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# Untraditional Approaches to Law: Teaching the International Law of Peace

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# Untraditional Approaches to Law: Teaching the International Law of Peace

Cecilia M. Bailliet\*

“It is remarkable that peace studies and international law are regarded as separate academic disciplines.”

Edward Gordon<sup>1</sup>

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1. Edward Gordon, Book Review: ‘From Erasmus to Tolstoy: The Peace Literature of Four Centuries; Jacob Ter Meulen’s Bibliographies of the Peace Movement Before 1899’, in 34 *Harvard International Law Journal* 641 (1993). He suggests that law professors shied away from peace studies due to the fear of association with pro-communist or pro-Soviet sympathies as well as increased specialization within legal education.

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## I. Introduction

Teaching international law is often described as an increasingly complex endeavor due to the consequences of fragmentation and specialization within sub-fields. The proliferation of specialized international legal and quasi-legal instruments, tribunals, and institutions addressing international human rights, trade, international criminal law, and environmental law is characterized as strengthening a technical approach to law. Broad perspectives relating to the human condition and the study of peace are rendered diffuse and peripheral.

An additional point of concern is the dominance of violence as a type of tradition within international law, particularly in a post-9/11 era. Law students are exposed to presentations on the use of force in the context of war/armed conflict, humanitarian intervention, peacekeeping/peace-enforcing, and counter-terrorist operations to an extent where it is possible to argue that there has been a normalization of these themes. Upon reflecting that many of my lectures addressed the use of drones, extraordinary rendition, torture, targeted killing, etc., I became concerned about the type of education we were providing the next generation of international lawyers. It occurred to me that although we were emphasizing the prohibition of certain actions, we were failing to comprehensively present non-violent approaches, which seek to prevent or resolve conflicts and strengthen peace.<sup>2</sup>

Review of peace syllabi from a variety of institutions around the world reveals that this topic is generally approached from social science perspectives.<sup>3</sup> Ironically, these courses also tend to focus on discussion of armed conflicts, such as those in Syria, Libya, Afghanistan, and Iraq. It appears that there is a gap within the field of peace studies, which law schools may be able to fill due to their particular competence and knowledge of the relevant instruments and institutions intrinsic to the implementation and

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2. Consider Mary Ellen O'Connell's concern for the impact of drone technology on the selection of use of lethal force over non-lethal force and increased formulations of legal justifications by policy makers. Mary Ellen O'Connell, *Seductive Drones: Learning from a Decade of Lethal Operations*, 21 J. L. INF. & SCI. 116 (2011).
  3. See e.g., *Peace and Conflict Studies (masters' 2-years), Learning Outcomes*, UNIV. OF OSLO (June 6, 2012 10:00 AM) <http://www.uio.no/english/studies/programmes/peace-master/learning-outcomes/>; *International Peace Studies*, IRISH SCH. OF ECUMENICS, TRINITY COLL. DUBLIN, <http://www.tcd.ie/ise/peace/> (last updated Feb. 14, 2012); *Centre for Peace Studies*, UNIV. OF TRØMSØ, [http://en.uit.no/ansatte/organisasjon/hjem?p\\_dimension\\_id=88157&p\\_menu=42374](http://en.uit.no/ansatte/organisasjon/hjem?p_dimension_id=88157&p_menu=42374) (last visited Mar. 3, 2014); *What is Peace Studies?*, KROC INST. FOR INT'L PEACE STUDIES, UNIV. OF NOTRE DAME, <http://kroc.nd.edu/about-us/what-peace-studies> (last visited Mar. 3, 2014); *Judith Reppy Institute for Peace and Conflict Studies*, CORNELL UNIV., <http://pacs.einaudi.cornell.edu/> (last visited Mar. 3, 2014); and *Oxford Network of Peace Studies (OxPeace)*, CTR. FOR INT'L STUDIES, UNIV. OF OXFORD, <http://cis.politics.ox.ac.uk/research/Projects/oxpeace.asp> (last updated Dec. 2013); and *Peace & Conflict Studies*, INT'L & AREA STUDIES ACADEMIC PROGRAM, UNIV. OF CAL., BERKELEY, <http://iastp.berkeley.edu/pacs> (last visited Mar. 3, 2014).

