

RIGHT TO PEACE AS A HUMAN RIGHT

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INTRODUCTION

The movement of human right is marked by interesting story of development. It has passed through the phases of conceptualization, transformation from soft law to hard law, and the broadening of its contents. In this process, we come across with further step of development, popularly known as internationalization and universalization of human rights. And today we say that there has not only been generational development of human rights at three stages, even the fourth generation of human rights is knocking at our doors for its recognition.

The right to peace figures along with other characteristics of the solidarity rights, namely the right to development, the right to environment, the right to common heritage of mankind, and the right to communication. It is more important that through the third world scholars realize their responsibilities towards studies and research on third generation of human rights, there is dearth of writing on the contents and components of solidarity rights and this is undoubtedly an area which can be explored to full extent.

1. Collective Right to Peace

There is a right to peace means that this right is already included in the catalogue of HR. This right was solemnly proclaimed by the UNGA in the Declaration on the Right of People of Peace on 12 November 1984:

“The General Assembly

Recognizing 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.

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2. Solemnly declared that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each state”¹.

Of more immediate legal concern was the absence in the text of clearly stated nature and difference between the bearer and the beneficiary of the obligation to the right of “all people of our planet” to peace. The former appears the singular ‘each state’ having a sacred duty and fundamental obligation and, it the plural ‘all states and international organization’ 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. As to the subject or bearer of the right, the Declaration purports to proclaim a collective right, similar to the right of people to self determination. However, on closer examination it is doubly collective right, the right of people in the plural, the right of the whole of mankind, the collective right of population of the world. Reference to the planet and the consistent use of the plural indicates that it was conceived as a right which could be claimed, not by one people, but by all the people².

2. Peace As a Third Generation Human Rights.

Right to peace is a third generation HR (Human Right) which has been recognized as expressing a new concept in the international life of the human society³. Its realization presupposes common and solidarity efforts by all the members of the world community. It serves not only a purely theoretical propose but also closely related and brings compulsory progress in international relations. It tends to synthesize new human

¹ Declaration on the right of people to peace (1984) 38 YU.N 118-1199 [G.A. REs 39/11, 12 November 1984]

² Vojin Dimitrijevic, “Human Rights and Peace” 47-69 at 51-52 in Janusz Symonides (ed), *Human Rights: New Dimension and challenges* (Aldershot/Brookfield/Singapore/Sydney: Ashgate Darmouth 1998).

³ The idea of the third-generation HR was launched as a theoretical concept by distinguished French lawyer Karel Vasak. He led the idea of HR from a basic concept to the advance conception As an integral and advanced conception, it was presented by him in inaugural lecture of the 10th Study Session of the International Institute of Human Rights at Strasbourg in 1979. At this session a new category of HR was proposed to be called as the rights of solidarity. Subsequently, this concept was introduced following a proposal of the former director. Generation of the UNESCO, Mahatir M’Bow.

aspirations and attempt to define desirable direction of the HR development in international law.

Historically speaking, peace as third generation HR is the next step in the basic principles governing that branch of HR study. The subjective, objective and implementational features of a new HR presents basic difficulties of qualification strictly under the traditional concept of HR. This leads to a fundamental question whether right to peace refers to and is recognized in terms of HR. It is obvious that protection of values being the object of the solidarity rights might be, more or less, successfully promoted outside the traditionally defined system of HR; nonetheless there are reasons in linking the right of solidarity with HR.

The right of the third generation have not yet been recognized as internationally established in terms of binding legal rules. However some have found clear recognition of international instruments, amongst which the most advanced state represents the ACHPR, while some other scholar consider that future codification of solidarity rights might be easier than those of the preceding generation. As a result of apparent reference of the Western countries for the classical rights (the first generation HR) and the socialist state for social rights (the second generation HR) both the first and the second generation are not politically neutral. In contrast to it, the rights to peace demonstrates the basic requirements of social life and their political substance is, therefore, very much reduced.⁴

This right is considered both collective as well as individual rights. The question whether collective rights can be treated as HR is not clear. One can argue in Kantian terms that *a priori* rights apply not only to individuals but also to all national beings which include collectives. The collective claims often turnout to be society's counter claims to individual rights and may, therefore, have anti-individual right consequence. The right of third generation as called solidarity rights are related not so much to the usual catalogue of negative or positive liberties as to the integration of efforts and common dependence within the group, i.e. the solidarity. The subject of solidarity rights are individuals, the local individuals, the local and regional collectivities and the international human society. Such a multi level concept is a response to the rights of synthesis. Therefore,

⁴ Krzysztof Drzewicki, "The Right of Solidarity. The Third Revolution of Human Rights", (1984) 53 *Nordisk Tidsskrift for International Ret* 26-46, at 28.

diversified subjective formula depends upon the dimension of implementation.⁵

The object of the third generation HR involves values of international character. Preservation and protection of peace, development and environment are not exclusively the matter of isolate national or even regional solutions. Their very nature determine implicitly the need of vast and deep international cooperation inspired by a strong sense of international solidarity. It presupposes, however that states, not relinquishing their sovereignty, would restrict their part of freedom in favor of mankind as a whole. The just and equitable world order does not imply unrestrict freedom of state but a compromise of equality and freedom. It is probably a reaction to insufficiency of governmental activities that the protection of these values has been adopted in the third generation HR. The right to peace as HR is recognized as one of the dimensions of a struggle for realization of universal values and the approach is more effective than the traditional ways as it has arisen with respect of humanitarian law.

