

INFORMAL CONSULTATION ON THE RIGHT TO PEACE – 30 JANUARY 2015

Comments by Alfred de Zayas, Independent Expert on the Promotion of a Democratic and Equitable International Order

2. General remarks

Dear Ambassador Guillermet

I thank you for giving me the opportunity to contribute to this constructive process which, as you know, falls within the terms of reference of my mandate. The Human Rights Council too has a broad mandate which encompasses the universal promotion of human rights in their individual and collective dimensions. As I outlined in my 2013 reports to the Human Rights Council (A/HRC/24/38, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/153/65/PDF/G1315365.pdf?OpenElement>) and to the General Assembly (A/68/284, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/421/23/PDF/N1342123.pdf?OpenElement>), the right to peace has a solid legal basis in the UN Charter and the Human Rights Covenants. Therefore, all UN organs and agencies have a responsibility to mainstream peace into their activities.

While the Security Council has the primary responsibility for peace and security, the Human Rights Council has the task of promoting all human rights, not only civil and political, but also economic, social, cultural as well as the right to development-- and, as a *precondition* to the enjoyment of all the other rights, the Human Rights Council should affirm the right to peace. In this sense I am persuaded that all Special Procedures mandate holders can play a role in mainstreaming peace.

Let us endeavour to work in the spirit of compromise and consensus, as indeed the drafters of the UN Charter demonstrated in 1945. Let us advance toward the realization of human dignity by all -- human dignity as the source of all human rights. The principal right that we are reaffirming here is the right to life, which is endangered not only by armed conflict but also by structural violence and exploitation. In this drafting process we should hear all stakeholders, respect the diversity of individuals and the sovereignty of States. I am confident that we can arrive at a consensus on a draft that goes beyond General Assembly resolution 39/11, a draft that will reflect the aspiration of all individuals and peoples to live in peace. I also call for a monitoring mechanism so that the Declaration on the Right to Peace does not remain an empty gesture. Bearing in mind the acute threat posed by nuclear weapons and other weapons of mass destruction, we all know that the survival of humanity is at stake.

3b – Victim-centered approach

I thoroughly agree with previous speakers that a victim-centered approach must inform the draft, because it is real people who endure the consequences of every breach of the right to peace. Let the Security Council be concerned with matters of security and conflict-prevention. But at the same time, let us act upon the mandate of the Human Rights Council and address peace from the perspective of individual and collective human rights – in holistic terms encompassing the defence of the right to life, to freedom of expression and peaceful assembly, to freedom of movement, to

conscientious objection -- all justiciable rights under the Optional Protocol to the Covenant on Civil and Political Rights. These rights are key components of the right to peace and have already been confirmed in implementable precedents of the Human Rights Committee and in its General Comments.

Meanwhile the petitions procedures of the Committee on Economic, Social and Cultural Rights and of the Committee on the Rights of the Child have entered into force. In the near future we can expect pertinent case-law that will strengthen the legal basis of the right to peace, notably through reaffirmation of the rights to health, housing, education, and through the prohibition of the recruitment of children in armed conflict.

3c – principles of international law

In promoting a culture of peace we recognize that “positivism” or “legalism” is often an obstacle and not a solution. It is important to recall article 38 (1)(c) of the Statute of the International Court of Justice, which recognizes general principles of law as a primary source of law. In other words, it is important to recognize certain higher principles that inform law, such as the principles of good faith, estoppel, *ex injuria non oritur jus*, equality in and before the law, the impartiality of judges, the Martens clause, etc.

In this context the link between the principle of self-determination and peace should be better understood. My 2014 report to the General Assembly (A/69/272, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/497/95/PDF/N1449795.pdf?OpenElement>) focuses on the implementation of self-determination as a conflict-prevention strategy. Self-determination as *jus cogens* should also be mainstreamed into the Declaration on the Human Right to Peace.

Although States frequently try to interpret treaties and conventions narrowly so as to escape the implementation of the object and purpose thereof. I am confident that they can be brought to understand that in a globalized world we need consistency and predictability in the law, which cannot and must not be applied selectively or *à la carte*.

We know that some States, at one time or another, have ignored the spirit of treaties or the spirit of the law and invented loopholes so as to frustrate their purpose. What is important in this drafting process is that we work together *in good faith* and that we keep the common interests of mankind in mind – the survival of the human race and the affirmation of human dignity in all endeavours. Let us remember the famous book *Why War* (International Institute of Intellectual Cooperation, Paris 1933) an exchange of letters sponsored by the League of Nations, in which Albert Einstein posed multiple questions about peace and aggression and Sigmund Freud provided enlightened answers of great relevance to the discussions here and to the adoption of a Declaration on the Right to Peace.

Once again, let me thank you for convening this fruitful consultation. It is a noble challenge to persevere in reaching a consensus that will represent *vox populi*, the voice of civil society, recognize State sovereignty and strengthen GA Resolutions 2625 (friendly relations) 3314 (definition of aggression) and 39/11 (peoples’ right to peace). In a time of fear and want – let us manifest our consciousness that Peace is indeed the highest good -- *Pax optima rerum*.

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