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## THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND PEACE

*As sets of values, human rights and peace can be treated as complementary, totally separate, or opposed. Most frequently, there is the tendency to grade them as higher or lower, more or less desirable values. This affects political programs, nationally and internationally. For a long while the predominance of peace over human rights, and vice versa, was characteristic of the East-West and North-South divide. However, except in the most radical circles, there is agreement that peace and human rights are important values.*

*Peace can also be expressed as a right. The collective right to peace was promulgated in 1984 by the UN General Assembly in its Declaration on the Right of Peoples to Peace. This poorly prepared and hastily written document was adopted by an unconvincing majority and has had no discernible legal effects. More meaningful are those individual rights that help promote and preserve peace and prevent war.*

*Human rights are a component of peace, at least for those who insist on a meaningful, positive concept of peace. If kept apart, peace and human rights, are in a causal relationship: the observance of human rights increases the probability of peace, and vice versa.*

**Key words:** *Peace. – War. – Human Rights. – Development. – United Nations.*

### 1. HUMAN RIGHTS AND PEACE AS SETS OF VALUES

Peace and human rights can be studied axiologically, to attempt to determine whether one or both are values, or sets of values, and which, the one covered by the term “human rights” or the one denoted as “peace”, is higher, i.e. more desirable.

The value approach has practical relevance in terms of defining political programs, nationally and internationally. It is, however, complicated

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by the fact that within each cluster, value choices have to be made. Students of human rights are not unfamiliar with attitudes and programs which not only clearly indicate the order of preference for various human rights and groups of rights, but go as far as to discard some rights as undesirable or even harmful.<sup>1</sup> Depending on the case, the source of such discrimination may lie in ideological differences (this was characteristic of Cold War oratory), or in cultural relativism (frequently associated with the North-South divide).<sup>2</sup> A peace researcher will be aware of the opinions that reject certain elements that are usually subsumed under the concept of peace. One possible ground for gradation can be relevant to our theme: if human rights are part of a meaningful and desirable peace, then peace without human rights is less valuable, or not peace at all.

If the meanings of peace and human rights are clear, at least in operational terms, then one of them may be posited above the other. In the peace-human rights-development debate of the late 1970's and early 1980's groups of states in the United Nations and other international organisations were taken to be characterised by such preferences. Thus the "West" was said to favour human rights (with the priority of the "first generation" civil and political rights), the "East" peace, and the "South" development.<sup>3</sup> It was implied that all groups, and within them the most important states, recognised the other two values as relevant, albeit secondary.

Only in more radical circles, which were not represented in government delegations and did not use diplomatic language, some of the values were totally excluded. Thus, for instance, the "insider" official thinking of the "real socialist" ideologues, publicly considered only to prefer peace over other values, considered in fact peace not as inherently valuable but expeditious, as long as the Soviet Union, and then the "socialist camp", had to "strengthen socialism" in the hostile international environment.<sup>4</sup> Their preference of economic and social rights was also a diplomatic euphemism used by those who wanted to involve them in international efforts to promote human rights: the indisputable fact that "socialist states" provided relatively stable social security and health care did not mean that such services of the

1 According to the official interpretation of Marxist theory in the former "socialist camp", the right to private property, which is, as the right to the peaceful enjoyment of possessions, a recognized human right under the European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol no. 1), represents the main cause of social evils so that its abolition appears as the supreme goal, which will result in social happiness comparable to that which other advocates of human rights imagine as a result of the successful implementation of the whole catalogue of human rights. Kartashkin, Vladimir, *The Socialist Countries and Human Rights*, in: Vasak, Karel; Alston, Philip (eds.), *The International Dimension of Human Rights*, Paris, UNESCO, 1982, p. 631.

2 See Lukes, Steven, *Five Fables about Human Rights*, in: Shute, Stephen; Hurley, Susan, *On Human Rights. The Oxford Amnesty Lectures*, New York, Basic Books, 1993, p. 19–40.

3 See Marks, Stephen. *The Peace – Human Rights – Development Dialectic*, *Bulletin of Peace Proposals* (Oslo), vol. XI, no. 4, 1980, p. 339–340.

4 See Merlo-Ponty, Maurice, *Humanisme et terreur*, Paris, Gallimard, 1947.

state were rendered to individuals *as their human rights*. The “bearers of rights” (often divided, *de jure* or *de facto*, into the categories of functionaries, workers and ordinary citizens) had rights only in terms of the legal technique of dispensing necessary social benefits in accordance with the prevailing social doctrine and administrative or economic efficiency.

Those regimes in the Third World which were autocratic had similar attitudes to peace, and an even more cynical stance regarding human rights. If one removes development from the triad of prime values discussed by the United Nations, it becomes obvious that for many radicals in that area peace and human rights have not been secondary but non-existent concerns.<sup>5</sup>

This “hidden reality” was not readily visible in the international fora and was inadequately represented in mainstream journals. The debate has always been among those who generally accepted peace and human rights as values, or pretended to do so, but disagreed about their content, precedence and feasibility. Explicit or implicit acceptance of human rights and peace as values has been recently put to a severe test in the disturbed areas of the former “communist” block. The renaissance of nationalism, now heavily influenced by the intellectual and political methodology of “really existing socialism”, lessened most inhibitions and returned to respectability political parties and authors openly rejecting peace if it conflicted with nation building or the national interest and, for similar reasons, disfiguring the idea of human rights beyond recognition. Under such terms, the paramount right is the right to self-determination in its state-creating form; in its shadow, only persons belonging to the ethnic nation can claim rights, and they have to wait until the final goal of fullest sovereignty and security (purity) is attained.<sup>6</sup> In such areas, many participants in the public discourse and political campaigns, even in learned journals, unabashedly discard peace (even in its rudimentary form of the absence of deadly conflicts) as a value, and even deride it as cowardly and effeminate. The very idea of human rights can be openly put to doubt, generally as subversive for the new (and now better) national state: after the creation of the latter, duties to the nation, manifested in its state, become more important than rights. In this view, no right can exist without the corresponding duty towards the community (state).<sup>7</sup>

The preceding sentences are sufficient to indicate that the debate on the relationship between peace and human rights is now being conducted in a quasi pre-World War II atmosphere: total rejection of peace and human rights as values has again become an acceptable stance. Those who deal with human rights and peace have sometimes to return to square one and to face politically and intellectually powerful opponents who do not believe that, at least in their case and the case of their nation or movement, peace or human

5 See Fanon, Frantz, *The Wretched of the Earth*, Harmondsworth, Penguin, 1967. See also the preface by Jean-Paul Sartre, p. 7–26.

6 See Bojars, Juris, *The Citizenship and Human (rights) Regulations in the Republic of Latvia*, *The Finnish Yearbook of International Law*, vol. 3, 1992, p. 331.

7 See e.g. Kujundžić, Nedjeljko, *Ukazanje fašizma u boljševičkoj ropotarnici* (The specter of fascism in the Bolshevik waste storage), *Vjesnik* (Zagreb), 19 October 1994, p. 14.

rights are necessary or desirable. If none of them is wished, the relationship between peace and human rights becomes a pointless topic. A discussion of the relationship and interaction of peace and human rights is meaningful only for those who recognise both values, irrespective of the order of importance and priority, or who accept at least one of these value clusters.

## 2. VALUES AS RIGHTS

*2.1. The 'right to human rights'.–* The proposition that certain accepted values shall be expressed in terms of individual rights, necessary for the attainment or protection of the relevant good (value) is in the origin of human rights thinking, especially in legal theory. For example, according to international human rights instruments, the best protected value is human dignity. Within it, it is not human life (since capital punishment is permissible under certain conditions and killing in international conflict is legitimate under certain conditions), but it is the physical integrity of the person. For some reasons, which will not be studied here, there is a consensus that any attempt to encroach on the organic system of the human body is unacceptable. This is then expressed in the form of a set of human rights and concomitant prohibitions, such as the banning of torture and cruel, inhuman, and degrading treatment and punishment. If not expressed in terms of rights, the value of human physical integrity would still be present, morally supported and socially accepted, but it would not be promoted to the higher degree of legal security and enforceability. Hence the attraction of transforming values into rights and hence the tendency to claim all good things as human rights.

