



人权理事会
第十七届会议
议程项目 5
人权机构和机制

人权理事会咨询委员会关于人民享有和平权问题的 进展报告*

* 本报告附件不译，原文照发。

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一. 导言¹

1. 人权理事会第 14/3 号决议请理事会咨询委员会与各成员国、民间社会、学术界及所有利益攸关方磋商，编撰关于人民享有和平权问题的宣言草案，并向理事会第十七届会议报告编撰进展情况。
2. 咨询委员会第 5/2 号建议指定郑镇星、米格尔·德埃斯科托·布罗克曼、沃尔夫冈·什特凡·海因茨(报告员)和莫娜·佐勒菲卡尔(主席)为起草小组成员。² 随后，又增加了坂本茂树和拉蒂夫·候赛诺夫两位成员，经扩大后的起草小组提交了一份进展报告，供咨询委员会第六次会议审议。本报告将提交理事会第十七届会议供审议。

二. 国际法和国际惯例蕴含的和平权

3. 《联合国宪章》第一条开宗明义地宣布，国际和平与安全是共同的目标；第二条将之列为原则；第六章将之列为解决争端的根本(第三十三至三十八条)。《宪章》第五十五条阐明，促进人权是各国家之间和平共处，睦邻友好关系的必要条件。《宪章》本身即蕴含了和平权。
4. 联合国全体会议的主要机关，大会通过了枚不胜数的决议，其中虽少数成员国弃权，则一直承认和平权。最为显著的是，大会第 34/11 号决议附件宣布：“全球人民均有享受和平的神圣权利”。大会随后的一些决议，尤其是第 53/243、57/216、60/163 和 63/189 号决议均一再确认了和平权。人权委员会第 5(XXXII) 76、2000/66 和 2002/71 号决议，以及人权理事会第 8/9、11/4 和 14/3 号决议也确认了这项权利。若干国家一如既往对上述决议投了弃权或反对票。
5. 《消除一切形式种族歧视国际公约》的序言阐明，人与人间基于种族、肤色或人种的歧视，为对国际友好和平关系的障碍，足以扰乱民族间的和平与安全，甚至共处于同一国内的人与人间的和谐关系。³
6. 《公民权利和政治权利国际公约》的序言指出，人权是世界和平的根基。⁴ 人权事务委员会第 6 号一般性意见着重指出了生命权、防止战争与禁止宣扬战争，包括核武器扩散之间的关系；第 14 号一般性意见在阐述核武器与生命权的关系时，明确划定了禁止战争与生命权之间的关联关系。

¹ 报告员感谢，Lena Ebe M.A.，在德国人权研究所实习期间杰出的协助工作，撰写了本文件最初的文稿。

² 咨询委员会第 5/2 号建议。

³ 联合国条约系列第 660, 195 卷。

⁴ 同上，第 999, 171 卷。

7. 《消除对妇女一切形式歧视公约》阐明，国家充分和全面发展、世界福祉与和平事业都需要女性与男性对各个领域同样平等的参与。⁵
8. 《儿童权利公约》有一项关于儿童卷入武装冲突问题的任择议定书。⁶
9. 《残疾人权利公约》确认，各国在创建基于自由、正义、发展与和平之上的公平与平等社会时，人权普遍发挥着关键性作用。⁷
10. 《非洲人权和人民权利宪章》第 23 条毫不夸张地承认，各国人民都“应享有国家和国际和平与安权”。
11. 2007 年《东南亚国家联盟宪章》重申东盟各成员国(序言)享有和平生活与(第 1 和 2 条及其呼吁和平解决争端的各条款多次表示)维护和增强和平的共同愿望。
12. 民间社会组织，特别是西班牙国际人权法协会和许多其它非政府组织也承认专家们编撰的无数文件均蕴含着和平权，并且得到数以百计非政府组织的认同。2010 年《圣地亚哥和平人权宣言》即是该协会四年来开展的运动，汇聚了世界各区域投入结出的成果。这项举措值得称道的是，通过汲取地方以及西方和非西方法律传统，殚精竭虑寻求普世价值观。与此同时，创建了一个国际和平人权监察机构。900 多个民间社会组织和城市认同通过该协会提交的联合国文件。
13. 1998 年，200 多个非政府组织历经三年的讨论过程，起草了《亚洲人权宪章》。《宪章》宣称“人人享有和平权，从而每个人可全面开发各自的体力、智力、品行和精神能力，不会沦为任何类型暴力的对象”。⁸

三. 咨询委员会推荐的做法

14. 人权理事会第 14/3 号决议请咨询委员会与各成员国、民间社会、学术界及所有利益攸关方展开磋商，编撰关于人民享有和平权的宣言草案。
15. 理事会第 8/9、11/4 和 14/3 号决议承认和平权；若干成员国就此决议表决反对。
16. 咨询委员会提议采取集中要点的方式，澄清和平权并增强落实和平权。
17. 因此，咨询委员会提出，和平应被视为在一国境内或各国之间不发生有组织的暴力现象，以及全面有效的保护人权、男女平等和社会公正、经济福祉，以及自由广泛地表达各种不同的文化价值观，既不受歧视，也不受限制。

⁵ 同上，第 1249, 13 卷。

⁶ 同上，第 2173, 222 卷。

⁷ 大会第 61/106 号决议。

⁸ 诸类不同作者，《亚洲人权宪章》第 4.1 段，可检索 www.unhcr.org/refworld/docid/452678304.html。

四. 核心层面因素

A. 国际和平与安全

18. 人权理事会第 14/3 号决议确认，全球人民拥有享受和平的神圣权利，而维护人民享有的和平权和增进落实和平权也构成了每个国家的基本义务，并强调必须培养费增强和保护每个人享有一切人权。该决议重申了大会和理事会先前各项决议以及《联合国宪章》条款所述的标准。

19. 正如《宪章》第一条所述，联合国的宗旨是维护国家和平与安全，并采取适当措施加强世界和平。《宪章》第五十五和五十六条要求本组织及全体成员国，以创建实现各国之间和平与睦邻友好关系所必需的稳定和福祉为着眼点，促进普遍尊重和恪守所有人的人权和基本自由。

20. 《关于各国依照联合国宪章建立友好关系和合作的国际法原则宣言》强调必须维护和加强建立在自由、平等、正义和尊重人权基础上的国际和平。⁹

21. 大会各项决议一再重申这项权利。例如，1978 年大会《为各国社会共享和平生活做好准备的宣言》确认个人、国家和全体人类和平生活的权利。¹⁰《宣言》还说，每个国家和每个人，不论种族、良知、语言或性别均享有和平生活的固有权利。尊重这项权利以及尊重他人的权利，符合全体人类的共同利益，并且是所有国家，不论大小，拟在各个领域取得进步，必不可缺的条件。

22. 《人民享有和平权利宣言》庄严宣布，全球人民均有享受和平的神圣权利而每个国家都负有促进和实施这项权利的根本义务。

23. 2010 年，在坎帕拉举行的罗马规约审查会议上，《国际刑事法院罗马规约》缔约国同意将侵略列入法院可追究罪行的清单。各成员国经协商一致，修订了《罗马规约》，列入了侵略的定义，以及一项确定法院如何对侵略罪行使其管辖权的制度。¹¹ 侵略行为被界定为一个国家在毫无自卫理由，或未经安全理事会授权情况下，擅自动用武力侵犯另一国的行为。¹²

⁹ 大会第 2625 (XXV) 号决议附件。

¹⁰ 大会第 33/73 号决议。

¹¹ “法院以公平、有效和独立作为的先决条件审判：侵略罪”，可检索 www.iccnw.org/?mod=aggression。

¹² 修订案载有侵略的定义及可定性为侵略的行为(例如，以武力、轰炸和封锁方式实施的侵略)均受大会第 3314 (XXIX) 号决议的影响。见“美国提议，国际协调委员会争取将“侵略”列为国际法所列的罪”《CSMonitor》，2010 年 6 月 15 日。

