily a matter of state to state relations, in other words global order. However, in my opinion, this attitude is justified by the just mentioned wording in above mentioned article. It is useful to recall that the celebrated Universal Declaration of Human Rights co-existed with colonialism that was adopted at the time when most Asian and African states were under colonial rule. The international society adopted the provision of Article 28. Therefore, international society tried to break down the situation by adopting this article.

International human rights law is a powerful tool for the suppressed peoples and groups to realize a humane global order. Even authoritarian governments have had to come to terms with international human rights law and internalize some of its visions and concerns. Also this law offers a protective shield for social and protest movements against the State. Any State flagrantly violating international human rights law stands to be shamed before the international community of States. Such governments tend to lose their legitimacy. This can be seen from recent developments in Egypt and other Arab countries, because they were subjected to harsh criticism for their use of force against peaceful protestors is not seen any longer as interference into the internal affairs of states.

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I think that the draft should appropriately cover this issue as a constituent for peace. In any ways, I hope that in this Advisory Committee this topic will be discussed in a professional manner.

Thank you very much

IV. Oral statement by Mr. José Luis Gómez del Prado, member of the UN Working Group on the use of mercenaries.**The obligations under the Santiago Declaration on the human right to peace.**

Thank you, Mr. Chairman.

My personal interest in the process which is being carried out by civil society and has been crystallized, on the one hand, in the *Santiago Declaration on the Human Right to Peace* (10 December 2010) and, on the other, in the United Nations by the Advisory Committee of the Human Rights Council leading to a Declaration on the right of peoples to peace, has been triggered by my involvement, as a member of the UN Working Group on the use of mercenaries, in analyzing the new phenomenon of the privatization of war illustrated by the situations in Afghanistan and Iraq. Despite the generous wordings enshrined in the UN Charter, wars have not only continued taking other forms instead of combats with clear front lines between two countries, but are presently being outsourced to the private sector, initiating, thus, a process which resembles very much to that of the Middle Ages.

Therefore, Art. 6.1 of the draft Declaration (private military and security companies) should be amended by introducing at its second sentence the words “In other cases”, before “States...”.

Although Article 13 of the Santiago Declaration which contains the Obligations proclaimed in the Declaration indicates that the human right to peace “*entails duties and obligations for States, international organizations, civil society, peoples, individuals, corporations, the media and other actors in society and, in general, the entire international community*”, it really concentrates on the States and the United Nations which have the *fundamental responsibility for preserving peace and protecting the human right to peace*.

This Article can be divided in two parts:

Paragraphs 3 and 4 of Article 13 (Santiago Declaration) contain the provisions regarding States’ obligations. It emphasizes the measures that they should take in order to ensure development and protection of the environment as well as the increased resources that they should provide. This, in addition, of the measures that States are required to adopt in order to build and consolidate peace and protect humankind from the scourge of war. (Provisions which are reflected in the text of the Draft Declaration of the Advisory Committee)

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The remaining four paragraphs contain provisions specifically directed to the United Nations organs and bodies, in particular, the Security Council, General Assembly, Human Rights Council and the Peace Building Commission, competent to coordinate and take effective measures: (a) *to protect human rights from violations which may constitute a danger or threat to international peace and security;* (b) *to elaborate integrated strategies for peace and for the reconstruction of affected countries following the end of armed conflicts;* (c) to effectively implement the Program of Action for a Culture of Peace which embraces all possible dimensions of social action.

These obligations recall that *any military action outside the framework of the UN Charter is unacceptable, constitutes a most grave violation of the principles and purposes of the UN Charter* and that “preventive wars” constitute crimes against peace. (Here the text of the draft presented by the Advisory Committee is vague and diffused)

The last paragraph of the obligations in the Santiago Declaration reintroduces civil society, a stakeholder already mentioned in paragraph 1 of this Article 13. Indeed, civil society should participate in the debates of the Security Council in order to better guarantee the human right to peace. Two basic measures are fundamental to be adopted to guarantee this right: the composition and procedures of the Security should be reviewed so as to reflect and better ensure the representation of today’s international community.

Such a proposal is perfectly consistent with the movement operating normative change at the international level where innovations are being made not exclusively by the interests of the powerful States but, as has been the case with the Weapons Conventions and the Rome Statute for the International Criminal Court, by a combination of interests and actions from all parts of the world bringing together governments, non State entities, civil society and the academic world. (Here the text of the Advisory Committee is completely silent).

Thank you, Mr. Chairman.

V. Oral statement by the representative of the United States of America before the United Nations

Thank you Mr. Chairman

As we have spoken on this topic during the previous Advisory Committee session and consistently voted against the resolutions dealing with the right to peace, our position on this subject is well known. We take the floor at this time to further highlight clarify the very concerns and objections that the final report on the right to peace raises for us.

At the same time, we in no way wish to denigrate the work carried out by Professor Heinz. We understand that he has carried out instructions as mandated by the Council resolutions. We are very much appreciated to the open and constructive dialogue we have maintained with him informally and we hope that dialogue will continue. Likewise, we have carried on a constructive exchange of views with many civil society representatives that support this initiative, and we hope that this exchange also continues.

The United States upholds international peace as an ideal and a fundamental objective. The U.S. Government works tirelessly toward the achievement of international peace, devoting much effort and resources to its promotion including in the areas of conflict prevention, conflict resolution, and post-conflict reconciliation.

With regard to the final report of the report of the Advisory Committee, and in particular the proposed standards for a new UN Declaration, we must register our strong objections to specific aspects of the proposals and the overall general approach.

