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Promotion du droit des peuples à la paix

Le droit des peuples à la paix*

Rapport intérimaire établi par le groupe de rédaction du Comité consultatif**

* Soumission tardive.

** L'annexe au présent rapport est distribuée telle qu'elle a été reçue.

1. Dans sa résolution 14/3, le Conseil des droits de l'homme a prié le Comité consultatif, agissant en concertation avec les États membres, la société civile, le monde universitaire et les autres parties prenantes, de préparer un projet de déclaration sur le droit des peuples à la paix et de faire rapport à ce sujet au Conseil à sa dix-septième session. Le Comité a présenté un rapport intérimaire au Conseil (A/HRC/17/39) et a élaboré un questionnaire pour mener des consultations auprès des États membres et autres parties prenantes; le délai fixé pour répondre au questionnaire a été prorogé jusqu'au 27 mai 2011. Les réponses reçues ont été affichées sur la page Extranet du Comité consultatif.
2. Dans sa résolution 17/16, le Conseil des droits de l'homme a prié le Comité consultatif de poursuivre ses travaux et de présenter un projet de déclaration au Conseil à sa vingtième session.
3. Dans sa recommandation 5/2, le Comité consultatif a désigné M^{me} Chinsung Chung, M. Miguel d'Escoto Brockmann, M. Wolfgang Stefan Heinz (Rapporteur) et M^{me} Mona Zulficar (Présidente) comme membres du groupe de rédaction, qui a ensuite été élargi de façon à inclure M. Shigeki Sakamoto et M. Latif Hüseyinov.
4. Dans son rapport intérimaire, le Comité consultatif a énuméré plus d'une quarantaine de normes pour faciliter les débats et préciser les priorités. Il y est question de dispositions juridiques tant contraignantes que non contraignantes et de la justification de ces normes.
5. Les réponses au questionnaire élaboré par le Comité consultatif ont fait apparaître un large soutien en faveur de la démarche générale et des normes proposées par le Comité, de même que quelques critiques et suggestions tendant à modifier les normes proposées et à en ajouter d'autres.
6. L'avant-projet de déclaration sur le droit des peuples à la paix, que doit examiner le Comité consultatif à sa septième session, est joint en annexe au présent rapport. Une déclaration à l'intention du Conseil des droits de l'homme, puis de l'Assemblée générale, ne peut certainement pas intégrer toutes les normes mentionnées dans le rapport soumis au Conseil par le Comité (a fortiori l'intégralité de leur champ d'application), même si nombre d'entre elles ont été reprises dans le projet de déclaration. Le Comité retient les normes relatives à la paix et à la sécurité internationales comme normes de base (éléments de paix négative, absence de violence), en incluant des normes touchant à l'éducation à la paix, au développement, à l'environnement et aux victimes et groupes vulnérables comme éléments d'une paix positive. Le but était d'aboutir à une déclaration relativement courte et succincte plutôt que d'ajouter en tant qu'éléments d'une paix positive de nombreux autres droits de l'homme déjà pris en considération dans des instruments et déclarations de l'Assemblée générale et du Conseil des droits de l'homme. Une simple réaffirmation de ces droits ne semblait pas contribuer à une clarification conceptuelle.
7. Le projet de déclaration se réfère au début au droit des peuples à la paix, mais emploie ensuite l'expression «droit fondamental à la paix», jugée plus appropriée. La résolution 39/11 de l'Assemblée générale, adoptée il y a plus de vingt-cinq ans, met l'accent sur la dimension collective. Dans le projet de déclaration, les droits de l'individu sont également inclus. Les États et organisations internationales y sont définis comme étant les principaux «titulaires d'obligations» et les individus et les peuples comme les «titulaires de droits».
8. Pour ce qui est du suivi, les diverses résolutions de l'Assemblée générale sur les droits de l'homme ne mentionnent pas de mécanisme de suivi spécifique. Cependant, le Conseil des droits de l'homme a créé des mécanismes spéciaux tels que le Forum sur les questions relatives aux minorités et le Mécanisme d'experts sur les droits des peuples autochtones. Dans le dernier article du projet de déclaration, il est proposé que le Conseil

mette en place un mécanisme pour prolonger le débat sur le droit fondamental à la paix et en assurer le suivi.