拟议的标准

1. 全球各国人民权享有和平人权。
2. 维护、促进和落实和平人权构成所有国家的基本义务。
3. 和平和发展是基本的人权，系为联合国体制的支柱和人身安全和福祉的根基。
4. 为了让人民行使和平权，并促进和落实和平权，各国就必须致力于铲除战争威胁，特别是核战争威胁，放弃在国际关系中使用或威胁使用武力，并依据《联合国宪章》，以和平方式解决国际争端；
5. 所有国家都应在尊重《宪章》所载原则并增进所有人权和基本自由，包括发展权和人民自决权的基础上建立起来的国际体制内，促进建立、维护和加强国际和平与安全；
6. 所有国家都应尊重并实际奉行《宪章》原由和宗旨，与所有其他国家开展关系，不论他国的政治、经济或社会体制如何，也不论他国的幅员大小、地理位置或经济发展水平，尤其不得威胁使用或使用武力，或以任何其它不符合联合国宗旨的方式，侵犯任何国家的领土完整，或政治独立，而且更不得干预根本隶属任何国家本国司法管辖权内的事务；
7. 所有国家作为当事方都应依照《宪章》原则，采用和平方式解决任何争端，而争端的持续可危及维持国际和平和安全；并且鼓励各国尽早解决相互间的争端，拟为促进和保护每个人和各国人民享有一切人权做出重大贡献。¹³
8. 为增强国际法治，各国都应全力支持国际刑事法院及其追究危害人类罪、战争罪、灭绝种族罪和侵略罪的工作。

B. 裁军

24. 武器制造、军备竞赛和所有各类武器过度及失控的贩运，均有益于国际和平与安全。各国若不恪守裁军领域相关条约，包括不扩散条约规定的义务，以及拥有、部署和威胁使用武器，即阻碍了对人权的尊重。

¹³ 参见大会第 39/11 (1984) 号决议、人权理事会第 8/9 (2008)、11/4 和 14/3 (第 6-10 段) 号决议和《宪章》第二条。

25. 核武器的继续存在对世界和平造成了威胁，因为核武器的使用会给世界所有的生命和人类带来普遍的灾难性后果。¹⁴ 人权事务委员会承认，研制、试验、制造、拥有和部署核武器是人类生命权当今面临的重大威胁。¹⁵ 1996 年 7 月 8 日，国际法院关于威胁使用核武器是否合法问题的咨询意见得出一致的结论，《不扩散核武器条约》第六条及其它国际承诺要求各国“真诚谋求并完成谈判，以促成在严格和有效国际控制下的全面核裁军”。大会的一项年度决议欢迎法院结论呼吁谈判一项关于全球禁止和消除核武器的公约，以作为履行义务的一项举措。¹⁶

26. 大规模毁灭性武器，包括核武器、化学武器和生物武器不仅会当即对民众和个人，而且还会对享有和行使其各类人权造成不良影响。研制、生产、储存和使用大规模毁灭性武器肆意杀戮的影响也可意味着无法预料、无法控制和长期且跨越边界的环境影响，危及子孙后代的生活。

27. 《禁止为军事或任何其他敌对目的使用改变环境的技术的公约》¹⁷ 第一条称，《公约》的每个缔约国承诺不将会带来广泛、长期或严峻后果的改变环境技能，诉诸军事或任何其他敌对性的利用，以作为毁灭、危害或伤害任何其他缔约国的手段。

28. 裁军和发展之间关系国际会议的最后文件¹⁸ 得出结论，这个相互依存世界若要实现真正和永久的和平与安全，就必须在当今世界面临的两个最紧迫的挑战问题：裁军与发展方面迅速取得进展。

29. 秘书长强调，裁军可促进创建有利于发展和人权，更稳定的国际和国家秩序。¹⁹ 联合国推出了若干拟解决国际武器贸易和非法武器贸易问题的行动计划。²⁰

30. 全面裁军权必须被理解为人民享有和平生活权的一个组成部分。裁军权应不但应成为人民享有和平权，还应成为国际团结权的组成部分。²¹

¹⁴ The Russell-Einstein Manifesto, 伦敦, 1955 年 7 月 9 日, 决议。

¹⁵ 关于核武器与生命权的第 14 号一般性意见(第 6 条), 1984 年, 第 4 段。

¹⁶ 参见, 例如, 大会第 64/55 号决议。至为重要的是, 在 2010 年条约审查会议最后文件, 首次在“核裁军行动计划”中确认, “所有国家都必须具体努力争取建立实现和维护一个无核武器世界必要的框架”。然后, 最后文件指出, 秘书长关于核裁军的五点提议, 具体提出考虑谈判一项以强有力的核查制度为支撑, 形成各成一体, 又相辅相成的核裁军公约或协议。因此, 2010 年的审查会议承认, 要消除核武器必须建立一个全球性的体制和法律制度。

¹⁷ 联合国条约系列第 1108 卷, 第 151 页。

¹⁸ A/CONF.130/39。

¹⁹ 参见 A/59/119。

²⁰ 例如, 从各个方面防止、打击和消除小武器和轻武器非法贸易的行动纲领和推动拟订一项武器贸易条约问题不限成员名额工作组的工作。

²¹ “新人权问题座谈会”, 墨西哥外交事务秘书处 Matias Romero 外交研究所, 联合国教育、科学及文化组织, SS-80/CONF.806/4, 1980 年。

拟议的标准

1. 各国人民和个人都有权提出要求，要求所有国家都必须紧迫地消除大规模毁灭性武器或肆意伤害性影响的武器，包括核武器、化学和生物武器。各国都应积极参与对武器贸易的严格和透明的控制，并禁止非法武器贸易。此外，各国应以联合和协调的方式，并在合理的限期内，在全面和有效国家监督下，开展进一步的裁军。²²
2. 各国人民和个人都有权将裁军节省下来的资源转用于人民的经济、社会和文化发展；并用于进行自然财富公平的再分配，尤其用于应对最贫困国家和处于弱势境况群体的需求，旨在结束不平等、社会排斥和极端贫困现象。²³
3. 各国人民有权在作为人类和平与生存基础的可持久且安全环境下生活。
4. 各国人民和个人有权在一个无大规模毁灭性武器的世界里生活。使用可危害环境的武器，特别是放射性武器是违反国际人道主义法、环境权与和平人权的恶行。各国必须紧迫消除和禁止这类武器，而使用这些武器的国家有义务修复所造成的一切损害，以恢复环境原有的面貌。

C. 人身安全

31. 和平权包括人身安全的要素。人身安全的着眼点在于解决人的基本需要。这包括免遭恐惧和免于匮乏的双重价值观。²⁴ 第一个观念系指冲突的威胁和战争期间对非交战者的保护，诸如核武器、化学和生物武器的威胁；第二个观念系指，经济不安全和的不平等、获取食物、饮用水、住房和适足卫生保健和扫除文盲等挑战问题。²⁵

²² 参见如，大会第 1653 (XVI)、2444 (XXIII)、2826 (XXVI)、2936 (XXVII)号决议和 47/39 号决议附件以及 A/CONF.95/15 号文件，附件一。

²³ 参见《亚洲宪章》：“在武器上的巨额经费支出，占用了本该用于国家发展规划或人民福祉的国家收入”(第 4.5 段)。

²⁴ 增强自由度：争取所有人的发展、安全和人权(A/59/2005)，第 25-126 段。

²⁵ 华盛顿特区融合人身安全、通信发展问题委员会，在英国合作伙伴 Grundy 和 Northedge 的指导下，编撰的“当前人身安全问题”最后报告，纽约，2003 年，第 94-124 页。

32. 人身安全针对的是不稳定和冲突的结构性原因，诸如贫困、不平等和经济机会匮乏。人身安全必须具备经济发展和增强社会正义。²⁶ 根据《和平文化宣言和行动纲领》²⁷ 和平建设战略必须确保发展和粮食安全的平等。

33. 2005 年《世界首脑会议的成果》²⁸ 确认，基于诸多威胁之间的相互关联关系；发展、和平、安全和人权的相辅相成关系；任何国家无法完全单凭独自行动实现自我保护，而所有国家都必须依赖切实有效的共同安全体制来实现《宪章》宗旨和原则的认识，世界领导人承诺力争达成对安全问题的共识。

34. 只有承认和平权所含的人身安全要素，才可实现永久和公正的和平共处目标。

拟议的标准

1. 每个人都有权享有人身安全，包括免于恐惧和匮乏，两个促进和平的要素。这包括有权享有适足的生活水准，包含适足的食物、饮用水、住房、卫生保健、教育和社会保障。

2. 各国人民和个人都有权不被任何国家视为敌人。²⁹

3. 各国人民和个人都有权在安全和健康的环境下，包括在无危险干预的氛围下生活，并获得保护，以防国家或非国家行为方任何侵害人身和心理的暴力。

4. 各国人民和个人都有权受到保护，免遭灭绝种族罪、战争罪、侵略战争罪、种族清洗和危害人类罪之害。各成员国若无法制止其本国边境内发生上述这类罪行，即应吁请联合国来履行维护《宪章》和国际法的职责。³⁰