We have significant concerns about many of the report's proposed standards. In brief, general terms, our objections to the standards include the following:

- in them, key concepts are undefined or not sufficiently defined;
- they inappropriately assign human rights to groups or "peoples", rather than to individuals;
- they purport to turn a goal of the entire human rights system into a freestanding "right;"
- they attempt to treat issues addressed in other areas, such as the environment and security, as human rights issues;
- they state "standards" that are not agreed upon, and are rejected by many countries; and
- to the extent that they do address valid human rights issues, they are duplicative of other instruments or mechanisms, and offer no significant prospect of improved promotion of these rights. In some instances, because of overly broad or vague

formulations, promotion of established human rights might actually be undermined. For example, in implementing the proposed standards for education, rights such as freedom of expression and opinion might be contravened.

Securing peace is a primary goal of the entire UN system, and of the international human rights system. The United States therefore continues to question the value of working toward a declaration on the "right" of peoples to peace. This proposed right is neither recognized nor defined in any universal, binding instrument, and its putative parameters would be entirely unclear. All resolutions on this topic in UN bodies, including the General Assembly, the Commission on Human Rights, and the Human Rights Council, have been adopted only against significant numbers of dissenting or abstaining votes. The proposed effort would surely be as divisive and disputed as those previous resolutions were, while requiring far more time and resources than they did. Moreover, we foresee no significant benefit from it; for example, such a Declaration will not bring more peace to the world. We propose to those civil society organizations and delegations that support the right to peace initiative that these efforts would be far better spent seeking to implement many of the worthy goals they have enumerated within the right to peace through existing mechanisms.



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VI. Oral statement by Mrs. Maysa Ureña, Counsellor of the Permanent Mission of the Plurinational State of Bolivia before the United Nations.

Gracias señor presidente,

Agradecemos a los miembros del Comité Asesor la preparación del Informe en progreso que incluye el primer borrador de la Declaración de los Pueblos a la Paz.

El Estado Plurinacional de Bolivia, se reconoce en su Constitución Política como un Estado pacifista que promueve la cultura de paz y el derecho a la paz, así como la cooperación entre los pueblos de nuestra región y del mundo. En este marco reafirmamos que el derecho humano a la paz es el requisito fundamental para el buen vivir de los pueblos y la realización de todos los derechos humanos.

En el ámbito nacional e internacional, promovemos la cultura del dialogo para la prevención y la solución o transformación de conflictos, rechazamos toda guerra porque hemos elegido promover la cultura de la vida y no de la muerte y la destrucción.

En el Consejo de Derechos Humanos, somos co-patrocinadores tradicionales de la Resolución sobre el derecho de los pueblos a la paz y hemos respondido detalladamente al Cuestionario recibido a través de la Secretaria. Otorgamos al desarrollo progresivo de los derechos humanos una alta importancia, por esta razón respaldamos y continuaremos participando activamente en la preparación de la Declaración del derechos de los pueblos a la paz.

En cuanto al borrador de Declaración preparado por el Comité Asesor, tenemos algunas observaciones y propuestas concretas que por su extensión, se las haremos llegar por escrito. Especialmente nos preocupa la falta de inclusión de los Pueblos Indígenas, no solo en el artículo 12 sino también en otros artículos del texto. Reitero que haremos llegar nuestros aportes detallados por escrito.

Sin embargo en esta oportunidad nos permitimos expresar nuestro respaldo general al importante trabajo que están realizando en este tema y destacamos la necesidad de establecer claramente los alcances del derecho de los pueblos a la paz, así como la creación de un procedimiento especial para el respectivo monitoreo en el ámbito de los derechos humanos.

Gracias Sr. Presidente



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VII. Oral statement by Mr. Carlos Villán Durán, President of the Spanish Society for International Human Rights Law.

Título: Enmiendas al proyecto de Declaración sobre el Derecho de los Pueblos a la Paz, presentado por el grupo de redacción del Comité Asesor

Gracias, Señor Presidente.

Formulo la presente declaración en nombre de la Asociación Internacional de Ciudades Mensajeras de la Paz, la Asociación Española para el Derecho Internacional de los Derechos Humanos, el Observatorio Internacional sobre el Derecho Humano a la Paz y de 778 OSC de todo el mundo, que han suscrito la exposición escrita conjunta que se ha distribuido como documento oficial de este período de sesiones (A/HRC/AC/7/NGO/3 y Corr. 1).

El proyecto de Declaración sobre el derecho de pueblos a la paz preparado por el grupo de redacción (doc. A/HRC/AC/7/3) afirma en el párrafo 6 que el proyecto de Declaración se refiere al derecho de los pueblos a la paz, pero posteriormente utiliza la expresión "derecho humano a la paz", al considerarla más apropiada.

Felicitemos al grupo de redacción por su proyecto de Declaración y consideramos que, en efecto, la futura Declaración debiera tener por título “sobre el derecho humano a la paz”.

En nuestra exposición escrita conjunta invitamos al Comité Asesor a tener en cuenta numerosas enmiendas al citado proyecto de Declaración, a la luz de la *Declaración de Santiago sobre el Derecho Humano a la Paz*, aprobada por la sociedad civil internacional el 10 de diciembre de 2010.

En la presente declaración quisiera llamar la atención del Comité Asesor sobre el artículo 14 del proyecto de Declaración, titulado “obligaciones y aplicación”. En nuestra opinión, este artículo debería ser reemplazado por los artículos 13 (“Obligaciones para la realización del derecho humano a la paz”), 14 (“Establecimiento del Grupo de Trabajo sobre el Derecho Humano a la Paz”) y 15 (“Funciones del Grupo de Trabajo”) de la *Declaración de Santiago*. El texto completo de estas disposiciones se encuentra en las notas a pie de página 33 a 43 (ambas incluidas) de nuestra exposición escrita conjunta.