maintenance of peace.<sup>4</sup> Antonio Cassese's *Realizing Utopia* states that "[w]e know that the international society will never be free from violence, poverty, and injustice. We do not dream of a peaceful international society based on comity, friendship, and cooperation."<sup>5</sup> Nevertheless, membership in the United Nations (UN) "is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations."<sup>6</sup> Indeed, Hersch Lauterpacht supported the notion that "international law should be functionally oriented towards both the establishment of peace between nations and the protection of fundamental human rights."<sup>7</sup>

Inspired by the Grotian tradition in international law of the idea of peace,<sup>8</sup> I designed a syllabus for a new course titled *The Right to Peace*, which would follow a seminar format assessing the normative framework and substantive components of peace.<sup>9</sup> The seminar covers different legal topics oriented towards creating peace, including non-discrimination, gender equality, fair trade, sustainable development, transitional justice, governance, democracy, and disarmament. Particular attention was placed on the role of civil society and non-state actors.

I was pleased that several of my colleagues from different departments of the law faculty and social sciences faculty were eager to cooperate in this unconventional project, thereby joining together multidisciplinary perspectives that are normally kept separate. Our goal was to pursue a holistic path, in which students would see the link between each of the topics and legal regimes, thereby combating fragmentation and illuminating the foundation for understanding the normative basis of a right to peace and the potential for implementation. This article will discuss the benefits and drawbacks of pursuing this type of nontraditional approach to teaching international law, which seeks to elucidate an alternative legal tradition. Part II sets out the philosophical origins of the right to peace. Part III introduces the normative foundations of the law of peace within international law, discussing its evolution up to the current UN Draft Declaration on the Right to Peace. Part IV considers transitions to peace: peace building and post-conflict

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4. Dr. Frank Przetacznik calls for education for peace as a "process of instruction of persons in order to help them to understand the importance of a genuine and just peace in the relations among men, peoples, nations and States, and thus to enable them to fulfill their duties towards their States, other peoples, nations, States and entire mankind." Dr. Frank Przetacznik, *The Catholic Concept of Peace as a Basic Collective Human Right* 29 MIL. L. & L. WAR REV. 519, 592 (1990).
  5. Antonio Cassese, *REALIZING UTOPIA: THE FUTURE OF INTERNATIONAL LAW*, at xxi (Antonio Cassese ed., 2012).
  6. U.N. Charter, art. 4, para. 1.
  7. Patrick Capps, *Lauterpacht's Method*, 82 BRIT. Y.B. INT'L L. 248, 249 (2012).
  8. See Professor H. Lauterpacht, *The Grotian Tradition in International Law*, 23 BRIT. Y.B. INT'L L. 1, 51 (1946).
  9. Syllabus (on file with the author), available at <http://www.uio.no/studier/emner/jus/humanrights/HUMR5134/h12/undervisningsmateriale/right-to-peace-course-outline-2-oppdatert-07.11.pdf>.

reconstruction. Part V presents equality and non-discrimination in relation to race and gender as components of peace. Part VI addresses regulation of arms trade and disarmament. Part VII discusses sustainable development and protection of the environment as preconditions for peace. Part VIII discusses the impact of trade on peace; and Part IX offers a conclusion and lessons for course development.

## II. Philosophical Origins of the Right to Peace

The identification of a right to peace requires reflection as to the origins of norms, their legitimacy, and justification. I deliberately sought to commence the course with a lecture by two philosophers from the Peace Research Institute of Oslo, Henrik Syse and Kristoffer Liden. Students were assigned readings by Hobbes, Kant, Locke, Habermas, Rawls, Oliver Richmond, and David Cortright.<sup>10</sup> The lecture addressed dilemmas between “negative peace” (absence of violence, prohibition of unlawful use of force) and “positive peace” (Johan Galtung’s advocacy of respect for human rights, guarantee of social justice, and the elimination of structural violence causing poverty and exclusion).<sup>11</sup> The students were encouraged to consider national versus international peace, realist versus liberal peace, as well as the notion of just war versus Kant’s perpetual peace and the triad of mutual democracy, economic interdependence, and international organization. The students engaged in a thorough debate on what constitutes a right, examining the notion of a “liberty right” (correlating with freedom) as opposed to a “claim right” (correlating with the duty of another), and thus, considered what category the right to peace would fall under. They also assessed to what extent the rights holders should be individuals as opposed to collective groups. Finally, the class discussed who the duty-bearers should be—states, international organizations (IOs), transnational corporations (TNCs), individuals, or other non-state actors.