5. 各国人民和个人都有权要求本国政府切实恪守国际法、国际人权法和国际人道主义法的准则。³¹

6. 各国人民和个人都有权对军费和相关预算实现民主执政管理，开展对国家和人身安全需求和政策、国防和安全预算编制问题，以及决策者对民主监督机构的问责制举行公开辩论。³²

²⁶ McFarlane, H. 和 Foong Khong, Y 编撰的《人类安全与联合国：针砭历史》，Bloomington, Ind.: Indiana University Press, 2006 年，第 151 页。

²⁷ 大会第 53/243 号决议。

²⁸ 大会第 60/1 号决议，第 72 段。

²⁹ 2010 年 12 月 10 日，国际和平人权大会在西班牙，圣地亚哥——德孔波斯特拉举行的“和平教育问题世界社会论坛”上，通过的《圣地亚哥和平人权宣言》第 5 条第 1 款。

³⁰ 大会第 60/1 号决议，第 138-139 段。

³¹ 参见《圣地亚哥宣言》第 3 条第 3 款。

³² 自 1990 年代以来，安全理事会决议频频表示必须改革安全部门，包括男女平等问题。参见如 2009 年 12 月 21 日新闻发布：“安全理事会敦请在中非竞选投票前先改革安全部门”，和理事会第 1509(2003)、1833(2008)、1902(2009)和 1906(2009)号决议。

D. 抵制镇压

35. 《世界人权宣言》的序言确认：“鉴于为使人类不致迫不得已铤而走险对暴政和压迫进行反叛，有必要使人权受法治的保护”。大会确认各国人民有权抗拒殖民或外来统治。³³

36. 《关于各国依照联合国宪章建立友好关系和合作的国际法原则宣言》不但承认和平人权的重要意义，而且确认“迫使人民遭受异族奴役、统治和剥削严重阻碍了促进国际和平和安全”。与此同时，《宣言》还确认，各国家均“有义务避免对民族采取剥夺其自决权……之任何强制行动”而遭受这类侵权行为的民族有权采取“诉诸行使自卫权的行动，抵制、抗拒这类强制性行动”并“寻求和接受大会确定的支持”。³⁴

37. 抵制和抗拒镇压是实现和维护正义和平的至为关键。

拟议的标准

1. 各国人民和个人都有权抵御和反抗镇压性的殖民主义和外来统治，这种构成公然侵犯人民人权，包括人民享有国际法所列自决权的体制。

2. 每个人都有权抵制本《宣言》界定的：战争罪、灭绝种族罪、侵略罪、种族隔离和危害人类罪、侵犯普世公认的他人人权、任何鼓吹战争或煽动侵犯和平人权的行。 ³⁵

E. 维护和平

38. 与保护人权相关的维护和平行动至少有两个方面。第一，维和行动的重点是在冲突后的环境下为平民提供人身保护，这是人身安全的关键组成成分。第二，涉及维和人员和相关工作人员被控犯有侵权行为，及联合国指挥下的行动享有的赦免问题。当地居民应拥有适当渠道可提出投诉并获得回复。³⁶

³³ 参见大会第 37/35 号决议。

³⁴ 大会第 2625(XXV)号决议，附件。

³⁵ 参见《圣地亚哥宣言》第 6 条第 2 款。还请参见《亚洲宪章》第 3.4 段。

³⁶ 参见网页资料来源“联合国和有关人员为免遭色情剥削提供的保护”，可检索 www.un.org/en/pseataforce/tools_manage.shtml。还参见 Marten Zwanenburg 编撰的“针对支持和平行动的问责制”，Leiden, 波士顿，2005 年，和 Keith J. Allred 编撰的“人口贩运与维和人员”，载于 Cornelius Friesendorf(ed.)、 “禁止人口贩运的战略：安全部门的作用”，维也纳和日内瓦，2010 年，第 299-328 页。

拟议的标准

各国和联合国均应把全面和有效履行对平民的保护列为执行维和行动一个首要目标。维护和平任务和维和人员应一丝不苟地履行联合国关于职业操守的规则和程序，包括一旦发生不当值后所犯的不轨刑事行为时，应撤销赦免权，以便地方居民可诉诸法律诉讼和补救办法。部队派遣国应采取一切措施，有效地全面调查指控本国派遣部队人员的投诉。

F. 依良心拒绝权和宗教与信仰自由

39. 联合国人权事务委员会和人权委员会发表的声明，显然承认依良心拒绝服役。这源于思想、良心和宗教自由权，并适用于义务兵役和自愿兵役。

40. 人权事务委员会确认依良心拒服兵役是《公民权利和政治权利国际公约》第十八条所载思想、良心和宗教自由权的部分内容。人权事务委员会第 22 号³⁷ 一般性意见称，依良心拒绝者之间不得基于具体信仰的性质相互歧视。此外，人权事务委员会还在关于国家报告及其案情的诸多结论性意见，最重要的是就 Yeo-Bum Yoon 和 Myung-Jin Choi 诉大韩民国案件，及此后针对大韩民国不同背景下依良心拒服兵役者的 11 份来访发表的结论性意见中均阐述了这个问题。³⁸

41. 人权委员会第 1995/83 号决议称，正在服兵役的人不应被排除在依良心拒服兵役权之外。人权事务委员会还欢迎一些国家认可，对依良心拒服兵役者的宣称不必调查其真实性，并呼吁若尚未设立独立和公平的决策机构，建立起此类机构。³⁹ 人权事务委员会表示关切军事司法人员对依良心拒服兵役案的裁定，并鼓励将由民政主管当局掌管评判申请依良心拒服兵役者实情的工作。⁴⁰

42. 此外，人权事务委员会第 1998/77 号决议称有权基于良心原因拒绝服役，因为拒绝服役是一种思想、良心和宗教自由的合法表现，而国家不得惩罚和歧视依良心拒服兵役者。

³⁷ CCPR/C/21/Rev.1/Add.4，第 11 段。

³⁸ 人权事务委员会确认依良心拒服兵役是《公约》第十八条第 1 款所列的一种受保护的宗教信仰的表现形式，并认为大韩民国不允许这两位耶和华见证会信徒依良心拒服兵役，违背了第十八条。至于其它案情，请参见第 1593 至第 1603/2007 号来文。

³⁹ 同上，还请参见，人权委员会第 2000/66 和 2002/71 号决议。

⁴⁰ CCPR/CO/78/ISR 第 24 段和 CCPR/CO/83/GRC 第 15 段。

43. 区域层面也有一些方面支持尊重依良心拒服义务兵役。⁴¹

44. 许多基于宗教问题的冲突，其核心就是打着宗教和信仰名义的歧视和暴力行为，往往与族裔、种族、政治或历史背景相互纠缠在一起。人权理事会第 4/10 决议承认，无视和侵犯人权和基本自由，特别是思想、良心和宗教或信仰自由，继续直接或间接地为人类带来战争和巨大的苦难。

拟议的标准

1. 每个人都有权依良心拒绝并得到行使此权利的保护。

2. 各国义务防止军事或其它安全机构成员参与，不论是国际还是国家的侵略战争，或其它违背国际人权法或国际人道主义法原则和准则的武装行动。任何军事或其它安全机构成员都有权不服从明显违背上列原则和准则的命令。服从上司军令的职责不会免除恪守上述原则和准则的义务，而不听从这类命令绝不构成抗拒军令罪。⁴²

3. 每个人都有权期待缔约国特别注重通过与民间社会的合作，协助解决与宗教和族裔问题相关的冲突。

G. 私营军事和保安公司

45. 2010 年 7 月使用雇佣军为手段侵犯人权和阻挠人民行使自决权问题工作组建议认真考虑该小组关于可拟订一项规约私营军事和保安公司的新国际法律文书草案。一项可作为规约私营军事和保安公司的公约草案第 3 条界定，各国和政府间组织以其主管职权范围为限，规约各私营军事和保安公司、及其活动和雇用人员。公约适用于“一切不论是否被界定为武装冲突的情况”。