El párrafo 7 del informe del grupo de redacción, en congruencia con el Art. 14.5 de su proyecto de Declaración, se limita a proponer que el Consejo DH establezca un mecanismo similar al Foro sobre Minorías o al Mecanismo de Expertos sobre los Derechos



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de los Pueblos Indígenas. En nuestra opinión estos foros no son modelos apropiados porque no tienen reconocidas funciones de control (“monitoring”).

En cambio, el sistema de procedimientos especiales del Consejo DH ofrece abundantes ejemplos de mecanismos extra-convencionales establecidos para la protección de los derechos humanos que, además, han asumido funciones de control de la aplicación de varias Declaraciones aprobadas por la Asamblea General sobre temas tan diferentes como la tortura, la desaparición forzada de personas, los defensores de los derechos humanos, o la violencia contra las mujeres.

Se trata de los relatores especiales y grupos de trabajo temáticos del Consejo DH, tales como el Grupo de trabajo sobre las desapariciones forzadas o involuntarias, que vela por la correcta aplicación de la Declaración de 1992 sobre la protección de todas las personas contra las desapariciones forzadas; el Grupo de trabajo sobre la detención arbitraria, que aplica en primer lugar las normas relevantes establecidas en la Declaración Universal de Derechos Humanos (1948); el Relator Especial sobre la cuestión de la tortura, que se ocupa de la Declaración de 1984 sobre la protección de todas las personas contra la tortura y otros tratos o penas crueles, inhumanos o degradantes; la Relatora Especial sobre los Defensores de los derechos humanos, que controla la correcta aplicación de la Declaración de 1998 sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos; y la Relatora especial sobre la violencia contra la mujer, que vela por la correcta aplicación de la Declaración de 1993 sobre la eliminación de la violencia contra la mujer.

En el caso del derecho humano a la paz, consideramos que se debe establecer un nuevo procedimiento especial que se encargaría de la promoción y protección del derecho humano a la paz, tal y como se defina en la Declaración que en su día apruebe la Asamblea General. Sus funciones, descritas en el Art. 15 de la *Declaración de Santiago*, reproducen las mejores prácticas de los procedimientos especiales del Consejo DH.

En atención a su particularidad, entendemos que sería preferible que el Grupo de Trabajo sobre el Derecho Humano a la Paz sea establecido directamente por la Asamblea General y tenga su sede en Nueva York, de manera que pueda gozar de la visibilidad necesaria que le permitirá contribuir eficazmente al reforzamiento de las competencias de la Asamblea General en áreas relativas a la paz y seguridad internacionales que están directamente relacionadas con violaciones masivas a los derechos humanos y, por ende, del derecho humano a la paz.

Por último, solicitamos al Comité Asesor que recomiende al Consejo de DH que establezca en junio de 2012 un grupo de trabajo de composición abierta encargado de

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proseguir los trabajos de codificación y desarrollo progresivo del derecho humano a la paz, partiendo del proyecto de Declaración que en su día le presentará el propio Comité Asesor. Muchas gracias, Sr. Presidente.

VIII. Oral statement by Mr. Juan Antonio Quintanilla, Counsellor of the Permanent Mission of Cuba before the United Nations.

Señor Presidente

Cuba agradece al Comité Asesor por el trabajo que ha realizado en entorno al derecho de los pueblos a la paz, y en particular al grupo de redacción encargado de elaborar el proyecto de declaración sobre el tema. Los resultados de este proceso denotan un trabajo serio, profundo y responsable.

Señor Presidente

Cuba concede la mayor importancia a la paz como condición esencial para el disfrute de los derechos humanos, ante todo del derecho a la vida.

La paz es un requisito fundamental para la promoción y protección de todos los derechos humanos para todos.

El contenido del derecho de los pueblos a la paz incluye la reafirmación de la obligación que tienen todos los Estados para resolver sus controversias internacionales por medios pacíficos de tal manera que no se pongan en peligro la seguridad internacional. Es por eso que debe rechazarse el uso de la violencia en la consecución de objetivos políticos ya que sólo las soluciones políticas pacíficas pueden garantizar un futuro estable y democrático a todos los pueblos del mundo.

Cuba reafirma que para lograr un clima de paz y seguridad en el mundo, es necesario respetar las diversas culturas e identidades de todos los pueblos, así como trabajar activamente en las acciones que propicien la cooperación, la solidaridad y el diálogo entre civilizaciones.

Cuba recuerda que en virtud de la Declaración Universal de Derechos Humanos, toda persona tiene derecho a un orden social e internacional el que los derechos humanos y libertades se hagan plenamente efectivos.

Asimismo, debe recordarse que de acuerdo al artículo común de los Pactos Internacionales en materia de derechos humanos, todos los pueblos tienen el derecho a la libre determinación de los pueblos, en virtud del cual establecen libremente su condición política y proveen asimismo libremente a su desarrollo económico, social y cultural.

Las normas del derecho internacional regulan la obligación que tienen todos los Estados de abstenerse en sus relaciones internacionales de recurrir al uso o a la amenaza de



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uso de la fuerza contra la integridad territorial o la independencia política de un Estado, o de cualquier otra forma que sea incompatible con los Propósitos de las Naciones Unidas.

En ese sentido, Cuba reafirma la importancia de velar por el respeto de los principios de igualdad soberana, la integridad territorial y la independencia política de los Estados y de la no intervención en asuntos que son esencialmente de la jurisdicción interna de los Estados, de conformidad con la Carta y el derecho internacional.