I suggest that such an approach is necessary to enable law students to establish a foundation for reflection on the lawmaking process in relation to peace. Students may debate the purpose of the UN, regional bodies, civil society, and the state itself within the challenging context of the pursuit of peace within the epoch of globalization. Is the articulation of a right to peace the correct path?

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10. The assigned readings included: Jürgen Habermas, *Kant’s Perpetual Peace, with the Benefit of 200 Years’ Hindsight*, in *PERPETUAL PEACE: ESSAYS ON KANT’S COSMOPOLITAN IDEAL*, 113-44 (James Bohman & Matthias Lutz-Bachman eds., James Bohman trans., 1997); THOMAS HOBBS, *LEVIATHAN*, 82-89, 84 (J.C.A. Gaskin ed., Oxford Univ. Press 1996) (1651) (addressing the characterization of life in the state of nature as “solitary, poor, nasty, brutish and short”); IMMANUEL KANT, *PERPETUAL PEACE* (Lewis White Beck ed., Liberal Arts Press, Inc. 1957) (1795); JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT*, 4-14 (Thomas P. Peardon ed., Liberal Arts Press, Inc. 1952) (1690); PATRICK HAYDEN, *JOHN RAWLS: TOWARDS A JUST WORLD ORDER* 151-68 (2002); JOHN RAWLS, *THE LAW OF PEOPLES* (1999); DAVID CORTRIGHT, *PEACE: A HISTORY OF MOVEMENTS AND IDEAS* (2009); and OLIVER P. RICHMOND, *THE TRANSFORMATION OF PEACE* (2007).
  11. Johan Galtung, *Violence, Peace, and Peace Research*, 6 *J. PEACE RES.* 167, 183 (1969).

### III. Normative Foundations of the Law of Peace within International Law

“Law is valued for providing an alternative to the use of force in the ordering of human affairs. In this sense, all of international law is law of peace . . . .”<sup>12</sup>

Mary Ellen O’Connell

It is often noted that the law of war is replete with instruments, whereas the law of peace is perceived as lacking. In truth, there is a wide range of instruments dating back to the Peace of Westphalia of 1648 and the notion of *pax optima rerum*.<sup>13</sup> The modern emergence of the law of peace is derived from various instruments that articulate the prohibition of unlawful use of force and the promotion of the use of dispute settlement mechanisms to avoid breaches of the peace, later culminating in soft law characterization of a “right to peace.” These instruments include the Briand-Kellogg Pact,<sup>14</sup> the Hague Conventions of 1899<sup>15</sup> and 1907,<sup>16</sup> the UN Charter,<sup>17</sup> the Organization of American States (OAS) Charter,<sup>18</sup> the African Charter on Human and People’s Rights,<sup>19</sup> the Protocol to the African Charter on the Rights of Women in Africa (2003),<sup>20</sup> the UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States (1970),<sup>21</sup> the Declaration on the Strengthening of

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12. Mary Ellen O’Connell, *Peace and War*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 272 (Bardo Fassbender & Anne Peters eds., 2012) (footnotes omitted).
  13. This particular regime established state sovereignty, the principle of non-intervention in domestic affairs, and the basis for self-determination.
  14. Treaty for the Renunciation of War as an Instrument of National Policy art. 1, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57 [hereinafter Briand-Kellogg Pact]. The Briand-Kellogg Pact “condemn[ed] recourse to war for the solution of international controversies . . . .” *Id.* Sixty-two nations ratified the Briand-Kellogg Pact but it failed due to lack of enforcement mechanisms.
  15. Convention for the Pacific Settlement of International Disputes, July 29, 1899, 32 Stat. 1779 [hereinafter Hague Convention (I)]; Convention with respect to the Laws and Customs of War on Land, July 29, 1899, 32 Stat. 1803; and Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864, July 29, 1899, 32 Stat. 1827. This conference established the Permanent Court of Arbitration. *See* Hague Convention (I) art. XX.
  16. Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277. The treaty on the Pacific Settlement of International Disputes originates from the conference. *See* Convention for the Pacific Settlement of International Disputes, Oct. 18, 1907, 36 Stat. 2199.
  17. U.N. Charter art. 1, para. 1 (“To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means . . . settlement of international disputes or situations which might lead to a breach of the peace.”) *See also* U.N. Charter art. 2, paras. 3-4; art. 26; arts. 33-51; and art. 55.
  18. Charter of the Organization of American States, Apr. 30, 1948, 119 U.N.T.S. 3.
  19. African Charter on Human and People’s Rights, June 27, 1981, 21 I.L.M. 58.
  20. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa art. 10, para. 1, July 11, 2003, available at [http://www.achpr.org/files/instruments/women-protocol/achpr\\_instr\\_proto\\_women\\_eng.pdf](http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf). The Protocol affirms that “[w]omen have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.” *Id.*
  21. G.A. Res. 2625 (XXV), U.N. Doc. A/RES/2625 (XXV), at 121-22 (Nov. 24, 1970). The preamble