46. 人权理事会依据第 15/26 号决议，设立了一个不限成员名额工作组，以审议可否编纂一项国际管制框架，以规约、监督和监察私营军事和保安公司的活动。

⁴¹ 参见例如欧洲委员会“依良心拒服义务兵役”，斯特拉斯堡，2007 年和美洲国家组织常设理事会，编撰“美洲国家关于土著人权利宣言”草案工作组“寻求共识第十届会议的结果” La Paz, -2007 年 4 月 23-27 日，第三十条第 4 款。

⁴² 参见《圣地亚哥宣言》第 5 条第 4 款。

拟议的标准

1. 各国不得将本国自身应承担的军事和保安职能外包给私营签约公司。各国应设立一个国际制度，列明有关现行私营军事和保安机构职能、监察和监督的明确规则。

2. 各国应确保依据遵循国际人权法和国际人道主义法正式颁布的法律，规约私营军事和保安公司、其雇用人员以及与私营公司各自履职活动相关的任何结构。各国应采取可能必要的这类立法、行政及其它措施，确保追究这类私营公司及其雇用人员违犯适用国家或国际法律行为的责任。任何归因于某个私营军事或保安公司的责任应有之独自承担，但并不免除一国或若干国家可能要承担的责任。⁴³

五. 其它层面因素

A. 和平教育

47. 若不以正式或非正式的方式，全面致力于落实严肃的教育，则无法想象和平权的概念。往往在传媒和政治及它利益集团的误导下，对手方或敌对方对某一国家长期形成的历史性威胁概念；推崇暴力的鼓吹；仇视外籍人，乃至各个异族的种族主义态度及许多其它的观念，可从根基上损毁任何真正想要创建和平文化的举措。相反，若开展严肃的职业教育和传媒报导则能大为增强和平文化，削弱种族主义、侵害性、歧视性和暴力性的观念。从 1970 年代起，联合国教育、科学及文化组织(教科文组织)就一直在积极开展此领域的工作。

48. 1974 年，教科文组织通过了《关于促进国际了解、合作与和平教育以及关于人权与基本自由教育的建议》。教科文组织强调和平教育与人权教育必须双管齐下。

49. 《千年发展宣言》称，人类必须相互尊重各自多样不同的信仰、文化和语言。对于社会内以及社会之间的差异，既不应惧怕，也不应压制，而应珍视为人类的宝贵财富。在各种文明之间应积极地创建起和平文化和对话。⁴⁴

50. 人权理事会第 14/3 号决议呼吁各国和联合国相关机构促进切实执行《和平文化宣言和行动纲领》。

51. 大会和人权理事会的许多关于和平权的决议均载有支持和平教育的条款。⁴⁵

⁴³ A/HRC/15/25，附件第 5 段。

⁴⁴ 大会第 55/2 号决议，第 6 段。

⁴⁵ 例如，大会第 53/243A 号决议，和人权理事会第 8/9 号决议第 9 段、第 11/4 号决议第 10 段和第 14/3 号决议第 10-11 段。

拟议的标准

1. 各国人民和每个人都有权接受全面的和平教育。和平教育应成为每个教育体制的根本，推动基于信任、团结和相互尊重的社会进程，融入性别平等观，促进和平解决冲突，在和平文化框架内走向处置人类关系的新方式。⁴⁶

2. 各国人民和每个人都有权要求和学会毕生以开创性，非暴力方式解决冲突的必备处事能力，甚至无法解决的情况下，得以转化冲突的能力。这些是应通过正式和非正式教育，可具备的处事能力。⁴⁷

3. 应禁止推崇暴力和为暴力辩护。⁴⁸

4. 各国人民和每个人都有权，可依据国际人权法，获得和接受多样化来源不必经过资讯检查的信息，以保护免受经过人为操纵，以主张战争或侵略倾向为目的的宣传。⁴⁹

5. 各国人民和每个人都有权，不受政府或私营方面的干预，谴责任何威胁或违背和平人权的事件，并自由地参与和平政治、社会及文化活动，或维护和增进和平人权的倡议行动。⁵⁰

6. 各国义务：

- (a) 加大教育力度，从教课书和其它教育材料中删除仇恨言论、歪曲、偏见和不良倾向性的内容，并确保对世界主流文化、文明和宗教的基本认识 and 了解；
- (b) 更新和修订教育和文化政策，以体现出基于人权的方针、文化多样性、跨文化对话和可持续的发展；
- (c) 修订歧视妇女的国家法律和政策，和颁布关于整治家庭暴力、贩运妇女和女孩以及基于性别暴力问题的立法。⁵¹

⁴⁶ 《圣地亚哥宣言》第 2 段第 2 款。

⁴⁷ 同上，第 2 条第 3 款。

⁴⁸ 同上，第 6 段第 2 款。《公民权利和政治权利国际公约》第二十条阐明：“任何鼓吹战争的宣传，应以法律加以禁止”和“任何鼓吹民族、种族或宗教仇恨的主张，构成煽动歧视、敌视或强暴者，应以法律加以禁止”。还参见《亚洲宪章》第 3.4 段。

⁴⁹ 《圣地亚哥宣言》第 8 段第 1 款。

⁵⁰ 同上，第 8 条第 2 款。

⁵¹ A/63/127 第 66 段。

B. 发展

52. 发展权要实现的是诸多进取性和平的所含要素，诸如改善主流居民的生活条件；采取先期行动保护一切经济、社会、文化权利，和为弱势群体女性提供具体的支持。咨询委建议，理事会确定若干关键性的标准，不要去重复各相关联合国机关和机构业已拟订的一长串现行标准。⁵²

53. 《发展权宣言》⁵³ 发展与和平之间的相互关联关系和相辅相成的性质，宣称铲除战争的威胁将促进建立有益于发展的环境，而国际和平与安全是实现发展的基本要素。

54. 此外，各国应采取步骤消除因未恪守公民权利和政治权利以及经济、社会和文化权利造成的发展障碍，并应利用裁军节省的资源，推动全面发展。⁵⁴

55. 1999 年，大会通过了《和平文化宣言和行动纲领》。⁵⁵ 该《宣言和纲领》系为“国际和平年”和“世界儿童的和平与非暴力文化国际十年”的依据。大会鼓励各成员国采取国家、区域及国际各级行动增强和平文化。民间社会拟参与各级行动，以扩大和平文化活动。

56. 《千年发展宣言》即以各种方式阐明和平是联合国的一个重要的宗旨。《宣言》第二段尤其强调，和平、安全与裁军之间，以及各项人权、民主与善政之间的关联关系。各成国在《宣言》中一致同意要确保加强政策的连贯一致性，深化联合国、及其机构、布雷顿森林机构和世界贸易组织以及其他多边机构之间的合作，以期形成一项全面协调配合的方针，处置和平与发展问题。⁵⁶ 这与千年发展目标 8 的 B 和 C 项，促请各国采取国家和国际措施，全面处置发展中国家债务问题的要求相吻合。此外，各国承诺履行义务，创建一个以坦诚、基于规则、可预测、非歧视性的贸易和金融体制，包括从国家和国际两个层面致力于开展善政、发展和减轻贫困工作。⁵⁷

⁵² 例如，发展权工作组，关于执行发展权的高级别特设工作组、特别程序任务负责人，诸如，食物权问题特别报告员和外债问题特别报告员，以及联合国各个机构，诸如联合国粮食及农业组织、国际劳工组织、世界卫生组织、联合国开发计划署和联合国儿童基金会等开展的工作。

⁵³ 大会第 41/128 号决议附件。

⁵⁴ 同上第 3 (3) 和 7 条。

⁵⁵ 大会第 53/243 (1999) 号决议。

⁵⁶ 大会第 55/2 号决议，第八节。

⁵⁷ 同上，第 13 和 16 段。

拟议的标准

1. 各国人民和每个人都有权奉行视和平与安全同发展为相互关联和相辅相成关系，且互为各自依据的国策。增强全面和可持续的经济、社会、文化及政治发展，即意味着有义务消除战争威胁，并为之致力于裁军以及全体人民自由和切实的参与此进程。

2. 为了实现享有和平人权并铲除结构性暴力，就必须让每个人和各国人民都享有参与经济、社会、文化和政治发展不可剥夺的权利，从而可充分行使所有的人权和基本自由，并促进和享有这方面的发展。⁵⁸

3. 各国人民和每个人都应免遭匮乏的困扰，从而享有和平的生活。人民应享有可持续发展权及经济、社会和文化权，尤其是：

- (a) 应有权享有食物、饮用水、卫生设施、保健、衣物、住房主、教育和文化；
- (b) 有权从事工作，并享有公平的就业条件和加入工会社团；有权享有与从事同样职业或职能的同仁们同等的报酬；按平等的条件享有社会服务和娱乐权。⁵⁹