Señor Presidente:

En cuanto al contenido práctico del derecho de los pueblos a la paz, coincidimos con varias de las esferas identificadas en el proyecto de declaración. Por ejemplo el desarrollo, el desarme y el medio ambiente.

Otros aspectos merecen una revisión y análisis más detallado. Por ejemplo, el artículo 2, sobre seguridad humana. Creemos que el inciso 3 de ese artículo pudiera dar lugar a interpretaciones erróneas y/o vínculos con la llamada "responsabilidad de proteger", asunto este que ha sido manipulado como basamiento doctrinal de aventuras militares. Teniendo en cuenta que la comunidad internacional no ha acordado los límites, el contenido y el marco programático del concepto "responsabilidad de proteger", debemos evitar cualquier referencia que pueda atentar o crear condiciones de amenaza para la soberanía, la integridad territorial y la no injerencia en los asuntos internos de los Estados, así como la libre determinación de los pueblos.

Otros temas como la responsabilidad o rendición de cuentas y la Corte Internacional de Justicia también merecen mayor reflexión. Creemos que son cuestiones muy concretas que no contribuyen al clima de cooperación y solidaridad que debe primar en el tratamiento de este tema.

Por otra parte, el artículo 10, relativo a la libertad de pensamiento, de conciencia, de expresión y religión, parece estar aislado y fuera de contexto. La mera repetición de preceptos contenidos en otras normas no ayuda a la elaboración coherente de un nuevo instrumento internacional.

Señor Presidente:

Estas son algunas reacciones preliminares sobre el proyecto de declaración, el cual consideramos puede ser mejorado y enriquecido.

Finalmente deseamos reiterar nuestro reconocimiento al grupo de redacción creado para el tema, en particular los esfuerzos para presentar el proyecto de declaración.



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Ratificamos nuestra confianza en que continuarán esforzándose para reflejar en un texto las posiciones e intereses de los países en desarrollo, en los que vive la mayoría de los habitantes del planeta.

Este es un tema de vital importancia para la humanidad, en momentos en que cada vez más nuestra especie se ve amenazada. Es por ello que resulta vital avanzar en la acción normativa y de protección del derecho de los pueblos a la paz, a través de una Declaración y la consideración de otras propuestas tales como la creación de un procedimiento especial. Cuba por su parte continuará trabajando para avanzar en la consecución de esos objetivos.

Muchas gracias



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IX. Oral statement by Mr. Alfred de Zayas, representative in Geneva of the International Society for Human Rights.

We congratulate the Drafting Group for its draft Declaration and invite the Advisory Committee to consider some possible amendments and additions to the draft:

Instead of the current Title: Declaration on the Right of Peoples to Peace, we would propose a broader, more inclusive title, “Draft Declaration on the Human Right to Peace”, which would signal the symbiosis of the collective and individual dimensions of peace as a human right.

As to the Preamble, it could be completed by drawing some ideas from the Preamble of the Santiago Declaration of December 2010 and make reference to universal and regional legal instruments relevant to the codification of the human right to peace¹⁸.

As to Art. 1. Principles of the human right to peace, the Advisory Committee may wish to expand Paragraph 1 to read as follows:

“Individuals, groups, peoples and all humankind have the inalienable right to a just, sustainable and lasting peace. By virtue of that right, they are holders of the rights and freedoms proclaimed in this Declaration”.

A new paragraph 5 could be added:

¹⁸ To make reference to the purposes and principles of the UN Charter; the positive dimension of peace; the affirmation of the right to life; the settlement of international disputes by peaceful means and the prohibition of use or threat of use of force; the need to establish a national and international social order in which peace has absolute priority; education is indispensable for the establishment of an universal culture of peace; the prohibition of war propaganda and the prohibition of incitement to hate and violence; the recognition of that human rights are inalienable, universal, indivisible and inter-dependent; 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; to peace is a general principle of international law the recognition of peace as a general principle of international law; the manufacture of weapons, the arms race and the excessive and uncontrolled traffic; the concern by gross and systematic violations committed in peace times; the contribution of women to peace processes; structural violence incompatible with peace; the need that peace is based on justice, redress and truth; the recognition of that impunity is incompatible with peace and justice; the impunity and the increasing activities of mercenaries and private military and security companies; the need to establish an international migration regime as a matter of urgency; and the recognition of all peace movements and ideas that have marked over the history of humankind, which have recently crystallized in major contribution. See at www.aedidh.org/sites/default/files/Santiago-Declaration-en.pdf (english) and www.aedidh.org/sites/default/files/DS.pdf 24 marzo 11.pdf (spanish).

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“States, individually, jointly or as part of multilateral organizations, are the principal duty-holders of the human right to peace. This right shall be implemented without any distinction or discrimination for reasons of race, descent, national, ethnic or social origin, color, gender, sexual orientation, age, language, religion or belief, political or other opinion, economic situation or heritage, diverse physical or mental functionality, civil status, birth or any other condition”.

A new paragraph 6 would read:

“All individuals and peoples subjected to aggression, genocide, racism, racial discrimination, xenophobia and other related forms of intolerance, as well new forms of *apartheid*, colonialism and neo-colonialism, deserve special attention as victims of violations of the human right to peace”.

On Art. 2. Right to human security, a new paragraph 7 bis could be added:

“Freedom from want implies the enjoyment of the right to sustainable development and of economic, social and cultural rights, particularly the rights set forth in Art. 9.2 of this Declaration”.

On Art. 3. Right to disarmament, strengthening is necessary to significantly reduce arms production and trafficking.