3. U.N. Framework of Peace and Human Right

Peace is one of the most important and universal human values. Horror and ruthless destruction was committed during the World War II. It was realized that there was urgent need of peace and by establishing peace, HR can only be protected and promoted through an international organization. In this regard, The UN Charter expressed its determination to save succeeding generation from the scourge of such war and to reaffirm faith in fundamental HR. For these end, there was need to practice tolerance and live together in peace as good neighbors, and to unite strength to maintain international peace and security.

(A) Realm of the Charter provision

Among the four purposes of the UN, the first and most important purpose is the maintenance of international peace and security. Art 1 (1) of the UN Charter refers to this purpose and puts emphasis of taking effective collective measure for prevention and removal of threats to the peace and to bring about by peaceful means, and in conformity with the

⁵ Jerome J. Shestack, "The Jurisprudence of Human Rights", 69-105, at 99-100: Theodor Meron (ed), *Human Rights in International Law: Legal and Policy Issues* (Oxford: Clarendon Press 1984).

principles of justice and international law, adjustment or settlement of international disputes or situation which might lead to a breach of the peace. The purpose of appropriate measures for strengthening universal peace has been mentioned in Art 1(2) of the Charter. However, the peace to be maintained is 'international peace', and the UN is concerned with internal disorder only to the extent that it affected international peace. Art 1(1) recognizes two paths to be followed in achieving international peace and security. One is the path to collective measure, and the other is that of peaceful settlement or accommodation.⁶ Art I.(1) contains phraseology which differs in certain respects from that of subsequent articles concerned with the maintenance of international peace and security. In this paragraph the words "effective collective measures" are used to describe the measures to be taken for prevention and removal of threats to the peace and the suppression of act of aggression Art 39, 41 and 42 speak of 'measures' to be taken by the UNSC. Art 2(7) refers to "enforcement measures", Art 50 refers to "preventive or enforcement" and Art 5 to "Preventive or enforcement action." The word "effective collective measures" has been interpreted to have a broader connotation than the words describing the action taken by the UNSC under Chapter VII and to justify the recommendation of collective measure by the UNGA under its "residual responsibility" and existence of a obligation on the part of members to take collective measures to defeat aggression.

The phraseology relating to peaceful settlement also differs from that of subsequent related articles in that it places more emphasis upon settlement in conformity with justice and international law than do the provisions of Art 2 (3) and Chapter VI, Art 2(3) of the U.N. Charter provides that "all members shall settle their international dispute by peaceful means in such a manner that international peace and security and justice are not endangered". The word 'shall' has been used. It means it is obligatory duty of every state to settle their dispute only by peaceful means. Different views have been expressed regarding the obligation to settle disputes the continuance of which might endanger international peace. Some have taken the view that the organization is concerned only with

⁶ Bruno Simna, *The Charter of the United Nations : A Commentary* (Oxford/New York, Oxford University Press, 1994) at 46-47; Leland M. Goodrich, Edverd Hambro and Anne Patricia Simons, *Charter of the United Nation: Commentary and Documents, Third and Revised Edition* (New York/London); Columbia University Press 1969), at 27-28

the more serious disputes and that members are under no obligation to seek settlement of minor disputes. Other, citing reference in the preamble to living in peace “as good neighbors” and in purpose to the development of “friendly relations”, taken the view that members are under the obligation to settle by peaceful means their less serious disputes. The requirements that justice not be endangered has provided a basis for contention that obligation to seek a peaceful settlement is not satisfied unless the parties are willing to accept a just settlement. Art. 2(6) says “the organization shall ensure that states which are no member of the United Nations act in accordance with these principles so far as may be necessary for maintenance of international peace and security”. Art 2(6) also imposes obligation on the non-members to act in accordance with the principle of UN chapter in order to maintain international peace and security. A combined reading of Art 2(3) and 2(6) gives a clear picture that every nation is legally bound to maintain international peace. And every individual has corresponding right to exercise right to peace against his or her sovereign. So right to peace is universal and inalienable right which is an essential attribute of HR.

The interdependence between peace and HR is also affirmed in other provision of the Charter, notably in Art. 55, which reads with a view of the creation of condition of stability and well-being which are necessary for peaceful and friendly relation amongst nations, based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote. “Universal respect for an observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion.” Art 55 has a central place in total scheme of the charter of promoting economic and social co-operation and respect for HR. Nonetheless in discussion and decision of UN organs, Art 55 has been most commonly invoked, largely because it is more specific than Art 1 in defining the UN responsibilities and also because taken together with Art 56, it creates a firmer commitment of members as well as organization to take measures to achieve the declared purpose.⁷

Apart from the several provision of the UN Charter, the UN has adopted several resolutions regarding peace as a HR. In the Declaration on Principles of International Law Concerning Friendly Relations and

⁷ Goodrich et al, *Ibid* at 28 and 43.