4. 各国人民和每个人都有权消除各种有碍实现发展权的障碍，诸如承受不公或不可持续的外债负担及债务附加条件，或维持不公平的国际经济秩序等，因为这些障碍造成了贫困和社会排斥现象。各国和联合国系统应全面合作，以消除国际和国内的此类障碍。⁶⁰

C. 环境，特别是气候变化

57. 环境是和平权的一个关键问题。气候变化是一个尤其相关的领域。⁶¹

58. 气候变化对从生命、食物、用水、保健、住房和住所，直至人民自决权和生活和文化权，迁徙权和冲突情况下的重新安置和人身安全权等各类人权产生的不良影响。⁶² 此外，造成气候变化的历史因素和对气候变化带来的负担分摊均

⁵⁸ 《圣地亚哥宣言》第4条第1款。

⁵⁹ 同上，第3条第4款。

⁶⁰ 同上，第4条第2款。

⁶¹ 联合国气候变化公约界定气候变化或“全球变暖”为“除在类似时期内所观测的气候的自然变异之外，由于直接或间接的人类活动改变了地球大气的组成而造成的气候变化”。（第一条第2款）。

⁶² “气候变化与人权：概略指南”，人权政策国际理事会，第1段，可查阅：http://www2.ohchr.org/english/issues/climatechange/docs/submissions/136_report.pdf。还请参风，人权理事会第7/23号决议，第一序言段。

极为不平衡。⁶³ 然而，适应和缓解政策以及长期的保护，也可产生适得其反的效应。⁶⁴

59. 2008 年，人权理事会第 7/23 号决议请人权高专办研究人权与气候变化问题。2009 年发表了这份研究报告，⁶⁵ 体阐述了在气候变化影响下产生的流离失所现象和冲突。报告还分析了气候变化对国际人权法所列相关义务的影响后果。据食物权问题特别报告员称，土壤退化，加上其它诸多因素一起，酿成了苏丹达尔福尔地区及非洲其它各地一些争夺资源的冲突。⁶⁶ 非政府组织——“警报国际”确定了 46 个因气候变化为可暴发武装冲突的高风险国家，和 56 个受政治不稳定威胁的国家。⁶⁷

拟议的标准

1. 各国人民和每个人都有权在安全和健康的环境下生活，包括在不受国家或非国家行为者任何危险的人为干预并受保护免遭任何心身暴力之害的氛围下生活。

2. 各国人民和每个人都有权受到保护，免遭灭绝种族罪、战争罪、种族清洗罪、侵略罪和危害人类罪之害。⁶⁸

3. 各国确认，人为造成的气候变化不良影响，干预了享有各项人权，特别是经济、社会及文化权利，从而危及国内和国际发展、稳定、和平和安全。因此，各国必须根据现行科学证据及酿成气候变化的历史导因，承担起减轻气候变化的责任，以确保各国人民都能调整应对气候变化的不利影响，特别是那些干预人权的影响。

4. 各国人民和每个人都有权参与可持续的发展，并推行减缓和调整应对环境的损毁，特别是气候的变化，并自由和有意义地参与研订和执行这类缓解和调整适应政策。

5. 各国人民都应战争造成的环境影响承担责任，包括不论是蓄意还是无意地导致环境改变，形成的长期或严峻的影响后果，导致了对他国永久性的毁损或伤害。

⁶³ A/HRC/10/61，还请参见《框架公约》第 3 条。

⁶⁴ 参见人权政策国际理事会“气候变化与人权”第 1-2 段。

⁶⁵ A/HRC/10/61。

⁶⁶ A/HRC/7/5。

⁶⁷ 关于国别评估参照的指标和标准的资料，参见“气候变化：气候变化、和平与战争之间的关联关系”，警报国际，2007 年 11 月，第 18-19 段，可查阅：www.international-alert.org/pdf/A_Climate_Of_Conflict.pdf。

⁶⁸ 大会第 60/1 号决议，第 138-139 段。

D. 受害者和弱势群体

60. 每个人都应同样享有人的尊严，和受保护的平等权利。然而，一些特殊的弱势群体应当给予特别的保护。这些群体包括处于特殊境地的妇女、儿童、强迫或非自愿失踪的受害者、残疾人、老年人和流离失所者、移徙者、难民和土著人民，以及以人身安全尤其易受侵害为特点的少数群体。

61. 2000 年，安全理事会第 1325 (2000)号决议首次承认妇女、和平与安全之间强有力的关联关系，而且必须解决冲突中和冲突之后情形下出现的基于性别的暴力和男女不平等问题，并强调妇女必须平等地参与各方面的努力，维护和增进可持续和正义的和平与人身安全。国家要承担的义务，包括保护妇女和儿童免遭强奸、强迫怀孕，以及不得利用妇女作为战争工具和性奴隶。安全理事会第 1888 (2009)和 1889 (2009)号决议确立了新方针，将性别问题融入和平与人身安全所涉的各个方面。

62. 在探讨那些尤其易遭暴力和武装冲突之害的个人和群体时，显而易见，这些个体和群体曾经受了多重情况下的政治、经济或其它方式的歧视、排挤和排斥。各国应认识到，这方面的关联关系，并因此认清消除歧视是为了防止暴力和武装冲突的暴发，所采取的一项预防性措施，让每个人或群体都能享有和平权。

63. 所有人权遭侵犯的受害者都有权诉诸补救办法、责令侵权者不得重犯并追究侵权责任，⁶⁹ 以及有权不受歧视地确认其受害者地位。⁷⁰ 关于尤其弱势的受害者权利及其诉诸补救的权利，人权事务委员会第 31 号一般性意见，在阐述关于缔约国对《公民权利和政治权利国际公约》负有的一般法律义务时主张采取相应适当的补救办法，从而照顾到特定类别人员的弱势境况，包括尤其是儿童的境况。⁷¹

64. 关于过去武装冲突的历史或国家紧急状态，一些诸如真相委员会之类的机制被证明是实现冲突之后社会的和平并确保受害者权利受保护的有助举措。第二个和平权的议题是赔偿权，赔偿不仅包括侵害者要从经济上给予赔偿，还得承认过去的侵权行为并承担责任。参与此类追究程序的权利至为重要，而必须接纳所有群体的参与。

⁶⁹ 具体参见：《世界人权宣言》第八条；《公民权利和政治权利国际公约》第二条；《消除一切形式种族歧视国际公约》第六条；《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》第十四条；《儿童权利公约》第三十九条；1907 年 10 月 18 日《海牙陆战法规与惯例公约》(第四《公约》)第三条；《一九四九年八月十二日内瓦四公约》及其 1977 年 6 月 8 日《关于保护国际性武装冲突受害者的附加议定书》(《第一议定书》)第九十一条；和《国际刑事法院罗马规约》第六十八和七十五条。

⁷⁰ 大会第 60/147 号决议第 21 段。

⁷¹ CCPR/C/21/Rev.1/Add.13, 第 15 段。

拟议的标准

1. 各国应确保全面考虑到各种不同形式的暴力对一些隶属弱势境况群体的人享有权利产生的具体影响后果。各国义务确保采取补救措施，包括承认隶属弱势境况群体的人有权参与采取这类措施。⁷²

2. 每位人权遭侵犯的受害者依据国际人权法都有权，恢复遭侵犯人权的原状；获得有效和全面的补救，包括获得康复和赔偿；有权获得象征性的补救或赔偿；和保证不再重犯侵权行为。⁷³

3. 各国、国际组织，特别是联合国和民间社会都应为妇女提供便利，以利于她们具体促进防止、管理与和平解决纠纷，并增强妇女为建立、巩固和管理冲突后的和平作出贡献。为此，国家、区域和国际等每个层级上述领域的决策机构及机制应推动扩大妇女的代表比例。

4. 凡遭侵略、灭绝种族、种族主义、种族歧视、仇外心理和其它相关不容忍或种族隔离、殖民主义和新殖民主义等行为之害的每个人和各国人民，都应作为和平人权遭侵犯的受害者得到特别的关注。⁷⁴

六. 国家义务

65. 根据国际法委员会关于国家对国际不法行为责任的条款草案，凡犯有国际不法行为的国家都有责任，就一国因国际不法行为造成的不论是在实质上，还是在精神上任何伤害进行赔偿。⁷⁵ 这样的国际不法行为(行为或不行为)都必须归咎于该国，并且还构成了违背该国国际义务的行为。⁷⁶ 显然，若干条约和公约以及国际习惯法均确立了和平与战争时期国家应就此问题承担的义务。⁷⁷