If regarded under this light, the value cluster of "human rights" reveals itself as a group of instrumental values, values that lead to or secure deeper, substantive values. To be sure, the very idea of human rights, meaning that every human being is by nature endowed with some inherent rights, which are not granted by the state and cannot be removed by it, is a value in itself, especially if compared with the pre – human rights era, when this idea was virtually unknown<sup>8</sup>. In this sense human rights as a value appear in the

<sup>8</sup> The prevailing understanding of human rights in "socialist" theory, even in the late seventies, was also very conservative and state centered. In the words of a Soviet scholar with a high position in the United Nations Secretariat: "The theory of natural law .. is in principle invalid, since it destroys the link between human rights and their creators – States... " Neither does positivism help: according to the same writer, if a state has ratified a human rights treaty, "the concrete realization and implementation of ... rights falls within the domestic jurisdiction of each contracting state and may not be ... the object of foreign intervention." Rechetov, Youri, *International Responsibility for Violations of Human Rights*, in: Cassese, Antonio (ed.), *UN Law. Fundamental Rights. Two Topics in International Law*, Alphen aan den Rijn, Sijthoff & Noordhoff, 1979, p. 237–238, 240. "Human rights constitute a part of the rights a State, two or more States, awards to the individuals, to a group of people (the nation, an ethnic minority, the staff of an enterprise), or even to the entire population. Today human rights are ... desirable rights". Lopatka, Adam, *The Right to Live in Peace as a Human Right*, *Bulletin of Peace Proposals*, vol. 11, no. 4, December 1980, p. 362.

United Nations Charter, without indication of their content, save for the reference to equality of human beings (“without distinction as to race, sex, language, or religion”).<sup>9</sup>

Unless some human rights pre-existed in customary international law, the process of transforming the Charter provisions into a coherent list of rights and freedoms that would be universally respected and observed was in fact a matter of agreeing on the values to be protected. The first list, contained in the Universal Declaration of Human Rights, owed much to tradition, to the proclamations, declarations, constitutions and laws of various nations, established in the preceding century and a half. This traditional set was believed to represent “human rights”, which the United Nations as a war coalition of states defended against the Axis powers and was determined to universally impose. Additions to that catalogue, mainly in the area of economic, social and cultural rights, were fewer and reflected the socialist tradition, officially represented by “socialist” states but strongly present in the late 1940’s in the West. There was a broad consensus among the drafters and in the UN General Assembly on those received values so that the dilemmas about deciding on new values to be elevated to rights were not prominent.<sup>10</sup>

In the next step after the adoption of the Universal Declaration, the elaboration of an international legally binding treaty on human rights, it became clear that the consensus had not been perfect and that the debate on many values and their importance had to be reopened. The worsening international climate (Cold War) and the joining of the debate by the newly independent former colonies, made the drafting of what at the end became two general human rights treaties, the Covenant on Civil and Political Rights (CCPR) and the Covenant on Economic, Social and Cultural Rights (CESR), a long, perilous and cumbersome procedure (1948 – 1966). In the realm of civil and political rights some values had to be discarded (e.g. private property – Art. 17 of the Declaration), some were cast in doubt (such as the right to citizenship and international movement (Art. 13, 14 and 15 of the Declaration)). The whole category of economic, social and cultural rights was envisaged in less stringent terms. It was consigned to a separate treaty, the Covenant on Economic,

9 References to human rights are found in the Preamble and Articles 1, 13, 55, 56, 62, 68, and 76 of the Charter. Rechetov believes that the UN Charter “does not impose on Member States *concrete* obligations concerning *specific* human rights and fundamental freedoms”, but that “concrete obligations to promote the highest standards of living, full employment, and conditions of economic and social progress and development, solutions of international economic, social, health, and related problems, international cultural and educational cooperation ... have to be considered as a part of positive international law and must be strictly observed by States”. *Op. cit.*, p. 23

10 See Humphrey, John, *Human Rights and the United Nations: A Great Adventure*, Dobbs Ferry, Oceana, 1984.

Social and Cultural Rights, with a number of Western states not intending to ratify it at the time.<sup>11</sup>

The only significant enrichment of the traditional catalogue of human rights came in the form of the right of peoples to self-determination, which was transformed from a legitimate value (political principle) to a collective right, placed at the beginning of both Covenants.

The true drive to recognise as rights values that had hitherto not been perceived as rights in such a way began only later and has been loosely connected with the efforts to list and recognise the solidarity rights of the "third generation".<sup>12</sup> A growing number of values was listed as candidates for promotion to rights, among which development, environment, food, communication, and – peace.<sup>13</sup> The development of human rights will certainly be a dynamic and endless process: not only will the recognised rights be refined, enriched and broadened, but new rights will be added to the list as soon as there is agreement that a value is of significant importance and that it can be properly expressed and protected as a human right.

*2.2. Collective right to peace.* – The statement that there is a right to peace means that this right is already included in the catalogue of human rights, or, rhetorically, that it must be immediately included in it. This right was solemnly proclaimed by the United Nations General Assembly in the *Declaration on the Right of Peoples to Peace* on 12 November 1984.<sup>14</sup>

The General Assembly,

Recognising that the maintenance of a peaceful life for peoples is the sacred duty of each state,

1. Solemnly proclaims that the people of our planet have a sacred right to peace;

2. Solemnly declares that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each state...

11 The United States of America, which ratified the "ideologically" more acceptable Covenant on Civil and Political Rights only after hesitation and long delays, and with a number of far-reaching reservations, still does not show any inclination to ratify the CESR. See UN Doc. CCPR/C/2 Rev. 4..

12 See Vasak, Karel, For the Third Generation of Human Rights: the Rights of Solidarity, Inaugural lecture to the Tenth Study Session of the International Institute of Human Rights, Strasbourg 2–27 July 1979; Holleaux, Andre, Les lois de la "troisième génération" des droits de l'homme, *Revue française d'administration publique*, vol. 15, 1980, p. 45. For a critique see Donnelly, Jack, In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development, *California Western International Law Journal*, vol. 15, 1985, p. 473–509.

13 See Alston, Philip, A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?, *Netherlands International Law Review*, vol. XXIX, no. 3, 1982, p. 307 *et seq.*

14 Resolution 39/11.

There is considerable literature on the right to peace, mostly from the pre-1989 era.<sup>15</sup>

Advocates of this right do not find much legal support in the 1984 Declaration and the circumstances under which it was passed by the General Assembly. The Declaration was adopted hastily, without having been studied by a committee. There were no votes against it, but many abstentions, with many delegations conspicuously absent from the room (92:0:34).

Of more immediate legal concern was the absence in the text of a clearly stated nature and difference between the bearer and the beneficiary of the obligation juxtaposed to the right of “all peoples of our planet” to peace. The former appears to be the singular “each state”, having a “sacred duty” (5th preambular paragraph) and “fundamental obligation” (par 2), and, in the plural: “all states and international organisations”, to whom the appeal is addressed “to do their utmost to assist in implementing “ this right “through the adoption of appropriate measures at both the national and international level” (par 4).

As to the subject (bearer) of the right, the Declaration purports to proclaim a collective right, similar to the right of peoples to self-determination. However, at a closer look it is a doubly collective right, the right of *peoples* in the plural, the right of the whole of mankind, the collective right of the population of the world. Reference to the planet and the consistent use of the plural indicates that it was conceived not as a right which could be claimed by one people, but by all peoples.