9. Le Comité consultatif entend poursuivre ses travaux sur le projet de déclaration à la lumière des débats menés à sa septième session. Il y consacra un second et dernier débat à sa huitième session, en février 2012. Une version finale du projet de déclaration sera ensuite présentée au Conseil des droits de l'homme à sa vingtième session. Les réponses au questionnaire ainsi que la participation aux discussions sont toujours accueillies avec satisfaction.

Annexe

Draft Declaration on the Right of Peoples to Peace

Preamble

The Human Rights Council,

Reaffirming the common will of all people to live in peace with each other, without violence and with respect for all human rights and fundamental freedoms;

Reaffirming that the principal aim of the United Nations is the maintenance of international peace and security;

Recalling United Nations General Assembly Resolution 39/11 of 12 November 1984 that proclaims that the peoples of our planet have a sacred right to peace;

Convinced that the prohibition of the use of force is the primary international prerequisite for the material well-being, development, and the progress of countries, and for the full implementation of the human rights and fundamental freedoms proclaimed by the United Nations;

Expressing the will of all peoples that the use of force must be eradicated from the world, including through full nuclear disarmament without delay;

Adopts the following Declaration on the Right of Peoples to Peace:

Article 1. Human Right to Peace – Principles -

1 Peoples and individuals have a human right to peace. This right is universal, indivisible, interdependent and interrelated.

2. States shall urgently pursue the renunciation of the use or threat of use of force in international relations, particularly the elimination of nuclear weapons.

3. All States, in accordance with the Principles of the Charter of the United Nations, shall use peaceful means to settle any dispute to which they are parties;

4. All States shall promote the establishment, maintenance and strengthening of international peace in an international system based on respect for the Principles enshrined in the Charter and the promotion of all human rights and fundamental freedoms, including the right to development and the right of peoples to self-determination;

Article 2. Human Security

1. Everyone has the right to human security, which includes freedom from fear and from want, all constituting elements of positive peace.

2. All individuals 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.

3. Everyone has the right to be protected from genocide, war crimes, the use of force in violation of international law, ethnic cleansing and crimes against humanity. If States are unable to prevent these crimes from occurring within their jurisdiction, they should call on Member States and the United Nations to fulfill that responsibility in keeping with the Charter and international law.

4. States and the United Nations shall include into mandates of peacekeeping operations the comprehensive and effective protection of civilians as a priority objective.

5. States, international organizations, in particular the United Nations, and civil society shall encourage an active and sustained role for women in the prevention, management and peaceful settlement of disputes, and promote their contribution to building, consolidating and maintaining peace after conflicts. 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.

6. Everyone has the right to demand from his or her Government the effective observance of the norms of international law, including international human rights law and international humanitarian law.

7. Mechanisms should be developed and strengthened to eliminate inequality, exclusion and poverty, as they generate structural violence which is incompatible with peace. Both state and civil society actors should play an active role in the mediation of conflicts, especially in conflicts related to religion and/or ethnicity.

8. Everyone has the right to democratic governance of military and related budgets, to an open debate about national and human security needs and policies, defence and security budgeting, as well as to accountability of decision makers to democratic oversight institutions

9. To strengthen international rule of law, all States shall strive to support international justice and relevant organs such as the International Criminal Court and its work on crimes against humanity, war crimes, the crime of genocide and the crime of aggression.

Article 3. Disarmament

1. States shall engage actively in the strict and transparent control of arms trade and suppression of illegal arms trade. Furthermore, States should proceed in a joint and coordinated manner and within a reasonable period of time to further disarmament, under comprehensive and effective international supervision.

2. All peoples and individuals have a right to live in a world free of weapons of mass destruction. States shall urgently eliminate all weapons of mass destruction or of indiscriminate effect, including nuclear, chemical and biological weapons. 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 a healthy environment and the human right to peace. Such weapons are prohibited and must be urgently eliminated, and States that have utilized them have the obligation to restore the environment by repairing all damage caused.