Moreover, a new paragraph on the recognition of gender mainstreaming as a major global strategy for the promotion of gender equality and disarmament, and a new paragraph on the impact of environment in the agreements on disarmament and arms limitations could be added.

On Art. 4. Right to education on and for peace and all other human rights.

It would be useful to focus on three additional dimensions, namely:

4. gender approach to the peace education;
5. peace education as means to halt racism and to promote human rights; and
6. the relationship between peace education and children.

On Art. 5. Right to disobedience and to conscientious objection.

Paragraph 1 could be replaced by:



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“Individuals, individually or as members of a group, have the right to civil disobedience and to conscientious objection against activities that entail a threat against peace”.

A new paragraph 3 could be added:

“Individuals, individually or as members of a group, have the right to obtain conscientious objection status in respect to their military obligations”.

A new paragraph 4 would read:

“Individuals, individually or as members of a group, have the right not to participate in, and to publicly denounce scientific research for the manufacture or development of arms of any kind”.

A new paragraph 5 would read: “Individuals, individually or as members of a group, have the right to object to participate in a working or professional capacity, and to oppose taxation for military expenditures connected with military operations in support of armed conflicts that violate international human rights law or international humanitarian law. States shall provide acceptable alternatives to tax payers who object to the use of their tax money for military purposes”.

A new paragraph 6 would read: “Individuals, individually or as members of a group, have the right to be protected in the effective exercise of their right to disobedience and conscientious objection”.

On Art. 7. Right to resist and oppose oppression.

A new paragraph 3 would stipulated:

“The glorification of violence and its justification as necessary to build the future and to enable progress shall be prohibited by law”.

On Art. 9 Right to development.

add to Paragraph 4, after "development", "and human rights".

On Art. 10. Freedom of thought, opinion, expression, conscience and religion.

The proposed very brief article could be replaced to reflect the new General Comment 34 of the Human Rights Committee, adopted on 21 July 2011:

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- “1. All peoples and individuals have the right to access and to receive information from diverse sources without censorship, in accordance with international human rights law, in order to be protected from manipulation in favor of warlike or aggressive objectives.
2. All peoples and individuals have the right to denounce any event that threatens or violates the human right to peace, and to freely participate in peaceful political, social and cultural activities or initiatives for the defense and promotion of the human right to peace, without interference by governments or by the private sector.
3. All peoples and individuals have the right to be protected against any form of cultural violence. To this end, persons should fully enjoy their freedom of thought, conscience, expression and religion, in conformity with international human rights law”.

On Art. 11. Right to environment.

A new paragraph 4 could be added at the end:

“The use of weapons that damage the environment, in particular radioactive weapons and weapons of mass destruction, is contrary to international humanitarian law, the right to the environment and the human right to peace. Such weapons must be urgently prohibited, and States that utilize them have the obligation to restore the previous condition of the environment by repairing all damage caused”.

Art. 12. Rights of victims and vulnerable groups could be split into two Articles:

Art. 12. Right of all victims.

- “1. All victims of human rights violations have the right, without discrimination, to recognition of their status as victims and to an effective remedy to protect them against violations of human rights, particularly of the human right to peace.
2. All individuals have an inalienable right, not subject to statutory limitations, to obtain justice in respect of gross violations of human rights, including the investigation and determination of the facts, as well as the identification and punishment of those responsible.
3. The victims of human rights violations, the members of their families and society in general have the right to know the truth, not subject to statutory limitations”.
4. Para 4 would take the language from Article 11.4 of the Santiago Declaration¹⁹).

¹⁹ “Every victim of a human rights violation has the right, in accordance with international human rights law, to the restoration of the violated rights; to obtain effective and complete redress, including the right to rehabilitation and compensation; measures of symbolic redress or reparation as well as guarantees that the violation will not be repeated. Such redress shall not preclude recourse to popular courts or tribunals of conscience and to institutions,

Art. 12 bis. Groups in situations of vulnerability could be expanded to reflect articles 12.1 to 12.6 of the Santiago declaration.

1. (12.1 of the Santiago Declaration)²⁰.
2. (12.2 of the Santiago Declaration)²¹.
3. (12.3 of the Santiago Declaration)²².
4. (12.4 of the Santiago Declaration)²³.
5. (12.5 of the Santiago Declaration)²⁴.
6. (12.6 of the Santiago Declaration)²⁵.

On Art. 13. Rights to refugee status and to emigrate.

A new Paragraph 2 bis could be added:

methods, traditions or local customs of peaceful settlement of disputes, which may be acceptable to the victim as adequate reparation”.

²⁰ “All individuals share the same human dignity and have an equal right to protection. Nevertheless, there are certain groups in situations of specific vulnerability who deserve special protection. Among them are women in particular situations, children, victims of enforced or involuntary disappearances, persons with diverse physical or mental functionality, elderly persons, displaced persons, migrants, minorities, refugees and indigenous peoples”.

²¹ “States shall ensure that the specific effects of the different forms of violence on the enjoyment of the rights of persons belonging to groups in situations of vulnerability are assessed. States also have the obligation to ensure that remedial measures are taken, including the recognition of the right of persons belonging to groups in situations of vulnerability to participate in the adoption of such measures”.

²² “States, international organizations, in particular the United Nations, and civil society shall facilitate the specific contribution of women to the prevention, management and peaceful settlement of disputes, and promote their contribution to building, consolidating and maintaining peace after conflicts. To this end, the increased representation of women shall be promoted at all levels of decision-making in national, regional and international institutions and mechanisms in these areas”.

²³ “All individuals deprived of their liberty have the right to be treated humanely; their right life, dignity and physical and moral integrity shall be respected. In case of children, detention shall be imposed exclusively as a last resort and be limited to exceptional cases. States shall ensure conditions of detention that promote rehabilitation and inclusion of persons deprived of their liberty, particularly children and youth, ensuring their education, training and general development”.

