

PEACE AS A HUMAN RIGHT¹

"One's freedom does not stop where other people's freedom starts. From that point on, we develop a common freedom!"

In 1997, a proposal for a declaration establishing peace as human right was submitted to the member states of the United Nation's Organisation for Education, Science and Cooperation (UNESCO). Even if it was clearly specified that it would only be a declaration, with no legal effects, it faced too much opposition from the members, and therefore it was never presented to the general conference for approval².

There has been many declarations in history saying that there is a right to peace³. So far the efficiency of such declarations can be counted in the number of casualties, far too much. Peace is still far from being achieved, and therefore more tools, new ones, are needed to improve peace. The novelty here would be to say that the right to peace is a human right ! That anyone could claim. Could it make a difference to stop war casualties is still to be proven. But at least we can try. And as we will see, a human right to peace extends much further than the protection from war. It extends into a living culture of peace, into a new paradigm for human relations and conflict transformation.

Human rights lawyers have often debated to know if a human right could exist without its previous writing in a legal text. Courts have accepted this possibility in various situations, be it in international or in national law⁴.

So is peace a human right ?⁵ And can we obtain its recognition either from a court, and case being which court ? And can international and national lawmaker recognize it as well ? We hope so.

Two questions arise:

First, is a human right to peace what we really want and at what costs ?

Let us compare the establishing of a human right to peace with the establishing of the international criminal court (ICC). Do we want war criminals to be punished ? Or better, do we want war crimes - and that for most likely war itself - to stop altogether ? Are these two goals (punishing war criminals and establishing a lasting peace) fully compatible ? Can we set up an institution that will not fully solve the problem, because it will need war crimes and war criminals to have its preventing and punishing mechanism to function ? Or can we admit it, as a "better than nothing" solution, as a temporary institution until war crimes stop, hopefully forever ? Meanwhile, can we still have sufficient means to invest in preventing wars and war crimes, to make the court as useless as possible ? Or will we bring humanity into a low compromise, with wars, war crimes, and a tribunal to pay lip service to a system brought into tradition ? Prevention is so often neglected and usually courts intervene only after the damage is done.

Likewise, can we claim peace, proclaim peace to be a human right and use the traditional human right's report and trial processes, with losers and winners, or persons and institutions to be

¹ This paper is a reviewed version of the one published in 2000, for Johan's Galtung 70th Birthday, on the 'Transcend web site. www.Transcend.org

² UNESCO documents 29C/43, 1997, and references therein.

³ For a list of these declaration to a right (but not a human right) to peace see Bertram Gross : "Power, right's and peace", in "peace as a human right", Peace review, California, 1991. Or Philip Alston : "Legal basis for a right to peace", peace review, same issue. Note that this whole issue is dedicated to "Peace as a human right".

⁴ For this process in Swiss law : Michel Hottelier "La Convention européenne des droits de l'homme dans la jurisprudence du Tribunal fédéral : contribution à l'étude des droits fondamentaux", Payot, Lausanne, 1985.

⁵ For this question in more details, see various articles from Karel Vasak (in French) and specially "Le droit de l'homme à la paix", in "Paix", Musée ethnographique de Genève, p. 44, Geneva, 2001.

blamed, but not automatically with progress in understanding and preventing conflicts, progress in peace building ? Said otherwise, shouldn't peace be built with more peaceful means than trials ? Can we accept a solution that does not go towards peace in every situation and in every aspects of that solution ? And therefore are the traditional ways to protect a human right sufficient and appropriate for a human right to peace ? And if not, how will we bring the human right to peace to become a more peaceful way to implement all human rights ?

The answer to these questions is a matter of choice, but also of tactics. What solution will be the fastest and the most efficient in bringing every individual, as well as humanity as a whole, to a better understanding of itself, of herself or himself ? We are all, or should all be, creators of peace and of well being, as we are all, or should all be, responsible for the dignity and the future of our humanity. But, for this to happen, we do need a better understanding that peaceful means are available, or can be created, to overcome all conflicts, differences and ignorance.

A human right to peace would serve that purpose well !

But to overcome some of the contradictions here described in the justice system, and of sometimes the human rights system, we need to admit that peace, that a human right to peace, is also a new vision of justice, a new way to solve conflict, for the good of all.

Therefore, peace can be a human right, but it is also a culture that will change the way problems are solved, including through human rights.

Secondly, and bearing this in mind, how can we give a practical meaning to the human right to peace ?

The human right to peace has various manifestations.

Theoretically, it is a global right. As only a peaceful solution can assure the respect of all other human rights, the human right to peace is included in all human rights. Similarly, it is valid for every individual and for all public bodies, in all situations. It is manifested in all relations, but also and as shown, in the way the right to peace itself is implemented.

Practically, the human right to peace would be grounded both in individuals and in institutions. For persons, many aspects of the right to peace are already protected by traditional human rights, or by other bodies of law, even if there is still gaps, or if these rights are yet not fully implemented. Other aspects like protection from fear⁶, from war propaganda, the right to conscientious objection and most of all the establishment of peace education could be enhanced through the human right to peace⁷.

The right to life is guaranteed by all human right's basic texts, and in matters of war too it should be fully protected, for civilians at least, by humanitarian law and the Geneva Conventions⁸.

We are still far from a right to a peaceful life, be it in war or because of the death penalty, and sadly because these protective conventions are not sufficiently and willingly applied.