The impression is that, again, unlike with the right to self-determination, there was no imaginable way how peoples demanding the right to peace could organise in themselves order to act as true beneficiaries, except as states assembled in international organisations, or, admittedly, in a super-organisation of non-governmental organisations of peoples. The latter is difficult to imagine if the right of self-determination obtains its goal, being the establishment of states “possessed of a government representing the whole people belonging to the territory “.<sup>16</sup> The subject of the right, the totality of

15 E.g. the special issue of the Bulletin of Peace Proposals, vol. 11, no. 4, 1980.

Dimitrijević, Vojin, The Interrelationship between Peace and Human Rights, in: Nowak Manfred; Steurer, Dorothea; Tretter, Hannes, Fortschritt im Bewusstsein der Grund- und Menschenrechte (Progress in the Spirit of Human Rights), Festschrift für Felix Ermacora, Kehl – Strasbourg – Arlington, N.P. Engel Verlag, 1988, p. 589–598; Tomuschat, Christian. Recht auf Frieden (Right to Peace), Europa-Archiv, vol. 40, 1985, p. 271 et seq. Dawes, Coleen E. , The Right to Peace, The Australian Law Journal, vol. 60, no. 2, 1986, p. 156 – 161; Tomaševski, Katarina, The Right to Peace, Current Research on Peace and Violence, vol. 3, no. 1, 1982, p. 42–68. Tomaševski was one of the few authors who revisited the subject after 1989: The Right to Peace after the Cold War, Peace Review (Palo Alto), vol. 3, no. 3, Fall 1991, p. 14–22. See also Alston, Philip. The Legal Basis of the Right to Peace, *ibid.*, p. 23–27.

16 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, General Assembly res. 2625 (XXV) (1970).

living human beings, thus has right *vis-à-vis* the community of states and each single state.

The drafters' insecurity as to the legal nature of the right to peace was reflected in the wording: in par. 1 of the Declaration, this right was not a right of peoples *tout court*, but a "sacred right" and there was no reference to enforcement, not even to the mechanisms linked to the traditional prohibition of the use of force in international relations (Chapter VII of the UN Charter).

The timing of the proposal, its author ("socialist" Mongolia), its vague floral political language ("peoples of our planet", "sacred duty", "sacred right") indicated that the Declaration was a propaganda effort on the part of the USSR in one of its traditional moves to encourage pacifists abroad. The support that came from the Third World governments was generally due to their disposition to side with all suggestions to add to the list of collective rights of the third generation. The dictatorial regimes among them were on this side for an additional reason: the ill defined rights of the "people" easily became the rights of the state which the regime controlled, symbolised and represented in the international community: the regime then became the comfortable bearer of an entitlement toward all other states and international organisations. Power holders appeared then to act in favour of human rights whilst denying them to individuals in their jurisdiction, at least as long as the collective (state) rights were not attained.<sup>17</sup> It should be remembered that the late 1970's and the early 1980's were not an easy time for democracy in many countries.

On the other hand, it was difficult to vote against the Declaration. It exhorted governments to act for peace and, vague and toothless as it was, contained no threat to anyone.

The Declaration was criticised as a simple but superfluous reiteration of the prohibition of force in international relations. Such a restatement would have some meaning if the rephrasing went the other way around, namely, from right to prohibition, which is not unusual in the field of human rights. Thus, for example the right to legality is translated into the prohibition of retroactive legislation in criminal matters, the right to personal freedom into the prohibition of arbitrary arrest, etc. Even if the existence of a prohibition is taken to imply a right, the Declaration is poor indeed: it neither includes a definition of peace, a mention of aggression, a reference to humanitarian law, nor does it address the related right to life.<sup>18</sup>

17 See Nzouankeu, Jacques, *The African Attitude to Democracy*, *International Social Science Journal*, vol. 43, 1991, p. 376-377.

18 See the General Comment 14 (23) of the Human Rights Committee on Article 6 of the CCPR: "It is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today". Doc. UN CCPR/C/21/Rev.1 of 19 May 1989.



Finally, the right to peace is conceived only as a collective right, without any consideration of its possible meaning in terms of the individual.<sup>19</sup>

More sophisticated and sincere proponents of the right to peace have not relied on the Declaration but regard this right to be an expression of the recognition of peace as a supreme international value, coupled with an insistence on the accompanying preconditions for peace. But then it becomes a figure of speech: "Designing procedures for peaceful articulation and negotiation of ... conflicts could be the best contribution that the right to peace could make".<sup>20</sup>

This is effective and attractive rhetoric, but not a statement of law. As with many attempts to secure and attain some important values, it is essentially relies on the magic of bringing a value closer and making it stronger by declaring it a right. Apart from being legally problematic, it is not clear how this change of label from value to right can help the attainment and preservation of peace.

*2.3. Use of individual rights to further peace.*—Whereas the collective right to peace, as described above, has little meaning and relevance, attention should be given to the frequently neglected individual rights, which repose on peace as a value or can be used to maintain peace, prevent armed conflict or refuse personal involvement therein. This includes rights and freedoms enabling individuals to act against violent methods of solving international and internal conflicts and to control decision-makers, who are in the position to involve society, deliberately or out of incompetence, in armed conflicts. The freedoms of movement, of expression and information, of peaceful assembly, of association, and the political rights to take part in the conduct of public affairs, as well as the rights to privacy and the protection of family and children come readily to mind.

The most conspicuous right directed against institutionalised violence and war is related to *conscientious objection to military service*. It is generally considered to be an emanation (correct interpretation) of the freedom of conscience,<sup>21</sup> although there are views that it is a part of a wider "right to refuse", immanent to secularised societies.<sup>22</sup> It has been recognised in a

19 See below, 2.3.

20 Tomaševski, Right to Peace (1991), *op. cit.*, p. 22.

21 See Mock, Erhard, *Gewissen und Gewissensfreiheit*, Berlin, Duncker & Humblot, 1983; Vermeulen, B.P. *De Vrijheid van Geweten. Een Fundamenteel Rechtsprobleem*, (The Freedom of Conscience. A Fundamental Problem of Law), Arnhem, Gouda Quint, 1989. For the work of international organizations see *Conscientious Objection to Military Service*, Report prepared in pursuance of resolutions 14 (XXXIV) and 1982/30 of the Subcommission on Prevention of Discrimination and Protection of Minorities by Mr. Asbjørn Eide and Mr. Chama Mubanga-Chipoya. See Resolution 337 and Recommendation 478 of the Assembly of the Council of Europe, 26 January 1967.

22 See Scheinin, Martin, *The Right to Say "No"*, *Archiv für Rechts- und Sozialphilosophie*, vol. 75, no. 3, 1989, p. 345–356.

number of countries with various explanations and justifications, following various procedures and with various effects, including consequences that could be interpreted as punitive (e.g. alternative unarmed national service of longer duration).<sup>23</sup>

For a long while, there was no international agreement that the freedom of thought and conscience included the right to conscientious objection. On the other hand, it was not expressly excluded by international instruments. The wording of Art. 8, par. 3.c.ii of CCPR indicates that its drafters had been aware of the problem, but seemed to leave it to the contracting states to regulate matters relating to conscientious objection and to interpret Art. 18, which deals with the freedom of thought, conscience and belief.

Initially, the Human Rights Committee, the body monitoring the implementation of CCPR, had also held the view that conscientious objection was not a recognised right, but in 1993 it adopted its General Comment on Art. 18, which devotes a paragraph to conscientious objection. There, the Committee expressed its belief “that such a right can be derived from Article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief”.<sup>24</sup> This is not a very strong statement; general comments of the Committee are a hybrid between its observations on state reports submitted to it and authoritative commentaries of CCPR. They cannot purport to be a binding interpretation of the Covenant.<sup>25</sup> Nevertheless, it can be taken that the general comment, coupled with obvious tendencies in individual states to recognise conscientious objection, clearly shows that there is growing consensus that individuals can practice their refusal to take part in preparations for armed conflict as a matter of their right.