²⁴ “The enforced or involuntary disappearance of individuals constitutes a crime against humanity. Their victims have the rights to the recognition of their detention, to regain their freedom and to obtain complete, effective, fair and adequate reparation”.

²⁵ “Indigenous peoples have all the rights guaranteed to them by international human rights law, particularly the right to live on their lands, to enjoy their natural resources and to the effective protection of their cultural heritage”.

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“All individuals have the right of freedom of movement and to emigrate if their right to human security or to live in a safe and healthy environment, as stipulated in this Declaration, is seriously threatened”.



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X. Oral statement by Mrs. Mariam Aftab, Counsellor of the Permanent Mission of Pakistan before the United Nations.

Thank you Madam Chairperson

At the outset, my delegation wishes to thank the drafting Group of the Advisory Committee for presenting a working draft of the Declaration on the Right of Peoples to Peace.

Pakistan attaches great importance to the subject under discussion – peoples right to peace. We believe that this right can be realized by a) identifying and addressing the root causes of issues that continue to thwart international peace and security, b) respecting the sovereignty, territorial integrity and political independence of all States, c) refraining from acting in any other manner inconsistent with the purposes of the United Nations, d) creating an enabling environment with greater participation of developing countries in international political, economic and financial decision making and e) implementing UN resolutions to ensure peace and security.

My delegation takes the Draft declaration as work in progress and would like to record the following preliminary observations;

a) Article 2.3 of the draft declaration attempts to introduce the notion of “responsibility to protect” with a view to protect populations from genocide, war crimes, the use of force in violation of international law, ethnic cleansing and crimes against humanity. We all know that discussions on the subject in General Assembly are at a very initial stage. It is important to recall that to-date, the only agreed framework and guidance on this issue is what is contained in paragraphs 138 and 139 of the 2005 World Summit Outcome Document. This was a delicate compromise considering the divergent views among the membership on this issue. Subsequent discussions in the General Assembly have shown continuation of varying opinions, analysis and approaches to this issue. Keeping this perspective in mind, my delegation believes that it is premature to include this concept in the Declaration.

b) Article 2.9 of the Draft Declaration contains a reference to the International Criminal Court. Since a large number of countries are not yet party to the Court, this reference is premature to be reflected in the Declaration.

c) Article 13 of the draft Declaration has grouped two distinct categories i.e. refugees and migrants, that have different conceptual and operational dynamics. My delegation proposes to differentiate between these two categories. As far as the list spelling out the grounds for fear of persecution is concerned, the draft Declaration focuses on



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creating new grounds of fear of prosecution which are not covered under existing international protection instruments i.e. the 1951 Convention relating to the Status of Refugees and its Protocol of 1967. The five grounds of fear of prosecution are a) race, b) sex, c) religion, d) nationality and e) membership in a particular social group or political opinions. The 1951 Convention is the key legal document in defining who is a refugee, their rights and the legal obligations of States. My delegation expects that the Convention language will be used in the next draft.

d) Millions continue to suffer under the yoke of foreign occupation, and are denied their fundamental freedoms and human rights including the right to self determination. However, it is surprising that the Declaration on the Right of Peoples to Peace has no reference to foreign occupation.

e) The draft Declaration has no reference to religious intolerance, negative stereotyping, stigmatization of and discrimination, incitement to violence, and violence against persons based on religion or belief. Recent incidents of religious intolerance and disrespect of religions have once again underscored the need to combat such ever increasing trends with political, administrative and legal means without any delay.

Madam Chairperson

These are preliminary comments that we are sharing with members of the Advisory Committee and expect that these observations will be duly reflected in the next draft of the Declaration. My delegation will also be responding to the questionnaire prepared by the Advisory Committee in line with the HRC resolution 17/16.

I thank you.



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XI. Oral statement by Mr. Akira Maeda, representative of the Japanese Workers Committee for Human Rights.

Japanese Workers Committee for Human Rights welcome the resolution of Human Rights Council 17/16 on Promotion of the right of peoples to peace and the Progress Report prepared by the drafting group of the Advisory Committee on the human rights to peace. The right of peoples to peace is the fundamental of civil, political, economic, social and cultural rights.

Right to live in peace in Nagoya case.

In this regard, we would like to introduce you the relevant decision of Japanese court. As you know, article 9 of Japanese Constitution proclaims the renouncement of war and abandonment of army. In addition, the Preamble of the Constitution reads in relevant part: " We, Japanese people, recognize that all peoples of the world have the right to live in peace, free from fear and want."

On 17 April 2008, Nagoya High Court found that the right to live in peace is a concrete right. The high court stated that the integration of the Japanese Self Defense Force's air transport activities with the use of force by coalition forces in Iraq during military conflict constituted the use of force by the Self Defense Force in violation of Article 9. The court's finding of a violation of Article 9 was the first since the Sapporo District Court's decision in the Naganuma case at 7 September 1973, and the first to be entered as a final judgment. The Nagoya High Court's recognition of the right to live in peace was also the first since Naganuma. Less than a year later, 24 February 2009, the Okayama District Court followed Nagoya High Court in recognizing the right to live in peace in a similar Self Defense Force Iraq Deployment case.

Peace Zone.

Secondly we would like to propose a new paragraph on " peace zone" to article 3 of draft Declaration, disarmament. In 2004, Japanese people started the new Peace Zone Campaign demanding the non-military zones to local governments, according to article 59 of the First Protocol of 1949 Geneva Conventions of 1977. The article 59 describes the Non-Defended Locality can be settled in local area. Therefore Japanese people combined article 59 of First Protocol and article 9 of Japanese Constitution. Article 59 describes the local Non-Military Zone and article 9 demands the national Non-Military Zone.