The right to safety deserves a special mention here. It is mentioned in all human rights texts⁹, but so far its scope as been highly limited to the absence of threat to the people from their own government. It could be broadened to a greater peace by courts. And surely, a right to security, understood as a right to peace, would make it a duty for all governments to hold the peace of all

⁶ Though it is not on their website anymore, "to be protected from fear and want" was the motto of the human security network. www.humansecuritynetwork.org.

⁷ K. Vasak gives a long list, though not comprehensive, of possible applications for the human right to peace, p 47.

⁸ www.icrc.org

⁹ Universal declaration of Human rights, 1948, article 3 : " Everyone has the right to life, liberty and security of person." European human right's convention, 1950, article 5 : " Everyone has the right to liberty and security of person (...)". Article 28 of the Universal declaration has also to be mentioned here as it provides "for an international and social order where all human rights take full effect". It is indeed a right to peace., but it is not so far implemented as a human right to peace. It could change !

human beings. This would make a major difference ! So it is all courts, or at least all courts judging human right's offences, that can proclaim and enhance the human right to peace !

The right to a peaceful solution - in any given conflict – is definitely a specific aspect of the right to peace. For what I understand, it is twofold :

First, peaceful solutions, mediation or what is generally called "soft law" should be made widely available. To me it should be a legal right to have access to such a peaceful solution. It means that governments (we, with our taxes) should provide for it. (And it must be said, that the costs of such solutions are lower than the ones of traditional justice and usually for a greater reward in understanding and in avoiding, preventing, new or similar occurrences of conflicts).

Secondly, I understand peace to be a lasting solution without supplementary damages. Ideally, the goal is to go from conflict, through understanding and caring, to a happy, liveable and lasting, humane solution. The focus is on :

- Understanding the values, interests and behaviours at stake.
- Building peace and understanding on personal and social levels.
- Constructive prevention and
- On lasting peace building.

The focus it is not on revenge or punishment. And it is only partly, when possible, on repairing or restoration. And it is not at all on having a winner or a loser, it is on peace for all.

A human right to peace would promote creative, constructive and educative solutions. In my opinion, a good or even a happy solution means that the conflict, its grounds and outcomes, will be sufficiently understood and dealt with for one to realize what the problem was, to understand how to overcome it and eventually to teach the solution to others. A conflict well solved is also a hope for others, as the experience gained is a help for future prevention.

There again the human right to peace is essential to provide comprehensive solutions to conflicts, solutions that will add no unnecessary burdens on the people involved, that will not lead to new conflicts or grief, but that will foster every one's capacity to be peace creative. I therefore also personally uphold the human right to peace for it to be as close as possible to a responsible and cooperative right to forgiveness and to common growth, with learning, including in conflict.

For institutions, or said otherwise in our collectively organized relations, there is also a human right to peace.

The United Nation's Charter largely provides for the basic grounds for peace, and it should be understood as a right to peace, and moreover as a human right to peace ! The difficulty is that there are just about no links between the people, owners and bearers of the human right to peace, and the nation states, legal providers of the right to peace. This is one of the major reasons why a right to peace has to be made a human right to peace, so people can claim the right and challenge governments that do not respect it. Therefore, in the future of the United Nations, or anywhere else, the right to peace has to be reclaimed by the people and made into a human right to peace. It surely needs to be given back to the people for them to keep governments on the way to peace to avoid and keep them from doing acts of "unpeace".

In political theory, the problem could be said to be the state monopoly on force. Which is not compensated, and moreover controlled and balanced, by ... a human right to peace !

History - even recently - is full of examples of misuses of force. It is therefore urgent, or at least logical for us humans, individually and as a whole, to find other ways than violence or force to tackle problems. The human right to peace is a solution, and it seems in itself to be a very reliable one, not only because it has the preventive capacity to overcome brute force, but also because it can do this with understanding, and therefore without force or violence. With a human right to peace, nations will have to abide to peace and to peaceful solutions.

In conclusion, the human right to peace can benefit from the traditional procedures – trials and reports – used to protect and to promote human rights, but it is also more than that ! Surely and slowly, courts will progress and recognize the right to peace. Hopefully, the International Criminal Court will take a position on the question, sooner or later. But how will nations be brought to respect it, fully ? This is still to be learned.

However, what the human right's system needs is more than one more court or procedure, it is more and more people learning to practice human rights and to practice the human right to peace, to practice them in daily life, at home, in business and at work, in politics as in social matters.

The human right to peace is therefore also a cooperative right, a very democratic right. One that is not easy to claim or to apply, but one of great reward.

The right to peace can be proclaimed¹⁰, and eventually protected and "institutionalized", but it is through our daily practice and education, for every individual and in every situation, that it will be implemented, and most of all lived, in each and every one.

At last, I would like to point out that the human right to peace is somewhat beyond conflict, in its fully harmonious and experienced overcoming. Because it promotes constructive solutions, because it avoids destructive ones, the human right to peace also brings hope and fulfilment to the heart. Therefore, the human right to peace might well be an essential step, if not the first one, towards a human right to happiness !

Because of the threat of war, but also and simply because peace is loving solution, in my humble opinion, humanity needs a human right to peace !

Let's "peace" together !

Christophe Barbey, Flendruz, September 2006.

¹⁰ Canadian Senator, Douglas Roche wrote a book called "The human right to peace" in 2003 (Novalis), but it gives very little attention to legal aspects, focusing much more on the culture of peace.