However, there is strong resistance to widening the circle of persons entitled to refuse to become involved in armed conflict against their will. The Convention on the Rights of the Child, adopted fairly recently (20 November 1989), allows states parties to recruit for military service all persons above the age of fifteen (Art. 38, par. 3). It only appeals to them to “take all feasible measures that persons who have not attained the age of fifteen years do not take a direct part in hostilities” (Art. 38, par. 2). Besides condoning the involvement of children in armed conflict, such provisions are objectionable in another respect: few minors (and persons below the age

23 See the Explanatory Report to the Recommendation No. R (87) of the Committee of Ministers of the Council of Europe, Doc. H (87) 3 of 22 June 1987.

24 UN Doc. CCPR/C/21 Rev. 1 / Add. 2 (1993); HRI/GEN/1/Rev. 1 (1994). For a survey of the relevant decisions of the Human Rights Committee and comments thereon see Tahzib, Bahiyyih G., *Freedom of Religion or Belief. Ensuring Effective International Protection*, Dordrecht, Nijboff, 1997, p. 249 ff.

25 See Nowak, Manfred, *UNO-Pakt über bürgerliche und politische Rechte und Fakultativprotokoll. CCPR-Kommentar*, Kehl-Strassburg-Arlington, N.P. Engel, 1989, p. 613–619.

of eighteen are minors in most states) are likely, under the present circumstances, to succeed in making a case that they object to military service for reasons of conviction and conscience. Furthermore, minors as a rule have no right to vote so that they are called to implement decisions to resort to armed force which they have never been able to influence.<sup>26</sup>

Conversely, human rights can be exercised in such a manner to endanger peace. In the present international human rights regime, it is up to the states to restrict the exercise of rights if it affects certain interests, and under certain conditions. However, the grounds for permissible restrictions in existing human rights treaties, universal and regional, do not show that restrictions are envisaged as means to protect peace. Rather, they point in the opposite direction, that of primarily protecting the interests of the nation state. Thus, under the European Convention for the Protection of Human Rights and Fundamental Freedoms the freedom of expression can be restricted by law, if the restriction is necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder and crime, health and morals, of the reputation and rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary (Art. 10, par. 2). Such a collection of grounds appears to offer more protection to the military and patriotic establishment, with their insistence on secrecy, territorial integrity and their glory and reputation, than to the interests of peace and peace activists, who can be easily blamed for acting contrary to the national interest.

Abuse of human rights can be countered by claiming that some rights are inherently restricted to protect certain fundamental values. The theory of inherent limitations was supported by some courts, but such a doctrine has been criticised as giving too much power to the interpreters.<sup>27</sup> Art. 20 of CCPR expressly prohibits propaganda for war and the advocacy of national, racial or religious hatred. The position of this article in the Covenant indicates that it limits the freedoms of manifestation of thought and conscience and of expression. While the prohibition of incitement to hatred has been widely accepted, the prohibition of propaganda of war is resisted as a vague limitation of the freedom of expression, relying as it does on uncertain notions of “propaganda” and “war”. A number of states have entered reservations and interpretative declarations to eliminate or restrict the application of the relevant par. 1 of Art. 20.<sup>28</sup>

26 See Tomaševski (1991), *op. cit.*, p. 19.

27 For the European Commission and the European Court of Human Rights see van Dijk, P.; van Hoof, G.J.H. *Theory and Practice of the European Convention on Human Rights*, 2 edition, Deventer – Boston, Kluwer, 1990, p. 575–578.

28 See Nowak, *op. cit.*, p. 392–393.

### 3. PEACE AND HUMAN RIGHTS: CAUSAL LINKS

If accepted as values, peace and human rights can be studied in their causal relationship. The discussion is no longer on whether they are accepted and desirable values, and which of them is to be ranked higher (a ranking which is, for that matter, difficult to accept when discussing values and cultures), but how they influence one another. Questions to be raised in this context relate to the mutual influence of respect for human rights is and peace, and *vice versa*.

*3.1. Human rights as the precondition for peace.*—Elementary peace (absence of armed conflict) was internationally recognised as a universal value earlier than human rights. The 20th century version of classical international law and the post World War I generation of international organisations rested on the assumption that the international community was entitled to act against states that violated the prohibition of aggression, or at least engaged in irregular and messy wars, but not against those who violated the human rights of their subjects.<sup>29</sup> International peace was not an internal affair of the state but human rights belonged there, until very recently.

It is natural that traditional diplomatic thinking has been committed to the proposition that respect of human rights is conducive to peace. One clearly recognised value needed another one as a prerequisite, not only because of the inertia of the diplomatic mind: this line of reasoning was also the best way for advocates of human rights to “sell” the need to guarantee the respect and protection of human rights to the sceptical realists controlling the process of the restructuring of the world order after World War II.

One does not have to go far for examples of this reasoning. According to Art. 55 of the UN Charter “... universal respect for, and the observance of human rights and fundamental freedoms” is instrumental in “the creation of conditions of stability and well-being which are necessary for *peaceful* and friendly relations among nations ...”<sup>30</sup> In its Preamble, the Universal Declaration of Human Rights lists, in the first place, and before reasons related to justice, the dignity and the worth of the human being, the conviction of the General Assembly that the “recognition of the inherent dignity and the equal and inalienable rights of all members of the human are family is the foundation of freedom, justice and *peace* in the world.”<sup>31</sup> Similar wording appears in the identical first paragraphs of the Preamble of the two Covenants on human rights.

29 See Farer, Tom J.; Gaer, Felice, *The UN and Human Rights: At the End of the Beginning*, in Roberts, Adam; Kingsbury, Benedict, *United Nations, Divided World*, Second Edition, Oxford, Clarendon Press, 1993, p. 240–244 and the literature quoted there.

30 Italics supplied.

31 Italics supplied.

The same reasoning was in the foundations of the efforts of the Conference (now Organisation) on Security and Co-operation in Europe (CSCE). In the Helsinki Final Act of 1 August 1975:

The Participating States recognise the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for *peace*, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.<sup>32</sup>

In this view, observance of human rights is prophylactic, it allegedly helps prevent armed conflict and preserve peace. As demonstrated above, it is a widely shared view in international organisations, governmental and non-governmental. The strength of this belief has served a very useful purpose in the strengthening of the international protection of human rights.<sup>33</sup> In order to examine the empirical validity of this proposition one has to look at some of its components.

Apparently, the strongest impetus to such thinking, especially in the United Nations, came from the experience preceding World War II. The aggressors in this world-wide armed conflict were states with official ideologies of disdain for ideas of individualism and humanism, renowned for their disrespect for human rights and guilty of the resulting massive violations thereof. Hence it was inferred that oppression at home leads to the proneness to use violent methods in the furtherance of perceived national interests. In other words, societies without human rights are a risk for international peace.

There are, however, historical examples that point the other way. Oppressive regimes sometimes avoid involvement in international conflict for fear of internal destabilisation (Franco's Spain). Stalin's USSR, at the peak of internal terror, purges and show trials, tried desperately to avoid international conflict until 1941, only to become, in 1945, a dubious member of the pro-democracy and pro-human rights coalition.

Democracies respecting the human rights of their own citizens have been known to frequently resort to war (Great Britain and France in the times of colonialism, United States in its "colonialist" episodes against Spain, Israel, etc.). It was observed, however, that democracies seldom went to war one against another.<sup>34</sup>

Systematic empirical research also appears inconclusive. The results that purport to prove that "libertarian" societies are less prone to international violence have immediately been challenged by other authors, mainly on the

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32 Declaration on Principles, VII, para. 5. Italics supplied.

33 "We have human rights norms officially because of the view that they contribute to peace. And that, in itself is a debatable notion". Forsythe, David P., *Human Rights and World Politics*, Lincoln – London, University of Nebraska Press, 1983, p. 31.