International Security (1970),<sup>22</sup> the Definition of Aggression (1974),<sup>23</sup> the UN General Assembly Resolutions on Peace (1949,<sup>24</sup> 1978,<sup>25</sup> 1979,<sup>26</sup> 1984,<sup>27</sup> 1990,<sup>28</sup> and 2002<sup>29</sup>), UNESCO declarations,<sup>30</sup> and the current UN Human Rights Council Advisory Committee on the Right to Peace Draft Declaration on the Right to Peace.<sup>31</sup>

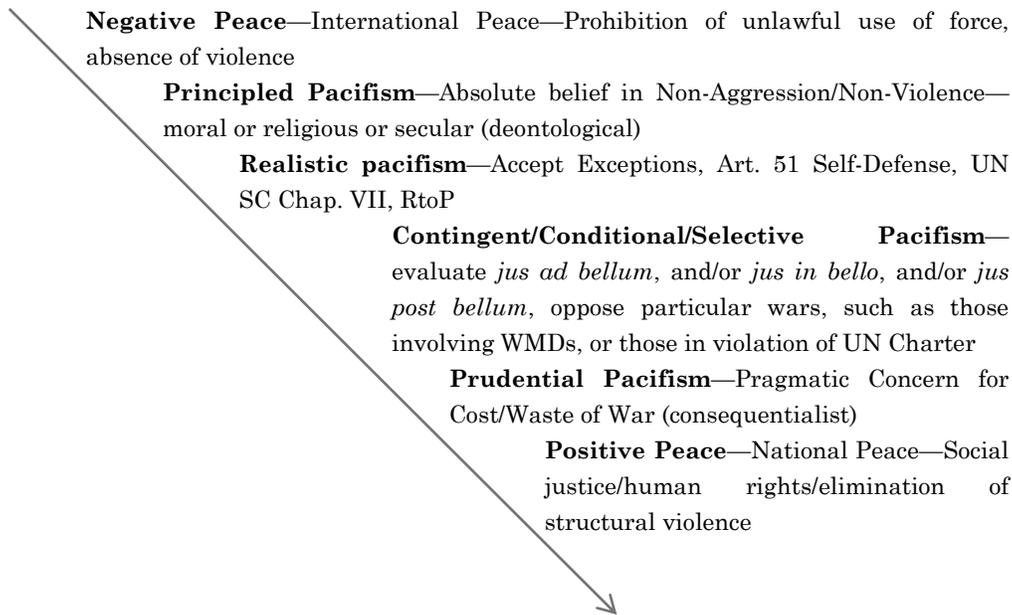
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recalls “that the peoples of the United Nations are determined to practice tolerance and live together in peace with one another as a good neighbors.” *Id.* at 121. It also sets forth the principles “that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,” *id.* at 122, and “that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.” *Id.*