⁷² 参见《残疾人权利公约》序言。

⁷³ 同上，第十一条第4款。

⁷⁴ 《圣地亚哥宣言》第1条第3款。

⁷⁵ 大会第56/83号决议，附件第31段。

⁷⁶ 同上，第2段。

⁷⁷ 例如，教科文组织《世界遗产公约》；《关于环境与发展的里约宣言》的义务，原则2、14、18、19和24；《一九四九年八月十二日内瓦四公约第一附加议定书》第五十五和五十六条。

66. 《圣地亚哥宣言》体现了各国的义务。第 13 条规定：

(a) 为切实和实际实现和平人权势必要求各国、国际组织、民间社会、各国人民、每个人、各公司、传媒和社会其他行为方以及整个国际社会普遍履行职责和义务；

(b) 各国，以及联合国作为协调各国实现《联合国宪章》宣称的宗旨和原则统筹努力最庞大的国际性机构也负有维护和平与保护人权的基本责任；

(c) 各国应采取一切必要措施，确保发展和保护环境，包括防灾筹备战备，因为采取防备举措会形成对和平的威胁，并且有义务在所有必要领域开展合作，尤其通过增强和提供资源以履行扩大国际发展合作的承诺，力争实现和平人权；

(d) 各国都必须采取措施建立和巩固和平，并有责任保护人类免遭战争恶魔的祸害。然而，这不应被理解为任何国家可对其它国家领土实施任何干预；

(e) 为保障和平人权，呼吁各成员国努力推动安全理事会的改革，以便体现和更佳地确保公正和平衡地代表当今国际社会。安全理事会必须采取透明的工作方法，并让民间社会及其它行为方参与安理会的辩论。

七. 监督和执行

67. 三个拟议的新机制。

一个新的特别程序

68. 2009 年 12 月 15 日至 16 日，人权高专办在日内瓦举行了人民享有和平权问题专家研讨会，一位专家提议设立一位人民享有和平权问题特别报告员或独立专家。⁷⁸

一个新的工作组

69. 西班牙促进人权法协会提议设立一个充当监督机制的工作组。《圣地亚哥宣言》第 15 条提及应组建一个由 10 名成员组成的和平人权问题工作组，履行增强遵循和执行《宣言》的职能。工作组为履行其任务将担负如下职责：(a) 促进对和平人权的广泛遵循和认识；(b) 切实收集、汇总并回应来自各国、国际组织及其机关、民间社会组织、国家人权机构、相关个人和任何其它可靠来源的任何信息；(c) 开展涉及侵犯和平人权问题的实地调查并呈报申诉机构；(d) 向联合国各成员国提出建议、呼吁和紧急行动，要求各成员国在给予这些建议和呼吁应有考虑的情况下，采取适当措施，促进有效实现和平人

⁷⁸ A/HRC/14/38 第 54 段。

权；(e) 在出现侵犯和平人权迫在眉睫的威胁或严重行为时，自主采取行动，或应大会、安全理事会或人权理事会的要求，编撰视为势在必行报告；(f) 向大会、安全理事会和人权理事会提交汇报其活动情况的年度报告；(g) 促进编纂有关侵略罪和正当自卫限度的定义和准则；和(h) 向国际刑事法院或其它主管国际刑事法庭呈交可靠资料，揭露显然隶属刑事法院或其他国际刑事法庭管辖之列的任何所犯罪行情况。

一个新的不限成员名额工作组

70. 在上述专家研讨会上，一位专家提议设立一个向民间社会组织开放的不限成员名额的成员国工作组。⁷⁹

71. 此时此刻，咨询委员会并不建议建立一个具体的机制，然而，则准备有待听取本次讨论提出的评论和提案。

八. 结论

72. 本报告提出了可列入关于人民享有和平人权问题宣言草案的 40 多项拟议标准、列入这些标准的具体理由以及相关的法律标准。

73. 咨询委员会在举行了第六次会议之后，将按历次调研的惯例，请各利益攸关方在调查问卷中就本报告发表评论意见。

74. 鉴于人权理事会举行的讨论和各利益攸关方的回复，咨询委员会拟在即将举行的各次后续会议上编撰宣言草案。其宗旨是编撰一份有助于推动自由、和平与安全，并将对增进人权议程及和平权有价值的文件。

⁷⁹ 同上，第 57 段。

Annex I

Literature

The enormous expenditures on arms have diverted public revenues from programmes for the development of the country

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Annex II

Some pointers on concepts of peace

This appendix intends to give a brief overview over different dimensions and approaches on peace and a right thereof.

It mainly focuses on who may be right holders and duty bearers, whether a right to peace can be perceived as an individual and/or collective right and on the prospect of a juridification of a right to peace. Further, it focuses on the relationship of a right to peace to other human rights and introduces the notion of human security.

A. Negative and positive peace

1. A key issue, abundantly discussed in academic debate is what constitutes peace or absence of peace. Negative peace is often understood to signify the absence of direct, physical violence.

2. In contrast, the understanding of positive peace goes beyond strict absence of armed conflict and is associated with the elimination of all kinds of violence and effective respect for all human rights. Only in peaceful environments, the conditions for satisfying the basic needs of human beings are met.^a Naturally, notions of positive peace differ considerably in states and societies over time, but there are certainly some common elements. To give just one example, the Kroc Institute of International Peace Studies at the University of Notre Dame asserts that ‘peace’ within peace studies,

“is defined not just as the absence of war (negative peace), but also the presence of the conditions for a just and sustainable peace, including access to food and clean drinking water, education for women and children, security from physical harm, and other inviolable human rights (positive peace). This idea is rooted in the understanding that a “just peace” is the only sustainable kind of peace; an approach that seeks merely to “stop the guns” while ignoring the denial of human rights and unjust social and political conditions will not work in the long run”.^b

3. Another perspective is Johan Galtung’s approach:

“The basic point is that peace is a relation, between two or more parties. The parties may be inside a person, a state or nation, a region or civilization, pulling in different directions. Peace is not a property of one party alone, but a property of the relation between parties. Saying that in no sense belittles the significance of the party’s intent and capability to build peaceful relations. But, like a marriage, it is not the sum of the capabilities of the parties. Which is why we can have lovely people related in a less-than-lovely marriage. And vice versa.

^a We just recall here the debate about (structural) violence, use of force, war, right of self-determination, right of resistance to cite only a few aspects of a complex issue.

^b The Kroc Institute of International Peace Studies at the University of Notre Dame, “What is peace studies?”, <http://69.5.8.7/node/312>, retrieved at 12 Oct 2010.

What kind of relations can we have? Three types, it seems:

- (a) Negative, disharmonious: what is bad for one is good for the Other.
- (b) Indifferent: a non-relation, they do not care about the Other.
- (c) Positive, harmonious: what is bad-good for one is bad-good for Other.

In the real world relations may be mixes of all three. When the negative relation is brought about with intent, the party is an actor, we talk about direct violence, or harm, and about war if the actor is collective. If the violence to a party is not intended (but watch out for acts of commission, more or less intended!) it maybe referred to as indirect, often caused by inequitable structures producing harm - structural violence. And then the role of culture legitimizing either or both types of violence: cultural violence.

From this follow two concepts of peace:

- (a) Negative Peace: the absence of violence, like a cease-fire, like keeping them apart, not negative but indifferent relations.
- (b) Positive Peace: the presence of harmony, intended or not. They are as different as negative health, the absence of (symptoms of) illness and positive health, the feeling of wellness and the capacity to handle some illness.”^c

B. The collective and individual dimension: peoples and individuals should be rights holders

4. At the OHCHR Workshop (2009) an expert noted that there was a tendency to perceive the right to peace primarily from the perspective of collective rights. Yet, he argued that peace was also a personal right, prior to and indispensable to other rights. He indicated that peace must be seen as an enabling right empowering individuals to enjoy civil, political, economic, social and cultural rights. Moreover, one should not be limited to considering peace as the absence of war. Humanity needed to ensure positive peace in the form of social justice. He stated that the right to peace must be understood and implemented in a holistic manner, among other things, through, respect for civil and political rights and must include a focus on the obligations that peace imposes both on States and on individuals.^d

5. Another expert at the workshop noted that the “right to peace had a definite individual dimension, which was assessed through the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.”^e

6. An expert mentioned that there is a generally accepted principle of dual ownership of the human right to peace. He noted that peace was indivisible, and thus manifested itself as a collective right of the human community of peoples and States while, at the same time, directly affecting each human being as an individual right.^f

^c Johan Galtung, “A mini theory of peace”, http://www.transnational.org/Resources_Treasures/2007/Galtung_MiniTheory.html, retrieved at 12 Oct 2010.