34 See Doyle, M.W., *Kant, Liberal Legacy, and Foreign Affairs*, Philosophy and Public Affairs, vol. 12, 1983, p. 205–235; Bobbio, Norberto, *Il futuro della democrazia*, Torino, Einaudi, 1984, p. 31–39.

basis of the elusive operationalisation of the concepts of “free” societies and “international violence”.<sup>35</sup> It is very difficult to determine, even today, which states are democratic and have an excellent human rights record. It is much harder to do it in historical perspective. Where do colonial wars belong? In terms of the 19th century, was Great Britain a democracy respecting human rights. If it was, were autochthonous pre-colonial states in Africa democracies according to contemporary African standards?

This probably explains why empirically oriented researchers have avoided the study of democracy and respect for human rights as factors influencing involvement in international armed conflicts.

There are, on the other hand, strong statements that human rights and war do not influence one another, that “freedom and conflict are basically unrelated”.<sup>36</sup>

Another support for the hypothesis that the absence of human rights endangers peace is that consistent deprivation of human rights leads to rebellion, which causes internal violence and may result in international conflict. This is also a traditional belief, originating in the theory of tyrannicide and the right to rebel against oppression.<sup>37</sup> It was also reflected in the Preamble of the Universal Declaration of Human Rights:

... it is essential, if man is not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights shall be protected by the rule of law.

In the later practice of the United Nations the right to rebel was mainly associated with the right to self-determination of peoples. General Assembly resolutions referred to “man’s basic right to fight for the self-determination of his people under colonial and foreign domination”<sup>38</sup> and stated that:

The struggle of peoples under colonial, alien domination and racist regimes for the implementation of their right to self-determination and independence is legitimate and in full accordance with the principles of international law.<sup>39</sup>

It will be noted that this shift in the United Nations towards the violation of human rights that were taken to be in some sense committed by

35 For a sample of the debate see: Rummel, R.J., *Libertarianism and International Violence*, *Journal of Conflict Resolution*, vol. 27, no. 1, 1983, p. 27–71; Vincent, Jack E., *Freedom and International Conflict: Another Look*, *International Studies Quarterly*, vol. 31, no. 1, 1987, p. 103–112; Rummel, R.J. On Vincent’s View of Freedom and International Conflict, *International Studies Quarterly*, vol. 31, no. 1, 1987, p. 113–117; Vincent, Jack E. On Rummel’s Omnipresent Theory, *International Studies Quarterly*, vol. 31, no. 1, p. 125.

36 Vincent, Jack E. On Rummel’s Omnipresent Theory, p. 125. Vincent refers to data collected by the late Edward Azar at the University of Maryland.

37 See Cohen, C.A. *The Right and Duty of Resistance*, *Human Rights Journal*, vol. 1, no. 4, 1968, p. 491–516.

38 GA resolution 2787 (XXVI) of 6 December 1971, art. 2.

39 GA resolution 3103 (XXVIII) of 12 December 1973, art. 3.

“aliens” also gives the clue to understand how rebellion, which would normally cause only internal disturbances, could result in damage to international peace. Namely it is implied that rebels are entitled to international assistance, or at least that foreign states providing help are not violating international law. If freed from the excessive attachment to the right to self-determination, this boils down to the right of the international community to act against governments grossly violating human rights or to assist the rebellious victims of human rights violations. This is how international conflict can be generated even if there is no formal alien domination.<sup>40</sup>

In other words, human rights violations open the door to humanitarian intervention. Some of the worst repressive systems have finally been crushed by foreign intervention or by defeat in international conflict. The definite fall of the regime of Idi Amin in Uganda after Tanzanian intervention is often quoted as one of the recent examples, although it was also triggered by border transgressions by Ugandan troops.<sup>41</sup> The motives of the intervening countries have been much too frequently mixed to allow their intervention to be treated as genuinely humanitarian, but this does not concern us here. There is some merit in the statement that human rights violations lead to foreign involvement and conflict, not by the aggressive policies of the oppressive government but by opening the way and creating legitimacy for foreign involvement.

This statement has sometimes been rephrased to mean that insistence on human rights endangers peace.<sup>42</sup> If absence of international conflict is taken to mean peace, then any foreign interference to prevent, monitor, condemn or sanction human rights violations in a country, which inevitably results in more or less vehement reactions from the government, will certainly bring the parties closer to conflict than co-operation. This is also true when more structured, internationalised and “polite” intervention is undertaken. The record of the United Nations and its various human rights organs, including “treaty bodies” monitoring various human rights covenants and

40 To perceive a regime as “alien” can be easier than imagined and is not only limited to colonial situations. In almost all states of the world there are groups and political movements that consider their governments as “alien” in national or political terms. For the nationalist ideologues in multinational federations, the federal authorities appear “alien”. For Yugoslavia, see generally Ramet, Sabrina P., *Nationalism and Federalism in Yugoslavia*, 2nd edition, Bloomington and Indianapolis, Indiana University Press, 1992. It is interesting to compare the views of Serb and Slovene writers, writers being the traditional agents of national “awakening” in Central and Eastern Europe: Gojković, Drinka, *Trauma bez katarze*, Republika (Belgrade), vol. 7, no. 118, 1995, p. I-XXVI; *Samostojna Slovenija* (Independent Slovenia), thematic issue of *Nova Revija* (Ljubljana) vol. 9, March 1990, p. 241–632. The most radical wings of the “new left” believed that most Western governments were surrogates of the United States or of some kind of capitalist center. When brought before courts, they maintained that they were prisoners of war. See Detrez, Conrad (ed.), *Zerschlagt die Wohlstandinseln der Dritten Welt*, Reinbeck bei Hamburg, Rowohlt, 1971.

41 See Forsythe, *op. cit.*, p. 28.

42 “Human rights breeds confrontation”. Hoffmann, Stanley, *The Hell of Good Intentions*, *Foreign Policy*, vol. 29, no. 1, 1977, p. 8.

conventions, shows that individual states have been extremely reluctant to use any existing opportunity to initiate action in state-against-state complaints, and that action started by individuals and groups has been pursued by political organs with little enthusiasm and efficiency. The non-political Human Rights Committee, which has been active already for nineteen years, has not received a single communication from a state party of the Covenant on Civil and Political Rights claiming that another state party is not fulfilling its obligations under CCPR (Art. 41). The Commission on Human Rights has not completed any of its actions, however circumspect, originating in reports that in some countries there appears to be a consistent pattern of gross violations of human rights and fundamental freedoms:<sup>43</sup>

Since the adoption of the 1503 procedure, the Commission has neither exercised its power to undertake a thorough study nor sought the consent of a delinquent state for the creation of an investigating committee.<sup>44</sup>

To be sure, the reasons for such timidity are not only fear of armed conflict, but hesitancy to affect economic interests, to imperil ideologically close and otherwise friendly and strategically reliable governments, to weaken international alliances, etc. Nevertheless, it remains true that, if there were no other motives, the most atrocious internal repression has been preferred to armed conflict, even when the offending governments were militarily weak. In this respect, a sharp distinction is still made between internal and international peace, with the latter being the only one that matters.<sup>45</sup>

According to one line of reasoning, societies where human rights are respected and observed tend to live in internal peace, but this does not always apply to their proneness to violate international peace if they follow one interpretation of the nature of the nation state. Namely, if there is a consensus that the state exclusively and predominantly serves the interests of its population, then aggression and the international use of force is more easily accepted. Then the majority of citizens who believe they are free and respectful of democracy and human rights can support going to war for something that is perceived as good for the whole national community. Moreover, respect for human rights can be regarded as a purely national value. This has been recently loudly proclaimed in societies dominated by nationalist rhetoric: human rights and democracy are meant only for the members of one's own nation. They are almost irrelevant abroad, unless they are the rights of co-national minorities there. Within the state, ethnically different (alien) citizens are then excluded because they are not a true part of the body politic and it is not *their* right to self-determination that is in

43 Economic and Social Council resolutions 1235 (XLI) of 1967 and 1503 (XLIV) of 1970.

44 Farer – Gaer, *op. cit.*, p. 281. See also Franck, Thomas M, *Nation Against Nation*, New York – Oxford, Oxford University Press, 1985, p. 224–245.