22. G.A. Res. 2734 (XXV), U.N. Doc. A/RES/2734 (XXV) (Dec. 12, 1970).
23. G.A. Res. 3314 (XXIX), U.N. Doc. A/RES/3314 (XXIX) (Dec. 14, 1974).
24. G.A. Res. 290 (IV), U.N. Doc. A/RES/290 (IV) (Dec. 1, 1949).
25. G.A. Res. 33/73, U.N. Doc. A/RES/33/73, at 55 (Dec. 15, 1978). The Preamble reaffirms “the right of individuals, States and all mankind to life in peace.” *Id.* art. 1, paragraph 1 states “[e]very nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace. Respect for that right, as well as for the other human rights, is in the common interest of all mankind and an indispensable condition of advancement of all nations, large and small, in all fields.” *Id.* art. 1, para. 1.
26. G.A. Res. 34/102, U.N. Doc. A/RES/34/102 (Dec. 14, 1979).
27. G.A. Res. 39/11, U.N. Doc. A/RES/39/11 (Nov. 12, 1984). This resolution states, in part, that 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 peoples 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;
  3. *Emphasizes* that ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations;
  4. *Appeals* to all States and international organizations to do their utmost to assist in implementing the right of peoples to peace through the adoption of appropriate measures at both the national and international level.*Id.* at 22 (Annex).
28. G.A. Res. 45/14, U.N. Doc. A/RES/45/14 (Nov. 7, 1990).
29. G.A. Res. 57/216, U.N. Doc. A/RES/57/216 (Dec. 18, 2002).
30. The Human Right to Peace, Declaration by the Director-General, (Jan. 1997), UNESCO Doc., SHS-97/WS/6, *available at* [www.unesdoc.unesco.org/images/0010/001055/105530e.pdf](http://www.unesdoc.unesco.org/images/0010/001055/105530e.pdf). In this Declaration, the Director-General Federico Mayor reaffirmed that peace is a right and duty, inherent in all human beings. States, IOs, and individuals should promote and implement the right to peace. *Id.*
31. Rep. of the Human Rights Council Advisory Comm. on the Right of Peoples to Peace, 20th Sess., U.N. Doc. A/HRC/20/31 (Apr. 16, 2012) [hereinafter U.N. Draft Declaration on the Right to Peace]. Article 1, paragraph 1 recognizes that “[i]ndividuals and peoples have a right to peace.” *Id.* Paragraph 2 sets forth that “[s]tates, severally and jointly, or as part of multilateral organizations, are the principal duty-holders of the right to peace.” *Id.* It further calls upon states to “renounce the use or threat of use of force,” *id.* art. 1, para. 4., and to “use peaceful means to settle any dispute,” *id.* art. 1, para. 5, and respect human rights, “the right to development and the right of peoples to self-determination.” *Id.* art. 1, para. 6.

The most challenging dilemma is that international law lacks a clear, unanimous concept of peace. Further, there is a wide range of degrees within the scope of pacifism, as reflected in the graph below.

**Degrees of pacifism**<sup>32</sup>



The students discussed absolute pacifism versus pragmatic pacifism and assessed the Responsibility to Protect Doctrine (R2P)<sup>33</sup> and the right to self-defense as possible exceptions. The dilemma as to whether peace addresses only inter-state violence, or addresses intra-state violence as well, was also discussed. Kjell Anderson offers the following perspective:

- 1) the right to peace is applicable to intrastate violence;
- 2) the state can violate the right to peace of its citizens through the capricious use of force;

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32. See Andrew Fiala, *Pacifism*, STANFORD ENCYC. OF PHILOSOPHY (Edward N. Zalta ed., Fall 2010), <http://plato.stanford.edu/entries/pacifism/>.

33. For R2P criteria, which includes Just Cause, Right Intention, Proportionality, Last Resort, Reasonable chance of success in halting or averting the suffering, and right authority (U.N. Security Council), see *Core Documents: Understanding RtoP*, INT'L COAL. FOR THE RESPONSIBILITY TO PROTECT (ICRTOP), <http://www.responsibilitytoprotect.org/index.php/publications> (last visited Mar. 5, 2014).

- 3) on-state actors may also violate the right to peace through the illegitimate use of force;
- 4) there are reasonable exceptions to the right to peace, including the protection of the rights of others; and
- 5) we must move towards the prohibition of all forms of unnecessary and disproportionate violence.<sup>34</sup>

He sets forth that a state can use force as a last resort within its own borders for self-defense (defined as an overt, imminent, open and unlawful attack, which threatens a state's territorial integrity or political independence, determined by considering the level of organization of the group and its tactics), and for maintenance of peace and security, but must abide by international humanitarian law (IHL), international criminal law (ICL), and human rights (necessity, proportionality, precaution, and legality).<sup>35</sup>