^d OHCHR Workshop (2009), para 15.

^e OHCHR Workshop (2009), para 27.

^f Ibid., para 29.

7. Another expert held that the meaning given to the term “peoples” for the purposes of peoples’ right to peace still remained unclear, leading to an uncertainty as to the rights holders. The term “peoples” might have different meanings for the purposes of different rights of peoples. The question was whether the duty bearers were individual States, States acting collectively through the United Nations, or the international community as a whole.^g

C. Other collective rights

8. If one looks at other collective rights, such as the right to development und the Declaration on the Rights of Indigenous Peoples, those clearly include collective as well as individual rights.

9. The UN Declaration on the Right to Development (1986)^h, for example, states in article 1 (a)

“an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

10. In article 2, it specifies that the human person is the central subject of development and should be the active participant and beneficiary of the Right to Development.

“The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”

11. The United Nations Declaration on the Rights of Indigenous Peoples (2007)ⁱ combines collective and individual rights:

Article 7

(a) Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

(b) Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. ...

^g Ibid., para 10. See also Santiago Declaration (2010), Article 1 para 2.

^h GA Resolution 41/128, “United Nations Declaration on the Right to Development” (1986).

ⁱ GA Resolution 61/295 (2007), “United Nations Declaration on the Rights of Indigenous Peoples”.

Article 17

(a) Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

(b) States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

(c) Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

D. A legal standard, an emerging standard, not yet a human rights standard

12. At the OHCHR Workshop (2009), different opinions were voiced by experts whether a right to peace (a) existed, (b) was an emerging right or (c) represented rather an aspiration.^j For the purpose of this progress report the question of legal status is less important. There is a request by the Human Rights Council for a draft declaration, so there is obviously a political will to strengthen a soft law standard.

13. Regarding the question of assertion of peoples' right before contemporary international courts and tribunals, former judge Cançado Trindade spoke at the OHCHR Workshop (2009) about his experience at two such tribunals in which he had served or was currently serving as a judge, namely, the Inter-American Court of Human Rights and the International Court of Justice. That experience showed that the rights of peoples had been acknowledged and asserted before contemporary international tribunals. It indicated that there had been clear advances in the realization of international justice in recent years, in cases of factual and evidentiary complexities.^k

^j OHCHR Workshop (2009), para 14, 56.

^k Judge Cançado Trindade reported: "The Inter-American Court of Human Rights, in the case of the *Community Mayagna (Sumo) Awas Tingni v. Nicaragua* (2001), had extended protection to the right of all the members of an indigenous community to their communal property of their historical lands. Furthermore, three other decisions had had a direct bearing on the rights of peoples, their cultural identity and their very survival, namely, in *Yakye Axa Indigenous Community v. Paraguay* (2005–2006), *Sawhoyamaya Indigenous Community v. Paraguay* (2005–2006), as well as in *Moiwana Community v. Suriname* (2005–2006), which had ruled on the case of the Moiwana massacre. Mr. Cançado Trindade added that such late jurisprudential development would have been unthinkable for the draftsmen of the American Convention on Human Rights. Massacres no longer fell into oblivion. Atrocities victimizing whole communities, or segments of the population, were being brought before contemporary international tribunals, for the establishment not only of the international criminal responsibility of individuals, but also of the international responsibility of States" (OHCHR 2009 Workshop, para 36).

E. Relationship of an emerging right to peace to other human rights, especially the right to solidarity

14. At the OHCHR Workshop (2009), an expert suggested that the right to peace could be addressed within international human rights law from three perspectives: (1) as part of the emerging right to international solidarity; (2) as part of the right of all people and all peoples for a democratic and equitable international order; and (3) as an essential element of the right of peoples to peace. Thus, in the work of the Human Rights Council the right to peace should be linked in its material formulation to emerging rights or solidarity, in particular the right to international solidarity, the right to a democratic and equitable international order as well as to the traditional right of peoples to peace.^l

15. The independent expert on human rights and international solidarity, Rudi Muhammad Rizki, has argued in a report that “some respondents viewed solidarity as a principle born together with international human rights law through the pursuit of peace among nations. However, it lacks visibility in current human rights instruments because it has no binding force. International solidarity is the only way to alleviate poverty, including extreme poverty.” In the context of Third generation rights, and recognizing that solidarity rights are Third generation rights, he mentioned, the right to economic and social development, the right to participate in and benefit from the “common heritage of mankind”, the right to peace, the right to a healthy and sustainable environment, the right to humanitarian disaster relief and the right to communication.^m

F. Human security

16. It is interesting to look at the relationship of a right to peace to human security. The concept of human security is of particular relevance here. Since its first appearance in the 2004 World Development Report of UNDP, a major effort has been undertaken to develop the understanding of security beyond the military aspect. Instead with the concept of human security, one looks at multi-faceted possible threats against the population. Hence, the understanding of security has become much broader and much deeper, which inevitably has also given rise to criticism in the academic debate that the concept of human security lacks a clear focus and “borders”.

17. The General Assembly has asked the Secretary-General to report on progress in the area of human security.ⁿ His last report on human security emphasized

(a) Broadly defined, human security encompasses freedom from fear, freedom from want and freedom to live in dignity. Together, these fundamental freedoms are rooted in the core principles of the Charter of the United Nations. They are also reflected in the many human security-related initiatives and activities undertaken by United Nations agencies, funds and programmes and by intergovernmental organizations as outlined in the compendium^o submitted to the General Assembly. ...

^l OHCHR Workshop (2009), para 56.

^m United Nations, “Report of the independent expert on human rights and international solidarity, Rudi Muhammad Rizki”, UN doc. A/HRC/15/32 (2010), para. 13, 20.

ⁿ United Nations, “Human Security - Report of the Secretary-General”, UN doc. A/64/701 (2010).

^o For an overview of human security-related initiatives and activities by members of the Friends of Human Security and United Nations agencies, funds and programmes, see Annex of A/62/695 (2008).

(b) Calls for such a broader concept of security are rooted in the common issues faced by all Governments. No matter how powerful or seemingly insulated Governments may be, today's global flow of goods, finance and people increase the risks and uncertainties confronting the international community. It is in this interconnected environment that Governments are invited to consider the survival, livelihood and dignity of individuals as the fundamental basis for their security. (...)

18. In the summary of the report, it is noted that

“(h)human security is based on a fundamental understanding that Governments retain the primary role for ensuring the survival, livelihood and dignity of their citizens. It is an invaluable tool for assisting Governments in identifying critical and pervasive threats to the welfare of their people and the stability of their sovereignty. It advances programmes and policies that counter and address emerging threats in a manner that is contextually relevant and prioritized. This helps Governments and the international community to better utilize their resources and to develop strategies that strengthen the protection and empowerment framework needed for the assurance of human security and the promotion of peace and stability at every level – local, national, regional and international.”

19. Regarding national sovereignty, the document argues that

(a) “the Charter also gives equal weight to the sovereignty of States as well as to the livelihood and dignity of people everywhere. As articulated in the preamble and in Articles 1 and 2 of the Charter, the international community cannot have peace and security unless the rights of individuals and their fundamental freedoms are supported. In this context, human security, by addressing the varied aspects of insecurity and by focusing on the respective roles of individuals, communities and Governments, provides the analytical framework for the creation of genuine possibilities for partnership between Governments and citizens. As a result, the application of human security is expected to reinforce the stability and security of both, as well as that of the international community.”

(b) “Common to all the above definitions are three essential components that encompass the principles of human security and help further explore the added value of the concept. First, human security is in response to current and emerging threats – threats that are multiple, complex and interrelated and can acquire transnational dimensions. Second, human security calls for an expanded understanding of security where the protection and empowerment of people form the basis and the purpose of security. Third, human security does not entail the use of force against the sovereignty of States and aims to integrate the goals of freedom from fear, freedom from want and freedom to live in dignity through people-centred, comprehensive, context-specific and preventive strategies.”