45 See Tomaševski, *The Right to Peace* (1982), p. 47.



the origins of all individual rights.<sup>46</sup> Being a part of the superior nation elevates each of its biological members to a higher civic status than that of any member of another ethnic group. Nationalist majorities and their governments initially promise to treat their worst co-national political opponents better than the tamest member of a minority. Human rights and democracy are conceived and held feasible only within the closed national group. This explains how some of the best legal minds and staunchest opponents of ideological totalitarianism easily become the apologists of national discrimination.

As shown by the practice of the fascist brand of nationalist populism and recent events in East and Central Europe, this promise cannot be kept for long. *Nestbeschmutzer*, “cosmopolitans”, “mondialists” and other non-nationalists become traitors, together with those who for reasons of mercy and humanity sabotage the war effort. Referring to the French Revolution, Steven Lukes observes:

The revolutionary slogan “la fraternité ou la mort” thus acquired a new and ominous meaning, promising violence first against non-brothers and then against false brothers.<sup>47</sup>

Through the readiness to disregard violations of human rights committed against “others”, apparent democracy reveals itself as a sham and eventually results in the denial of human rights to individual members of one’s own group.

3.2. *Human rights as a component of peace.*— The statement that human rights are a prerequisite of peace can have a weaker or a stronger form. It can be maintained that human rights are conducive to peace, but it can also be said that there is no peace without human rights. The latter statement can be interpreted as meaning both that human rights are an indispensable condition for peace, which means that the separate value of peace cannot be attained without securing the separate value of human rights. However, the interpretation is also possible that peace cannot exist without human rights, where human rights are part of peace, where peace is defined by reference to human rights and peace and human rights merge in one value cluster. Peace without human rights is then not only unlikely, or even impossible: it is *unthinkable*.

This conclusion has been reached by those who refuse to accept the traditional concept of peace only as the absence of armed conflict (*negative peace*), or even as a set of instrumental values, but believe that it can be defined by reference to substantive values. In other and simpler words, peace in this view is not only a state of certain inactivity, which is precious because war is worse; it is not only a situation where all actors can pursue their

46 See Bojars, *op. cit.*, p. 242.

47 Lukes, *op. cit.*, p. 37.

respective goals (irrespective of their quality) by other means. It is defined as a set of values, which give peace substance and meaning (*positive peace*).

Such reasoning runs parallel with the efforts of some peace researchers to redefine violence, and to include into that concept not only the actual exercise of violent methods, but also the results of former violence and the permanent production of violent structures, national and international (*structural violence*).<sup>48</sup> This leads to the necessity to describe what the emanations of structural violence are, which in reverse is the description of a state without structural violence, i.e. peace. For most peace researchers, positive values to be included in the concept of peace are integration, human fulfilment, freedom, social justice, etc. If this is coupled with their individualistic, anthropocentric view of the world system,<sup>49</sup> it is obvious that what is meant is more or less the list of values otherwise covered by the concept of human rights.<sup>50</sup>

There was a similar potential in Marxism, with its concept of *alienation* (*Entfremdung*). This notion, originally borrowed from Hegel, covered various forms of the historical loss of the true human essence through economic and social organisation, politics, religion, etc.<sup>51</sup> This resembles comments by Johan Galtung's and other the inadequacy of the affirmation of individual somatic and mental potentials.<sup>52</sup> Unfortunately, recent Marxist writers have not been interested in matters of legal theory, tethered as they were by the vulgar definition of law as "the will of the ruling class". Hence the paucity of Marxist philosophical and legal writings on human rights

48 The most influential writer on positive peace, structural violence and related concepts has been Johan Galtung. See Galtung, Johan, A Structural Theory of Integration, Journal of Peace Research (Oslo), vol. 5, no. 4, 1968, p. 375–395; Violence, Peace and Peace Research, Journal of Peace Research, vol. 6, no. 3, 1969, p. 167–191; Feudal Systems, Structural Violence and Structural Theory of Revolution, Essays in Peace Research, Copenhagen, Christian Ejlers, vol. 3, 1970. A Structural Theory of Imperialism, Essays in Peace Research vol. 4, 1970. See also authors listed in Newcombe, Hanna; Newcombe, Alan, Peace Research around the World, Oakville (Ontario), 1969. For a critique, see Eide, Kjell, Note on Galtung's Concept of Violence, Journal of Peace Research, vol. 8, n.1, 1971, p. 71; Boulding, Kenneth E., Twelve Friendly Quarrels with Johan Galtung, in: Gleditch, Nils Petter, Leine, Odvar et. al. (eds.), Johan Galtung: A Bibliography of His Scholarly and Popular Writings 1950 – 1980, Oslo, Peace Research Institute, 1980, p. 7–26.

49 Modern nationalists, who otherwise are strangely attracted to Galtung, object to this approach as disregarding the nation and its state. See e.g. Simić, Dragan, Pozitivan mir. Shvatanja Johana Galtunga (Positive Peace. The views of Johan Galtung), Belgrade, Akademija nova, 1993, p. 77.

50 See Galtung, Johan, The Next Twenty-Five Years of Peace Research: Tasks and Prospects, Essays in Peace Research, vol. 6, 1988, p. 103.

51 See Israel, J., L'aliénation de Marx à la sociologie contemporaine, Paris, Anthropos, 1972; Atienza, Manuel, Marx y los derechos humanos, Madrid, Mezquita, 1982. For a recent reappraisal see Žižek, Slavoj, The Sublime Object of Ideology, London – New York, Verso, 1989.

52 Violence, Peace etc., *op. cit.*, p. 110–111.

issues,<sup>53</sup> and the failure to explore the possibilities of *disalienation* through human rights.

In the “official” thinking of states and international governmental organisations the belief that peace was equal to human rights was not present in its radical form, described above; it was reduced to expressing the view that peace without human rights (and other values, most frequently development) was still peace, but insecure and inferior. The General Conference of UNESCO has been very fond of language indicating that peace cannot consist solely in the absence of armed conflict but implies principally a process of progress, justice, and mutual respect among the peoples ... A peace founded on injustice and the violation of human rights cannot last and leads inevitably to violence.<sup>54</sup>

In the late 1970s and early 1980s this discourse was replaced by the primacy of peace, which is to be served by human rights and eventually resulted in the Declaration on the Right of Peoples to Peace. Politically this can be explained by the stronger presence in the majority of non-aligned states from the Third World of regimes disinclined toward individualism and the related interpretation of human rights, which brought them closer to the political East. The concept of peace returned to its negative international meaning, as the absence of war among nations. In political reality, the security of states, which came to be identified with state (regime) security,<sup>55</sup> became the most important concern.

Although well-intentioned, all attempts to identify peace and human rights reveal methodological weaknesses. The inclusions of various desirable values and goals stretches the concept of peace beyond recognition. The effort to transform peace from a set of modal values to a collection of substantive values has also been in vain. There is a new competition to include everything desirable in the package of peace, which reveals the same stratagem used with human rights: declaring something to be identical to peace (or an essential component thereof) brings that something within reach. In less sophisticated terms of agitation, this comes close to semantic tricks

53 See however, Marković, Mihailo, Differing Conceptions of Human Rights in Europe. Toward a Resolution, in: Philosophical Foundations of Human Rights, Paris, UNESCO, 1986, p. 113–130; Paastela, Jukka, Human Rights in the Writings of Marx and Engels, in: Rosas, Allan; Helgesen, Jan (eds.), Human Rights in a Changing East-West Perspective, London – New York, Pinter, 1990, p. 6–16. For a survey of the Soviet Marxist legal doctrine on human rights see Cassese, Antonio, International Law in a Divided World, Oxford, Clarendon, 1986, p. 300–302.