The students discussed whether there is a breach of the peace when states use violence against their own people. They followed the evolution of the law of peace from an issue just between states, to one involving states, individuals, and other entities, as well as the emerging links to other human rights, development, and disarmament.<sup>36</sup> It is interesting to note that International Court of Justice (ICJ) Judge Antonio Cançado Trindade concludes that prior peace projects failed because they focused on abolishing war between states, “overlooking the bases for peace *within* each State and the role of non-state entities.”<sup>37</sup> In contrast to the traditional perspective held by other scholars, Cançado Trindade calls for the search for social justice within *and* between nations as the road to peace.<sup>38</sup>

Nsongurua J. Udombana provides justifications for classifying the “Peaceful World Order” as a human right.<sup>39</sup> This provided a framework for classroom discussion: what are

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34. Kjell Anderson, *The Universality of War: Jus Ad Bellum and the Right to Peace in Non-International Armed Conflicts*, in *THE CHALLENGE OF HUMAN RIGHTS: PAST, PRESENT AND FUTURE* 52, 53 (David Keane & Yvonne McDermott eds., 2012).

35. *Id.* at 61-62.

36. Tina Moorhouse, *The Right to Peace or the Right to Live in Peace*, 6 *HOLDSWORTH L. REV.* 120, 130 (1981) (discussing the “increasing international legitimacy” of the dialectic of peace, human rights, development triad and the addition of disarmament).

37. ANTONIO AUGUSTO CANÇADO TRINDADE, *INTERNATIONAL LAW FOR HUMANKIND: TOWARDS A NEW JUS GENTIUM* 353 (2010) (footnote omitted).

38. Consider also, “peace requires creation of conditions of equity, gender equality and social justice. Indeed, depriving people of their economic, social, and cultural rights generates social injustice, marginalization and unrestrained exploitation. It follows that there exists a correlation between socio-economic inequalities and violence.” Anwarul K. Chowdhury, *Human Right to Peace; The Core of the Culture of Peace*, in *CONTRIBUCIONES REGIONALES PARA UNA DECLARACIÓN UNIVERSAL DEL DERECHO HUMANO A LA PAZ* 125 (Carlos Villán Durán & Carmelo Faleh Pérez eds., 2010), available at <http://mail.aedidh.org/?q=node/1825>.

39. Nsongurua J. Udombana, *The Right to a Peaceful World Order*, in *INTERNATIONAL HUMAN RIGHTS LAW: SIX DECADES AFTER THE UDHR AND BEYOND* 137 (Mashood A. Baderin & Manisuli Ssenyonjo eds., 2010).

the components of a right to peace and how should they be implemented? Is peace linked to human rights? If so, which rights? Is it justiciable? Is the right to peace soft law? How do we protect this right? Who are the beneficiaries of this right and who are the duty-bearers? Which agencies have responsibilities and capacities to ensure compliance with obligations entailed therein or to sanction non-compliance? Specifically, what are the roles of the UN Secretary General, Security Council, General Assembly, ICJ, regional organizations, national governments, and civil society?

### ***A. Peace as a Solidarity Right or Civil and Political Right?***

When peace first emerged within the context of human rights, it was characterized as a solidarity right, like the right to a clean environment, the right to development, and the ownership of the common heritage of humankind (e.g., the ocean floor). The right to peace “concerns not only an individual’s right to live in peace, but the greater right of societies to enjoy a common peace.”<sup>40</sup> Carl Wellman cites Karel Vasek’s advocacy of solidarity rights as:

necessary in order to overcome the solitary autonomy of competing individuals and achieve a social solidarity that will enable individuals to develop their full human potentiality through cooperative participation in the social life of the various communities to which they belong. Moreover, these new human rights are needed now more than ever before to respond to the rapidly emerging global interdependence. The problems confronting any contemporary society can no longer be met by even the most resolute action of any single state. Maintaining peace, protecting the environment, and encouraging a sustained and equitable development of all economies require cooperative action on the national and, especially the international level.<sup>41</sup>

Solidarity is a right that can be guaranteed and requires holistic implementation by states and non-state actors, including individuals, groups within civil society, NGOs, TNCs, and IOs that recognize duties and responsibilities in this regard. Philip Alston concluded that the right to peace is both an “individual and collective right”<sup>42</sup> and implies “duties and obligations from individuals to collectivities, such as States and the

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40. R. Scott Appleby, *Religion, Violence and the Right to Peace*, in RELIGION AND HUMAN RIGHTS: AN INTRODUCTION 346, 347 (John Witte, Jr. & M. Christian Green eds., 2012) (noting that this is a group right and not merely the several rights of individual members of the group). *See also id.* at 349 n.17 (citing MICHAEL IGNATIEFF ET AL., HUMAN RIGHTS AS POLITICS AND IDOLATRY 18 (Amy Gutman ed., 2001)).