(c) “The human security concept derives much of its strength from a dual policy framework that rests upon the mutually reinforcing pillars of protection and empowerment. Application of this framework offers a comprehensive approach that combines top-down norms, processes and institutions, including the establishment of early warning mechanisms, good governance and social protection instruments, with a bottom-up focus, in which participatory processes support the important role of individuals and communities as actors in defining and implementing their essential freedoms. As a result, human security not only promotes a framework under which people are protected and empowered, and are therefore in a better position to actively prevent and mitigate the impact of insecurities, but it also helps in establishing a social contract among various actors in a given society by cultivating public discourse, promoting local ownership and strengthening States (...).”

Annex III

UNESCO: Brief history of the concept of a culture of peace

A. Origin of the concept at UNESCO

1. The concept of a Culture of Peace arose at the end of the Cold War. For the first time, the objective for which the United Nations was founded, the abolition of war, had become feasible. The United Nations Organization for Education, Science and Culture, UNESCO, had engaged in activities to promote a Culture of Peace from its beginnings, when it was founded in the aftermath of the Second World War to construct the defences of peace in the minds of men and women.

2. The concept of a Culture of Peace was formulated by the International Congress on Peace in the Minds of Men that was held in Africa (Yamoussoukro, Côte d'Ivoire, 1989). In its final declaration, the Congress invited "States, intergovernmental and non-governmental organizations, the scientific, educational and cultural communities of the world, and all individuals to "[...] help construct a new vision of peace by developing a peace culture based on the universal values of respect for life, liberty, justice, solidarity, tolerance, human rights and equality between men and women."^a

3. The term peace culture was inspired by the 1986 educational initiative *Cultura de paz* in Peru and by the Seville Statement on Violence, elaborated by scientists from around the world, which stated scientifically and categorically that war is not determined by genes, violent brains, human nature or instincts, but was rather a social invention. Therefore, "the same species that invented war is capable of inventing peace."^b

B. National programmes for a culture of peace

4. In 1992, UNESCO's Executive Board requested a specific programme for a Culture of Peace as a contribution to United Nations peacekeeping efforts. Reasoning that peacekeeping operations alone might assure the absence of war but could not by themselves bring a positive, dynamic peace, UNESCO argued in 1992 that this could be done best by engaging those who had been in conflict in common ventures of human development. Acting primarily in the fields of education, science, culture and communication, UNESCO offered its services in post-conflict peace-building. National programmes were undertaken in a number of countries of Central America and Africa, as well as in collaboration with the Government of the Philippines.

C. UNESCO's medium term strategy

5. A major turning point came in 1995 when the General Conference of UNESCO dedicated the Organization's Medium-Term Strategy for the years 1996 – 2001 to a Culture of Peace. The General Conference stated that

^a <http://www.unesco.org/cpp/uk/declarations/yamouss.pdf>, Part II a), retrieved 22 Oct 2010.

^b http://portal.unesco.org/education/en/ev.php-URL_ID=3247&URL_DO=DO_TOPIC&URL_SECTION=201.html, retrieved 22 Oct 2010.

“the major challenge at the close of the twentieth century is to begin the transition from a culture of war to this culture of peace:

- (a) a culture of social interaction and sharing, based on the principles of freedom, justice and democracy, tolerance and solidarity,
- (b) a culture that rejects violence, endeavours to prevent conflicts by tackling their roots and to solve problems through dialogue and negotiation,
- (c) a culture which guarantees everyone the full exercise of all rights and the means to participate fully in the endogenous development of their society.”

D. Transdisciplinary project

6. UNESCO then established a transdisciplinary project in which its various sectors, including education, culture, communication and social science, contributed in a co-ordinated way to this challenge.

E. UN General Assembly

7. Recognizing the importance of the UNESCO experience with a Culture of Peace, the 52nd United Nations General Assembly meeting in the fall of 1997 established a separate agenda item entitled “Towards a Culture of Peace” and requested the Secretary-General, in co-ordination with the UNESCO Director-General, to submit a report on its transdisciplinary project along with a draft declaration and programme of action on a Culture of Peace. The General Assembly also responded to the recommendation of the Economic and Social Council (ECOSOC) and proclaimed the Year 2000 as the International Year for the Culture of Peace with UNESCO as the focal point.

F. The UNESCO Executive Board

8. Meeting in Tashkent at the invitation of the President of the Republic of Uzbekistan during its 155th session in November 1998, the UNESCO Executive Board adopted the “Tashkent Declaration for the Culture of Peace and UNESCO’s Action in Member States”. Aware of the “great responsibility that will devolve upon UNESCO during the International Year for the Culture of Peace” as well as the International Decade for a Culture of Peace and Non-violence for the Children of the World, the Executive Board issued an invitation to the Member States, the United Nations System and other intergovernmental and non-governmental organizations to celebrate the Year. It invited them to take “all necessary steps to ensure the success of the Year and thus to affirm the values of tolerance and mutual understanding and the values of combating poverty and exclusion, all of which are actions that will primarily be of benefit to women, young people and the least developed countries.”

G. Beyond the year to a decade

9. In the fall of 1998, the 53rd General Assembly approved an ECOSOC recommendation, based on a proposal coming from all of the Nobel Peace Prize Laureates, to proclaim the decade of 2001 – 2010 as the International Decade for a Culture of Peace and Non-violence for the Children of the World. Thus, the Year 2000 should be seen as a new departure towards a long-term process of transformation.

H. Declaration and programme of action

10. Following nine months of debate the UN General Assembly adopted on 13 September 1999 a “Declaration and Programme of Action on a Culture of Peace”.^c The first article of the declaration provides the most complete definition to date of the Culture of Peace:

“A culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on:

(a) Respect for life, ending of violence and promotion and practice of non-violence through education, dialogue and cooperation;

(b) Full respect for the principles of sovereignty, territorial integrity and political independence of States and non-intervention in matters which are essentially within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations and international law;

(c) Full respect for and promotion of all human rights and fundamental freedoms;

(d) Commitment to peaceful settlement of conflicts;

(e) Efforts to meet the developmental and environmental needs of present and future generations;

(f) Respect for and promotion of the right to development;

(g) Respect for and promotion of equal rights of and opportunities for women and men;

(h) Respect for and promotion of the rights of everyone to freedom of expression, opinion and information;

(i) Adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations; and fostered by an enabling national and international environment conducive to peace”.

Source: http://www3.unesco.org/iycp/kits/uk_concept.pdf (accessed on 1st March 2011)

^c GA Resolution 53/243 (1999).

Annex IV

Asian Human Rights Charter (1998, extract)

The right to peace

1. All persons have the right to live in peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence. The peoples of Asia have suffered great hardships and tragedies due to wars and civil conflicts which have caused many deaths, mutilation of bodies, external or internal displacement of persons, break up of families, and in general the denial of any prospects of a civilized or peaceful existence. Both the state and civil society have in many countries become heavily militarized in which all scores are settled by force and citizens have no protection against the intimidation and terror of state or private armies.
2. The duty of the state to maintain law and order should be conducted under strict restraint on the use of force in accordance with standards established by the international community, including humanitarian law. Every individual and group is entitled to protection against all forms of state violence, including violence perpetrated by its police and military forces.
3. The right to live in peace requires that political, economic or social activities of the state, the corporate sector and the civil society should respect the security of all peoples, especially of vulnerable groups. People must be ensured security in relation to the natural environment they live in, the political, economic and social conditions which permit them to satisfy their needs and aspirations without recourse to oppression, exploitation, violence, and without detracting from all that is of value in their society.
4. In fighting fascist invasion, colonialism, and neo-colonialism, Asian states played a crucial role in creating conditions for their peoples to live in peace. In this fight, they had justifiably stressed the importance of national integrity and non-intervention by hegemonic powers. However, the demands of national integrity or protection against the threats of foreign domination cannot now be used as a pretext for refusing to the people their right to personal security and peaceful existence any more than the suppression of people's rights can be justified as an excuse to attract foreign investments. Neither can they justify any refusal to inform the international community about the individual security of its people. The right of persons to live in peace can be guaranteed only if the states are accountable to the international community.
5. The international community of states has been deeply implicated in wars and civil conflicts in Asia. Foreign states have used Asian groups as surrogates to wage wars and have armed groups and governments engaged in internal conflicts. They have made huge profits out of the sale of armaments. The enormous expenditures on arms have diverted public revenues from programmes for the development of the country or the well-being of the people. Military bases and other establishments (often of foreign powers) have threatened the social and physical security of the people who live in their vicinity