3. All peoples and individuals have the right to have the resources freed by disarmament allocated to the economic, social and cultural development of peoples and to the fair redistribution of natural wealth, responding especially to the needs of the poorest countries and of groups in situations of vulnerability.

Article 4. Peace Education and Training

1. All peoples and individuals have a right to a comprehensive peace and human rights education. Such education should be the basis of every educational system, generate social processes based on trust, solidarity and mutual respect, incorporate a gender perspective, facilitate the peaceful settlement of conflicts and lead to a new way of approaching human relationships within the framework of a culture of peace and the dialogue among cultures.

2. Everyone has the right to demand and obtain the competences needed to participate in the creative and non-violent resolution or, failing that, transformation, of conflicts throughout their life. These competencies should be accessible through formal and informal education.

3. Everyone has the right to have access and receive information from diverse sources without censorship, in accordance with international human rights law, in order to be protected from manipulation in favour of warlike or aggressive objectives.

4. Everyone has the right to denounce any event that threatens or violates the human right to peace, and to freely participate in peaceful political, social and cultural activities or initiatives for the defence and promotion of the human right to peace, without interference by Governments or the private sector.

5. States undertake:

(a) To increase educational efforts to remove hate messages, distortions, prejudice and negative bias from textbooks and other educational media, to prohibit the glorification of violence and its justification and to ensure the basic knowledge and understanding of the world's main cultures, civilizations and religions;

(b) To update and revise educational and cultural policies to reflect a human rights-based approach, cultural diversity, intercultural dialogue and sustainable development;

(c) To revise national laws and policies that are discriminatory against women, and adopt legislation that addresses domestic violence, the trafficking of women and girls and gender-based violence.

Article 5. Conscientious Objection

1. Individuals have the right to conscientious objection and to be protected in the effective exercise of this right.

2. States have the obligation to prevent members of any military or other security institution from taking part in wars of aggression or other armed operations, whether international or internal, which violate the Charter of the United Nations, the principles and norms of international human rights law or international humanitarian law. Members of any military or other security institutions have the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms. The duty to obey military superior orders does not exempt from the observance of these obligations, and disobedience of such orders shall in no case constitute a military offence.

Article 6. Private Military and Security Companies

1. States shall refrain from outsourcing inherently State military and security functions to private contractors. States shall establish an international regime with clear rules regarding the functions, oversight and monitoring of existing private military and security companies.

2. States shall ensure that private military and security companies, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international human rights and humanitarian law. They shall take such legislative, administrative and other measures as may be necessary to ensure that such companies and their personnel are held accountable for violations of applicable national or international law. Any responsibility attributable to a private military or security company is independent of and does not eliminate the responsibility that a State or States may incur.

Article 7. Resistance and opposition to oppression

1. All peoples and individuals have the right to resist and oppose oppressive colonial, foreign or dictatorial domination (domestic oppression), such subjugation constitutes a flagrant violation of their human rights.

2. Everyone has the right to oppose war crimes, genocide, aggression, apartheid and crimes against humanity, violations of other universally recognized human rights, any propaganda in favour of war or incitement to violence and violations of the human right to peace, as defined in the present declaration.

Article 8. Peacekeeping

1. Peacekeeping missions and peacekeepers shall comply fully with United Nations rules and procedures regarding professional conduct, including the lifting of immunity in cases of criminal misconduct or the violation of international law, to allow the victims recourse to legal proceedings and redress.

2. Troop-contributing States shall take every measure to investigate effectively and comprehensively complaints against members of their national contingents. Complainants should be informed about the outcome of such investigations.

Article 9. Development

1. 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.

2. Everyone shall enjoy the right to sustainable development and economic, social and cultural rights and, in particular:

(a) The right to adequate food, drinking water, sanitation, housing, health care, clothing, education, social security and culture;

(b) The right to work and to enjoy fair conditions of employment and trade union association; the right to equal remuneration among persons who perform the same occupation or function; the right to have access to social services on equal terms; and the right to leisure; and

(c) All States have an obligation to cooperate with each other to achieve the right to development and other human rights.