41. Carl Wellman, *Solidarity, the Individual and Human Rights*, 22 HUM. RTS. Q. 639,642 (2000) (footnote omitted) (citing Karel Vasek, *Pour une troisième génération des droits de l'homme*, in STUDIES AND ESSAYS ON INTERNATIONAL HUMANITARIAN LAW AND RED CROSS PRINCIPLES 837, 839 (Christophe Swinarski ed., 1984).

42. Philip Alston, *Peace as a Human Right*, 11 SECURITY DIALOGUE 319, 329 (1980).

international community as a whole.”<sup>43</sup> Those espousing classic Western perspectives on human rights as supporting individual agency and autonomy may be skeptical of recognizing this solidarity right precisely because of its communitarian orientation.

It is arguable that the right to peace is better characterized as a collective right or meta-right (as the individual right may be confused with tort law, civil, and criminal law situations), or perhaps even be re-characterized as a duty, as opposed to a right.<sup>44</sup> It may be perceived as a type of solidarity-based value or principle that imposes legal duties on individuals and states to act in the wider social interest.<sup>45</sup>

Yet, scholars writing in the 1980s characterized the right to peace, in part addressing the individual right of conscientious objection and the right of states not to be subjected to violations of *jus ad bellum* or *jus in bello*. Consider the perspective of Stephen P. Marks:

it is the right of every individual to contribute to efforts for peace, including refusal to participate in the military effort, and the collective right of every state to benefit from the full respect by other states of the principles of non-use of force, of non-aggression, of peaceful settlement of disputes, of the Geneva Conventions and Additional Protocols and similar standards, as well as from the implementation of policies aimed at general and complete disarmament under effective international control.<sup>46</sup>

Richard Bilder offers a similar view, linking the right to freedom of expression:

[it] *must* embrace at least the related rights of every individual: (1) to participate in the formation of policies of his or her government which relate to its use of violence; (2) to question such policies; (3) to speak freely, petition and peacefully organize with others to change such policies; and (4) if the individual is morally convinced that such policies are wrong, to refuse to participate in implementing them. This right must also imply a correlative duty on the part of every government to insure that its citizens not be called on to sacrifice their lives in aggressive, illegal or immoral wars – or to be required to kill other people who are often innocent and fundamentally uninvolved.<sup>47</sup>

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43. *Id.*

44. Philip Alston, *Peoples' Rights: Their Rise and Fall*, in PEOPLES' RIGHTS 281 (Philip Alston ed., 2001) (discussing the Internet search result list that links to “peace and quiet” when searching for “peace”).

45. Kate Cook, *Solidarity as a Basis for Human Rights: Part One: Legal Principle or Mere Aspiration?*, 5 EUR. HUM. RTS. L. R. 504, 505 (2012).

46. Stephen P. Marks, *Emerging Human Rights: A New Generation for the 1980s?*, 33 RUTGERS L. REV. 435, 446 (1981).

47. Richard Bilder, *The Individual and the Right to Peace: The Right to Conscientious Dissent*, Address at the Third Armand Hammer Conference on Peace and Human Rights—Human Rights and Peace, held in Warsaw, Poland, (July 3-6, 1980), in 11 SECURITY DIALOGUE 387 (1980).

He suggests the following template of the elements of the right to peace: (1) individuals are to claim the right from their governments, and governments shall not suppress or violate human rights (such as repressing dissent) in the name of peace; (2) “all people have a right to participate in the decisions of their governments regarding war and peace;” (3) the right to petition government, “to assemble, and organize associations to work for peace should be protected;” (4) the right to conscientious objection should be preserved; and (5) the right to the truth about government actions and decisions, free information and communication without censorship should be aggressively asserted.<sup>48</sup> He concludes:

[t]he right to peace includes the right of every individual to freedom of speech, petition and association in opposition to policies of his or her own government which may lead to or which involve war, the right freely to receive and impart information relevant to the reaching of a judgment on such policies, and the right of conscientious objection.<sup>49</sup>

Hence, these positions placed the right to peace squarely within the realm of civil and political rights and retained an individual focus, countering the perspective that it is a third-generation solidarity right, thereby resulting in both normative confusion and politicization, according to the ideology of the present day.