54 Resolution 18 C/11.1 of 1974. The Director General of UNESCO wrote in the same vein: “Peace is more than simply a matter of refraining from war; there can be no lasting peace if individuals are deprived of their rights and liberties, if people are oppressed by other peoples, if populations are beset with poverty or suffering from malnutrition and sickness”. Quoted by Marks, p. 341.

55 See Dimitrijević, Vojin, Pojam bezbednosti u međunarodnim odnosima, (The Concept of Security in International Relations), Beograd, Savez udruženja pravika, 1973.

related to value-laden terms. If there is a “good” word, attach it to a desired value or result. “Peace” is “good”: everything that is subsumed thereunder is also “good”. As witnessed by a number of resolutions of international organisations and governmental statements, “terrorism” is “bad”: everything that has been thought to merit condemnation or to be noxious has then been called terrorism.

3.3. *Peace as a precondition for human rights.* – Conversely, it can be asked whether peace leads to the respect and enjoyment of human rights, or whether the latter can be enjoyed without peace at all. In terms of the history of general ideological and political currents, this causal link was suggested later than the human-rights-leading-to-peace hypothesis.

In most important international human rights instruments, the respect of human rights is not made dependent on the conditions of peace. Furthermore, the whole structure of *humanitarian law*, or the set of humanitarian rules of the international law of armed conflict (war), which was codified before the law of human rights,<sup>56</sup> rested on the assumption that individual rights ought to be specially protected *in armed conflict* and *in spite of war*, which at the time was a legitimate means of furthering national interests and solving international disputes (*ius ad bellum*). To be sure, all this was an implicit recognition of the intuitive reasoning that absence of peace (war), international (and later) internal, was a menace to the enjoyment of human rights. It is axiomatic that during a situation which is characterised by violence, although most of it legitimate, individual human rights are very likely to suffer.

In all its manifestations, the human rights law<sup>57</sup> attempts to limit the damage that armed conflict causes to the enjoyment of human rights.

Humanitarian law deals with the danger of war to the human rights of human beings on the other, enemy side. Although forced to recognise the legitimacy of many forms of denial of human rights of the combatants, such as the right to life and physical integrity, and of the civilian population, such as the freedom of movement, assembly, association, etc., it nevertheless limits the methods of warfare and control of occupied territory to the historically acceptable range, absolutely prohibiting some human rights violations, and declaring them to be criminal offences (grave breaches).

Human rights law during wartime is concerned with the effects of the use of violence within the state at war on the whole population, including

56 See Coursier, Henri, *L'évolution du droit international humanitaire*, Recueil de Cours, Academy of International Law, 1960, p. 357; Dinstein, Yoram, *Human Rights in Armed Conflict: International Humanitarian Law*, in: Meron, Theodor, *Human Rights in International Law. Legal and Policy Issues*, Oxford, Clarendon, 1985, p. 345–368.

57 After all, human rights law and humanitarian law are the expression of the same idea, influenced by the particular plight of the beneficiaries of rights and the historical circumstances of codification. See Robertson, A.H., *Human Rights as the Basis of International Humanitarian Law*, Lugano, International Institute of Humanitarian Law, 1971.

“enemies” in internal strife. International instruments allow for restrictions of some rights for reasons of national security, even in peacetime. They tolerate the restriction and derogation of rights “in time of emergency which threatens the life of the nation”<sup>58</sup>, which certainly includes the state of war. The only condition is that derogation does not have discriminatory effects. Nevertheless, some rights are absolutely protected and cannot be temporarily abolished. According to CCPR (Art. 4.2) the non-derogable rights are the right to life, the right to physical integrity (prohibition of torture and similar treatment or punishment), prohibition of slavery and servitude, prohibition of imprisonment for inability to fulfil a contractual obligation (imprisonment for debt), right to legality in criminal law (*nullum crimen, nulla poena sine lege*), right to be a person before the law, and freedom of thought, conscience and religion. It is not easy to determine why exactly the rights enumerated were chosen to represent the very gist of the catalogue of human rights, even after the perusal of the *travaux préparatoires*.<sup>59</sup> The rationale was obviously similar to that underlying humanitarian law: no derogation shall be permitted if it is morally repellent and if it does not meaningfully contribute to the legitimate war effort.

There are other ways armed conflict adversely affects human rights, many of them not easy to grasp in legal terms. The non-state actors and factors which militate against the human rights of others and which can even in the peacetime be more prone to human rights violations than government agencies and agents, now feel less inhibited by moral restraints and encouraged by the culture of war, which offers the opportunity to criminal elements to ennoble their deeds by putative patriotic motives.<sup>60</sup> War enthusiasm and war hysteria lessen popular support for human rights and without it institutions designed to protect human rights lose their independence and effectiveness.

There is no evidence that even exceptionally stable democracies, based on the rule of law and strong “law habits”, manage to preserve the full enjoyment of the human rights of their own population during armed conflict. War is harmful for human rights. Peace is one of the preconditions of the full enjoyment of human rights. This does not mean, however, that, conceptually, there are no human rights without peace.

#### 4. CONCLUSIONS

Human rights and peace are separate clusters of modal (instrumental) values. They partly overlap, but are not identical. Subsuming human rights

58 CCPR, Art. 4.1.

59 See Bossuyt, Marc J., Guide to the “travaux préparatoires” of the International Covenant on Civil and Political Rights, Dordrecht, Nijhoff, 1987.

60 See Denitch, Bogdan, Ethnic Nationalism, Minneapolis – London: University of Minnesota Press, 1994, p. 187–205.

under peace, or peace under human rights is methodologically wrong and does not serve any meaningful educational or political purpose. In a world of sovereign nation states respect for human rights does not unequivocally result in peace. As peace and human rights are separate sets of values, one of them can take precedence so that in case of gross violations of human rights the risk of international conflict becomes acceptable. There is no doubt that the absence of peace, international and national, endangers the enjoyment of human rights, totally or partially.

The collective (peoples') right to peace, as advocated in the United Nations and formulated in the 1984 Declaration on the Right of Peoples to Live in Peace, does not have a clear legal meaning and cannot be translated into meaningful action. On the other hand, many individual rights can be exercised with the view of defending peace and preventing national and personal involvement in war.

Vojin Dimitrijević\*

## LE RAPPORT ENTRE LES DROITS DE L'HOMME ET LA PAIX

### *Résumé*

Divers types de rapports peuvent être établis entre la paix et les droits de l'homme, considérés en tant que valeurs. Dans le débat passionné relatif aux rapports entre la paix, les droits de l'homme et le développement, débat s'étant déroulé dans la huitième et neuvième décennie de ce siècle, divers groupes d'Etats au sein des Nations unies et d'autres organisations internationales se sont identifiés avec la priorité d'une de ces valeurs. Il apparaissait que l'"Occident" soutenait les droits de l'homme, l'"Est" la paix, alors que le "Sud" insistait surtout sur le développement. On admettait cependant que chacun de ces groupes reconnaissait l'importance, bien que secondaire, des deux autres valeurs, alors que, durant toute cette période, les positions rejetant totalement certaines de ces valeurs étaient le fait de personnes représentant des courants radicaux, extrainstitutionnels.

Le débat relatif au rapport entre la paix et les droits de l'homme se déroule aujourd'hui dans une atmosphère qui rappelle celle existant avant la Deuxième Guerre mondiale: le rejet total de la paix et des droits de l'homme en tant que valeurs est redevenu une position intellectuelle acceptable. Les personnes oeuvrant en faveur des droits de l'homme et de la paix se trouvent de nouveau confrontées à de puissants adversaires sur le plan politique et

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intellectuel qui ne croient pas que la paix et les droits de l'homme soient nécessaires ou souhaitables, du moins lorsqu'il s'agit d'eux et de leurs peuples. Si ni l'une ni l'autre de ces valeurs ne sont recherchées, l'établissement du rapport entre la paix et les droits de l'homme perd tout intérêt. Le débat relatif à ce rapport n'a un sens que pour les hommes qui reconnaissent ces deux valeurs.