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As you know, there are 27 countries without armies in the world. Countries without armies are peace zones in national level. Aland islands of Finland is peace zone in local level. International humanitarian law recognizes Non-Defended Locality even during armed conflict. We should include the peoples right to make peace zone in peace time into international human rights law. Then we can create many peace zones in local and national level all over the countries, and also international level.



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XII. Oral statement by Mr. Jun Sasamoto, representative of the International Association of Democratic Lawyers.

Thank you, Chairperson. I speak on behalf of the International Association of Democratic Lawyers.

First we appreciate the draft declaration prepared by the drafting group. We approve the importance of a codification of the right to peace. We also recommend additional words to put on it. To expand and strengthen the right to peace as a human right, each state should do more for peace in order to realize international peace and security. It should be underlined that one of the most suitable fora within the UN to discuss these matters should not be limited to the Security Council or the Disarmament Conference, but could be also the Human Rights Council and the Human Rights Advisory Committee.

The draft declaration would be strengthened if it contained words like phasing out foreign military bases on the territory. Recently Japan faces a big political issue concerning relocation of a US military base in Okinawa. Residents near-by suffer most every day. As a foreign military base aims at combating other countries, a lot of crimes such as murders or rapes by military personnel may happen any time, residents suffer from roaring military planes, inhabitants might be targeted by an attack. In such a situation the population is far from living in peace. We call your attention, Chairperson, to the fact that the Santiago declaration adopted last year by the civil society organizations said clearly in its article 7, paragraph 1 a right to phase out foreign military base. The same wording can be added to article 3 of the draft declaration about the right to disarmament.

We would also, Chairperson, ask your attention to radioactive sufferings. As everybody in this room knows, Fukushima nuclear power plant accident in Japan causes severe problems just after March 11 great earthquake and tsunami. People in this area still fear radioactive sufferings. More than direct exposure to radiation, there are serious concerns about internal exposure to radioactive materials taken through air and food. Japanese government should face review of its policy on nuclear energy. German and Switzerland have turned their heads toward an energy policy free from nuclear powers. We recommend therefore a right to peace free from radioactive sufferings to be incorporated to article 11 on environmental right.

Thank you for hearing me.

XIII. Oral statement by Derek Brett, representative in Geneva of Conscience and Peace Tax International.

Conscience and Peace Tax International welcomes the progress made by the working group in producing this commendably concise first draft of a Declaration.

We commend in particular that the first article now incorporates a reference to the human right to peace, which must be the foundation stone of the Declaration.

One small drafting point, and some questions about the logic of the organisation of the Articles.

Article 5 ought to be entitled “Conscientious objection to military service”. There can logically be a wide range of conscientious objections, but not only is it conscientious objection to military service which is specifically relevant to the right to peace; it is conscientious objection to military service which has special recognition in the jurisprudence of the Human Rights Committee, and since last month of the European Court of Human Rights²⁶, based as the Human Rights Committee stated in its General Comment no. 22 on the severe nature of the obligation to use lethal force.

However, conscientious objection to military service is now recognised by the Human Rights Committee as inhering in the freedom of thought, conscience and religion²⁷. It is therefore illogical that the broader freedom should be the subject of an Article (number 10) at a distant part of the Declaration.

The title of Article 10 itself also includes the word “expression”. This is a freedom of a different nature to those of thought, conscience and religion. “Opinion” would be a more appropriate addition.

Finally, Article 5.2, although excellent, is actually about disobedience of illegal orders and linked issues, which is not directly a matter of conscientious objection.

²⁶ European Court of Human Rights, Judgement, *Bayatyan v Armenia* (Application no. 23459/03), 7th July 2011

²⁷ Human Rights Committee. Views. *Min-Kyu Jeong et al v Republic of Korea* (CCPR/C/101/D/1642-1741/2007), 5th April 2011, para 7.3

XIV. Oral statement by Mrs. Grisselle Rodriguez, Counsellor of the Permanent Mission of the Oriental Republic of Uruguay before the United Nations.

Gracias Señor Presidente,

Uruguay desea agradecer la presentación del informe sobre la marcha de los trabajos del grupo de redacción sobre el derecho de los pueblos a la paz, que tiene un primer proyecto de Declaración anexo.

Sobre el contenido del proyecto de Declaración, nos permitimos formular sólo algunas observaciones preliminares e interrogantes, reservándonos el derecho de volver sobre el tema en otra oportunidad:

- En el Artículo 2 sobre la seguridad humana, observamos que el párrafo 8 hace referencia a la seguridad nacional y a la seguridad humana como dos conceptos aislados; sin embargo, para nosotros dichos conceptos se encuentran vinculados, toda vez que la seguridad nacional debe reforzar la seguridad humana.

- También en el Art. 2, párrafo 7, merece ser incluida una referencia a la discriminación como una fuente de violencia estructural, debiendo abordarse la eliminación de las causas de estos fenómenos. En tal sentido, el texto está más referido a la violencia, quizá en contraposición a la paz, que a temas más básicos como la no discriminación, sólo referida en el Art. 4. numeral 5 literal c) sobre discriminación contra la mujer.

- En el Artículo 3 sobre desarme, nos gustaría que los miembros del grupo de redacción nos aclaren a qué se refiere y cómo se lograría la distribución justa de las riquezas naturales, mencionada en el párrafo tercero.

- En el Artículo 4 sobre educación y formación para la paz, nos gustaría ver mayor referencia al aspecto de la tolerancia y al derecho a la educación como tal.