Cooperation among States in Accordance with the Charter of United Nations by UNGA Res. 2625 (XXV) of 24 October, 1970, its third perambular paragraph stresses “the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for human rights”, while the thirteenth perambular paragraph expresses the conviction, “that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to promotion of international peace and security.”⁸ In the Declaration on the Preparation of Societies for Life in Peace, adopted by UNGA Res. 33/73 of 15 December 1978, the GA reaffirms the right of individuals, states and all mankind to life in peace. Principle 1, in part I of the Declaration provides : “Every nation and every human being regardless of race, conscience, language or sex, has inherent right, as well as for other human rights is the common interest of all mankind and an indispensable condition of advancement of all nations large and small in all fields.”⁹ Principles 5,7 and 8 deal with the duties of states in ensuring the enjoyment of the right to life in peace.¹⁰ The basic principle set out in the Declaration on Participation of Women in Promoting International Peace and Co-operation, adopted by UNGA Res. 37/63 of 3 December 1982, is formulated in Art. I which reads. “Women and men have equal and vital interest in contributing to international peace and cooperation. To this end, women must be enabled to exercise their right to participate in economic, social, cultural, civil and political affairs of society on equal footing with men.”

(B) Regime of the UN Resolutions

Similarly the UN bodies also adopted resolutions linking the enjoyment of HR with maintenance of international peace and security.

⁹ ST/HR/2Rev.4 Supra n. 33, at 276-277.

¹⁰ Edward Lawson, *Encyclopedia of Human Rights*. Second Edition (Washington D.: Tylor & Francis 1996), at 1149.

¹¹ 5- Every state has the duty to respect the right of all people to self-determination, independence, equality, sovereignty, the territorial integrity of states and the inviolability of their frontiers, including right to determine the road of their development, without interference of intervention of their internal affairs.

7-Every state has the duty to discourage all manifestation and practices of colonialism as, well as racism, racial discrimination and apartheid, as contrary to the right of people to self-determination and fundamental freedom.

8- Every state has the duty to discourage advocacy of hatred and prejudice against other people as contrary to the principles of peaceful co-existence and friendly co-operation.

One of the first of these resolution 110(11) adopted by UNGA on 3 November 1947, in which the GA recalling that all members states had pledged themselves to take joint and separate action to promote universal respect for the observance of fundamental freedom, including freedom of expression, condemned “all forms of propaganda... designed or likely to provoke or encourage any threat to peace, breach of the peace or act of aggression”. The UNGA further requested to government designed to give expression to the undoubted desire of all for peace.¹¹ Another earlier UNGA resolution of linking HR and peace was Res. 290 (IV) of 1 December 1949 entitled “Essentials of Peace”. In that resolution the UNGA called upon every nation to refrain from any threats or acts, direct, or indirect aimed at impairing the freedom, independence or integrity or any state of at fomenting civil strife and subverting the will of people of any state, and further called upon every nation to promote, in recognition of the paramount importance of preserving the dignity and worth of human person full freedom for peaceful expression of political opposition, full opportunity for the exercise of religious freedom and full respect for all the other fundamental rights expressed in the UDHR.¹²

In its Res. 40/3 of 24 October, 1985, the UNGA referred to peace as a universal ideal, the promotion on which is the primary purpose of the UN.¹³ It stated that the promotion of international peace and security required continuing and positive action by states and peoples aimed at the prevention of war, removal of various threats to peace including the nuclear threat, respect for the principle of non-use of force, the resolution of conflicts and peaceful settlement of disputes, confidence building measures, disarmament, maintenance of outer space for peaceful uses, development, the promotion and exercises of HR and fundamental freedoms, decolonization in accordance with the principle of self-determination, elimination of racial discrimination and apartheid, the enhancement of the quality of life, satisfaction of human needs and protection of environment and called upon all peoples to join the UN in the efforts to safeguard peace and the future of humanity.

¹¹ St/HR/2Rev. 4, *Supra* n 33, at 277.

¹² GOAR 4th Sess., Resolution (20 September-10 December 1949) at 13[G.A. Res. 290(IV), 1 December 1949].

¹³ GOAR, Resolution, 40th Sess. Supp. NO. 53 (A/40/53), at 15 [G.A. Res.40//3, 24 October, 1985].

CONCLUSION

The gist of human right jurisprudence is human dignity. Human dignity of a man can only be realized at peace time. Peace is essential for human development, human survival and human happiness. It calls for aggressive response from human rights perspective. The right to peace is an important human right, it is a right of solidarity in the third generation of human rights. It is based on the claims and expectations for the protection of human rights by every action at the global, regional and national levels. Though it has already been accepted that all human rights are indivisible, interrelated and interdependent, but the nature and scope of the right to peace as third generation of human rights can not be ignored. It needs recognition as a separate and independent right of solidarity.