3. All peoples and individuals have the right to the elimination of obstacles to the realization of the right to development, such as the servicing of unjust or unsustainable foreign debt burdens and their conditionalities, or the maintenance of an unfair international economic order, that generates poverty and social exclusion. States and the United Nations system shall fully cooperate in order to remove such obstacles, both internationally and domestically

4. States should pursue peace and security and development as interlinked and mutually reinforcing, and as serving as a basis for one another. The obligation to promote comprehensive and sustainable economic, social, cultural and political development implies the obligation to eliminate threats of war and, to that end, to strive towards disarmament, and the free and meaningful participation of the entire population in this process.

Article 10. Freedom of Thought, Conscience, Expression, and Religion

Everyone has the right to enjoy freedom of thought, conscience, expression, and religion, in conformity with international human rights law.

Article 11. Environment

1. Everyone has the right to a safe, clean and peaceful environment, including an atmosphere that is free from dangerous man-made interference, and to sustainable development and to international action to mitigate and adapt to environmental destruction, especially climate change. Everyone has the right to free and meaningful participation in the development and implementation of mitigation and adaptation policies.

2. States have the responsibility for mitigating climate change based on the best available scientific evidence and their historical contribution to climate change in order to ensure that all people have the ability to adapt to the adverse effects of climate change, particularly those interfering with human rights, and in accordance with the principle of common but differentiated responsibility. States, in accordance with UNFCCC, with the resources to do so, have the responsibility for providing adequate financing to States with inadequate resources for adaptation to climate change.

3. States, international organizations, corporations and other actors in society are responsible for the environmental impact of the use of force, including environmental modifications, whether deliberate or unintentional, that result in any long-lasting or severe effects, cause lasting destruction, damage or injury to another State.

Article 12. Rights of Victims and Vulnerable Groups

1. 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 the investigation of facts, as well as identification and punishment of those responsible; to obtain effective and full redress, including the right to rehabilitation and compensation; to measures of symbolic redress or reparation; and to guarantees that the violation will not be repeated.

2. Everyone subjected to aggression, genocide, racism, racial discrimination, xenophobia and other related forms of intolerance or apartheid, colonialism and neo-colonialism deserve special attention as victims of violations of the human right to peace.

3. 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 taken fully into account. They 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.

Article 13. Refugees and Migrants

1. All individuals have the right to seek and to enjoy refugee status without discrimination, in the following circumstances:

(a) If the person suffers persecution for engaging in activities in favor of peace and other human rights, or for claiming the right to conscientious objection against war or military service;

(b) If the person has a well-founded fear of persecution by State or non-State agents, on grounds of race, sex, religion, nationality, sexual orientation, membership in a particular social group or political opinions, family status, or any other condition;

(c) If the person flees his/her country or place of origin or residence because his/her life, security or liberty has been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that gravely perturb public order.

2. Refugee status should include, inter alia, the right to voluntary return to one's country or place of origin or residence in dignity and with all due guarantees, once the causes of persecution have been removed and, in case of armed conflict, it has ended.

3. In order to promote social inclusion and prevent structural violence ensuing from discrimination in the enjoyment of human rights, migrants have the right to participate, individually or collectively, in the public affairs of the country in which they have their residence, and to benefit from specific mechanisms and institutions that facilitate such participation, in accordance with international human rights law.

Article 14. Obligations and Implementation

1. The preservation, promotion and implementation of the human right to peace constitute a fundamental obligation of all States

2. States should cooperate in all necessary fields in order to achieve the realization of the human right to peace, in particular by implementing their existing commitments to promote and provide increased resources to international cooperation for development.

3. The effective and practical realization of the human right to peace demands activities and engagement beyond States and International Organizations, requiring comprehensive active contributions from civil society, in particular academia, the media as well as corporations, and generally, the entire international community.

4. Every individual and every organ of society, keeping this Declaration constantly in mind, shall strive to promote respect for the human right to peace by progressive measures, national and international, to secure its universal and effective recognition and observance everywhere.

5. The Human Rights Council is invited to set up a monitoring body to continue discussion on and monitoring of the human rights to peace and to report to relevant UN organs.