“Les droits de l'homme” apparaissent comme un groupe de valeurs instrumentales qui conduisent à des valeurs plus profondes, essentielles. La seule idée de droit de l'homme, la conviction que chaque être humain possède des droits innés, que l'Etat ne lui donne pas et ne peut, par conséquent, lui ôter, est une valeur en soi. C'est en ce sens que les droits de l'homme sont mentionnés comme un objectif dans la Charte des Nations unies.

La paix peut être considérée comme un droit. Le droit à la paix a été solennellement proclamé par l'Assemblée générale des Nations unies dans la Déclaration sur le droit des peuples à vivre en paix, adoptée le 12 novembre 1984. Les défenseurs du droit collectif à la paix ne trouveront toutefois aucun soutien juridique dans cette Déclaration ni dans les conditions dans lesquelles elle a été adoptée. Le moment où l'adoption de cette Déclaration a été proposée, le pays ayant déposé cette proposition (la Mongolie “socialiste”) et les formulations floues et purement décoratives du texte ont immédiatement révélé qu'il s'agissait d'un effort de propagande de l'URSS et de ses alliés afin d'encourager une nouvelle fois les pacifistes dans le reste du monde, dont l'engagement était toujours profitable à ce bloc. Le soutien que l'URSS et ses alliés ont alors trouvé auprès des gouvernements du tiers monde provenait pour l'essentiel de l'inclination de ces derniers à soutenir toutes les propositions prônant l'adjonction de nouveaux droits sur la liste des droits de l'homme de la “troisième génération”. Ce faisant, les régimes dictatoriaux en place dans de tels pays étaient motivés par une autre raison: ils interprétaient les droits non définis des “peuples” comme étant des droits immanent à tout Etat, donc y compris à ceux à la tête desquels ils se trouvaient et qu'ils symbolisaient et représentaient au sein de la communauté internationale. En réclamant le respect de droits collectifs flous au nom de leurs peuples face à l'étranger, les tenants du pouvoir dans ces pays pouvaient ainsi prétendre agir en faveur des droits de l'homme, alors qu'ils en supprimaient la jouissance à leurs propres sujets.

Si le droit collectif à la paix n'a que peu d'importance et de teneur, il convient en revanche de prêter attention aux droits, souvent négligés, des individus, droits reposant sur la paix en tant que valeur ou pouvant être invoqués afin de préserver la paix, d'empêcher un conflit armé ou de refuser de participer à une guerre. Ces droits permettent à des individus de s'opposer aux recours à des moyens violents pour la résolution de conflits internationaux ou intérieurs et de contrôler ceux qui, par leur pouvoir de décideurs, se trouvent en position d'entraîner leur société dans des conflits armés, volontairement ou en raison de leur incapacité. Ce faisant, on pense ici, entre

autre, aux libertés de déplacement, d'expression, d'information, de rassemblement pacifique, d'association, aux droits politiques à participer à la conduite des affaires publiques, ainsi qu'aux droits à la vie privée et à la protection de la famille et de l'enfant.

Le droit le plus notable se posant contre la guerre et la violence institutionnalisée est lié à l'objection de conscience lorsqu'il s'agit des obligations militaires. Ce droit est reconnu par de nombreux pays en vertu de diverses explications et justifications, ce qui se traduit par divers comportements et réactions, y compris certaines conséquences qui équivalent en fait à des punitions. Malheureusement, la tendance générale consistant à expliquer l'objection de conscience comme étant une manifestation de la liberté de conscience a été contestée par la récente inclusion dans la Convention sur les droits de l'enfant d'une disposition autorisant les Etats à mobiliser des mineurs.

A l'opposé, les droits de l'homme peuvent être utilisés de telle sorte que la paix s'en trouve menacée. Selon le régime existant des droits de l'homme, les Etats sont en effet autorisés, sous certaines conditions, à limiter les droits de l'homme, si cela vise à assurer la protection d'un intérêt vital. Les raisons invoquées dans les textes existant ne montrent cependant pas que ces restrictions vont dans le sens de la protection de la paix. Elles suggèrent en fait le contraire, à savoir que c'est principalement la protection des intérêts de l'Etat national qui est recherchée. De même, de nombreux Etats ont formulé des réserves au sujet de l'article 20 al. 1 du Pacte international sur les droits civiques et politiques, qui leur imposent d'interdire toute guerre de propagande.

La paix et les droits de l'homme peuvent aussi être étudiés dans un lien d'interaction. Dans ce cas le débat ne porte plus sur la question de savoir si ce sont des valeurs acceptées ou souhaitables et dans quel rapport hiérarchique elles se trouvent, mais sur la façon dont elles influent l'une sur l'autre. Il est possible d'établir que les droits de l'homme conduisent à la paix, mais il est aussi possible de dire qu'il n'y a pas de paix sans droits de l'homme. Cette dernière position peut être interprétée en estimant que les droits de l'homme sont une condition irremplaçable pour la paix, ce qui signifie que la valeur particulière de la paix ne peut être atteinte sans une garantie de la valeur particulière des droits de l'homme. Toutefois, une autre interprétation conduit à la conclusion que la paix ne peut exister sans les droits de l'homme. Les droits de l'homme sont alors une partie intégrante de la paix, laquelle est déterminée en se référant aux droits de l'homme, tandis que les valeurs constituées par la paix et les droits de l'homme se réunissent en un tout. La paix sans les droits de l'homme n'est plus seulement improbable et impossible – elle devient inconcevable.

A l'opposé, les questions se posant sont de savoir si la paix conduit au respect et à la jouissance des droits de l'homme, et si l'on peut jouir des droits de l'homme sans la paix. Au sens de l'histoire des courants politiques



et idéologiques généraux on a commencé de parler de cette relation causale uniquement après l'exposition de l'hypothèse estimant que ce sont les droits de l'homme qui conditionnent la paix.

D'après la majorité des instruments internationaux relatifs aux droits de l'homme, le respect des droits de l'homme n'est pas dépendant des conditions préalables de la paix. Qui plus est, toute la construction du droit humanitaire, c'est-à-dire le système des droits humanitaires du droit international concernant les conflits armés (guerre), qui a été érigée avant la codification des droits relatifs aux droits de l'homme, reposait sur la conviction que les droits de l'homme doivent être particulièrement protégés *en temps de conflit armé et indépendamment de la guerre*. Le droit humanitaire tente de limiter les dommages que les conflits armés causent à la jouissance des droits de l'homme fondamentaux.

La guerre menace les droits de l'homme. La paix est une des conditions préalables de la pleine jouissance des droits de l'homme. Ceci, toutefois, ne signifie pas que les droits de l'homme ne peuvent être présentés, en tant que concept, indépendamment de la paix. Les droits de l'homme et la paix sont des ensembles distincts de valeurs instrumentales. Sur le plan méthodologique c'est une erreur d'englober les droits de l'homme dans la paix et inversement. Ceci ne répond à aucune fin pédagogique ou politique. Compte tenu que la paix et les droits de l'homme sont des ensembles distincts, l'un d'eux peut recevoir la priorité. Ainsi, par exemple, en cas d'infraction massive des droits de l'homme le danger de conflit international résultant de la volonté d'empêcher cette infraction commence à devenir acceptable. Il ne fait aucun doute que l'absence de paix, internationale et intérieure, empêche totalement ou partiellement la jouissance des droits de l'homme. Toutefois, le droit collectif à la paix, comme cela est formulé dans la Déclaration de 1984, n'a pas une signification juridique claire et ne peut être transformé en quelque action ayant un sens. D'autre part, de nombreux droits individuels peuvent être mis à profit afin de défendre la paix et empêcher les peuples et certaines personnes de participer à la guerre.

Mots clés: Paix. – Guerre. – Droits de l'homme. – Développement. – Nations Unies.