- En el Artículo 5 sobre la objeción de conciencia, consideramos que en el primer párrafo el grupo de redacción debería incluir qué se entiende por objeción de conciencia para los efectos del proyecto de Declaración, esto es, a la guerra y al servicio militar.

- En el Artículo 9 sobre desarrollo, debiéramos incluir también la referencia a los derechos civiles y políticos. Además consideramos que el literal b del segundo párrafo debe ir en línea con la terminología de la Organización Internacional del Trabajo, de modo que además de la referencia al empleo debe incluirse las condiciones justas de trabajo, lo que ha dado en llamarse trabajo decente.



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- En el Artículo 19, además de referirse a la libertad de pensamiento, conciencia, expresión y religión, también debería hacerse referencia a las creencias.

- En el Artículo 11 sobre medio ambiente, no observamos mención alguna sobre el impacto de los conflictos o diferencias internacionales sobre cuestiones ambientales.

- En el Artículo 12 sobre los derechos de las víctimas y grupos vulnerables, consideramos que en el párrafo tercero no sólo debe mencionarse los efectos, también debe hacerse referencia a las causas.

- Para finalizar, el Artículo 13 sobre refugiados y migrantes, coincidimos con varios de los estándares que se contemplan en este artículo, toda vez que el mismo está acorde con la Declaración de Cartagena, la cual amplía la definición de refugiados. Sin embargo, no coincidimos con la relación entre violencia estructural y discriminación contra los migrantes, tal y como lo contempla el párrafo tercero.

Muchas gracias.

XV. Oral statement by Wallace Fox, representative of the Indian Council of South America.

Mr. Chairman,

On behalf of the Indian Council of South America we congratulate the Drafting Group for its draft Declaration on the Right of Peoples to Peace and invite the Advisory Committee to consider strengthening the Declaration by referring to the links between historical truth and peace, and also by drawing attention to the existence of peace and friendship treaties which were concluded between the Indigenous Nations of North America on the one side and the British Crown and the United States on the other, so-called “Indian Treaties”, which have not been honored by the British Crown or the United States . This constitutes a form of structural violence against the Indigenous Peoples of America.

We should like to refer to document A/HRC/9/NGO/47 of 1 September 2008, which recalls that the right to peace as a fundamental human right has been recognized in the United Nations Declaration on Rights of Indigenous Peoples by indicating that the indigenous peoples have the right to live in freedom, peace and security. This UN Declaration was followed by the draft American Declaration on the Rights of Indigenous Peoples. The Working Group drafting the former Declaration recognized that the right to peace is a collective right with an individual dimension.

As acknowledged by the Program of Action of the International Conference on Population and Development held in Cairo in 1994, the situation of indigenous peoples, which is often characterized by discrimination and oppression, has in many instances become institutionalized in laws and governance structures.

The Beijing Declaration and Platform for Action of the Fourth UN World Conference on Women of 1995 recognized the need to ensure full respect for the human rights of all women in general, including Indigenous women.

The Sub-Commission Report on Treaties with Indigenous Peoples also refers to this peace dimension.

Moreover, in its jurisprudence the United Nations Human Rights Committee has held that historical inequities for as long as they continue without redress constitute a violation of the Covenant on Civil and Political Rights.

For peace to flourish between peoples it is important that treaties with indigenous peoples be respected and that vulnerable groups, including the indigenous peoples of North and South America, be rehabilitated. In conclusion, we would like to refer to Article 12 of the *Santiago Declaration on the Human Right to Peace*, which lists Indigenous Peoples among the vulnerable groups who deserve special protection.

I, thank you, Mr. Chairman and members of the Advisory Committee, for your kind attention.

XVI. Recommendation 7/3 of the Advisory Committee on the promotion of the right of peoples to peace, adopted without vote, on 12 August 2011.

7/3. Drafting group on the promotion of the right of peoples to peace

The Human Rights Council Advisory Committee,

Recalling Human Rights Council resolution 14/3 of 17 June 2010, in which the Council requested the Advisory Committee to prepare a draft declaration on the right of peoples to peace,

Recalling also that, at its fifth session, the Committee designated Chinsung Chung, Miguel d'Escoto Brockmann, Wolfgang Stefan Heinz and Mona Zulficar as members of the drafting group, which subsequently elected Ms. Zulficar as Chairperson and Mr. Heinz as Rapporteur, and that Shigeki Sakamoto and Latif Hüseyinov joined the drafting group at the sixth session of the Committee,

Recalling that Human Rights Council resolution 17/16 of 17 June 2011 requests the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to present a draft declaration on the right of peoples to peace and to report on progress thereon to the Council at its twentieth session,

1. *Takes note* of the second progress report submitted by the drafting group to the Advisory Committee at its seventh session (A/HRC/AC/7/3);

2. *Welcomes* the responses received to the questionnaire sent out in April 2011, and the discussions and statements made during its seventh session;

3. *Welcomes* initiatives by civil society to organize discussions on progress reports of the Advisory Committee with Member States and academic experts;

4. *Encourages* the various stakeholders to contribute to the work under way;

5. *Requests* the drafting group to submit to the eighth session of the Committee a draft declaration on the right of peoples to peace revised in the light of comments received and discussions held at the seventh session of the Advisory Committee;



Asociación Española
para el Derecho Internacional
de los Derechos Humanos

Spanish Society for the International Human Rights Law
Société Espagnole pour le Droit International des Droits Humains

6. Requests the Office of the United Nations High Commissioner for Human Rights to provide the drafting group with all the assistance necessary to enable it to accomplish its task.