### ***B. Soft Law from Civil Society: The UN Draft Declaration on the Right to Peace***

Philip Alston remarked that by the 1990s the right to peace had been “dropped like a stone”<sup>50</sup> within the UN, due to its lack of clear meaning as a collective right, thereby failing “to capture the global imagination”<sup>51</sup> or strengthen peoples’ rights. However, in 2012, it reemerged within the UN Human Rights Council due to the initiative of an NGO, the Spanish Society for International Human Rights Law (SSIHRL). Carlos Villán Durán, president of the SSIHRL, described the society as one that aims “[t]o translate the universal value of peace into the legal category of a human right.”<sup>52</sup> SSIHRL drafted various declarations on the right to peace and then pursued introduction of the human right to peace into the agenda of the UN via the Human Rights Council and its Advisory Committee.<sup>53</sup> SSIHRL has produced various declarations on the right to peace, including

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48. *Id.* at 388.

49. *Id.* at 389.

50. Alston, *supra* note 44, at 279.

51. *Id.* at 281.

52. Carlos Villán Durán, *Civil Society Organizations Contribution to the Universal Declaration on the Human Right to Peace*, 28 INT’L J. ON WORLD PEACE 59 (2011).

53. *Id.* at 60.

the Bilbao Declaration (2010),<sup>54</sup> the Luarca Declaration (2006),<sup>55</sup> the Barcelona Declaration,<sup>56</sup> and the Santiago Declaration (2010).<sup>57</sup> Durán alleges that these declarations:

[w]ere drafted in accordance with the legal technique of the international human rights instruments . . . . The Declarations articulated normative proposals from the civil society to the official codification and progressive development of the human right to peace, formulated with the aim that one day the UN General Assembly would approve the *Universal Declaration on the Human Right to Peace*.<sup>58</sup>

These civil society declarations address the positive elements of peace, calling for the eradication of structural violence produced by economic and social inequalities; the satisfaction of basic human needs; the elimination of cultural violence, gender-related violence, family violence, and non-discrimination; an increasing level of respect for human rights and fundamental freedoms; the creation of a new international economic order; the transition to sustainable development; and the protection of the environment. Durán claimed that eighty-five percent of the language contained in the UN Draft Declaration on the Right to Peace came directly from the Santiago Declaration and that he was committed to ensuring that the remaining fifteen percent would eventually be included.<sup>59</sup> Durán notes that the civil society engagement (over 500 NGOs) added over forty issues to the right to peace document.<sup>60</sup> This may well be a disconcerting development from the perspective of normative coherence and clarity and presents a possible downside to the expansion and engagement of fragmented transnational civil society actors. The UN Draft Declaration included fourteen provisions:

1) Right to Peace: Principles

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54. Bilbao Declaration on the Human Right to Peace, SPANISH SOC'Y FOR INT'L HUMAN RIGHTS LAW (Feb. 24, 2010), *available at* <http://www.aedidh.org/sites/default/files/Declaracio-Bilbao-en.pdf>.
  55. Declaración de Luarca (Asturias) sobre el Derecho Humano a la Paz [Luarca Declaration on the Human Right to Peace], SPANISH SOC'Y FOR INT'L HUMAN RIGHTS LAW (Oct. 30, 2006), *available at* [http://www.aedidh.org/sites/default/files/Dluarca\\_Esp.pdf](http://www.aedidh.org/sites/default/files/Dluarca_Esp.pdf).
  56. Barcelona Declaration on the Human Right to Peace, SPANISH SOC'Y FOR INT'L HUMAN RIGHTS LAW (June 2, 2010), *available at* <http://www.aedidh.org/sites/default/files/BCN-declaration.pdf>.
  57. Santiago Declaration on the Human Right to Peace, SPANISH SOC'Y FOR INT'L HUMAN RIGHTS LAW (Dec. 10, 2010), *available at* <http://www.aedidh.org/sites/default/files/Santiago-Declaration-en.pdf> [hereinafter Santiago Declaration].
  58. Carlos Villán Durán, *The Human Right to Peace: A Legislative Initiative from the Spanish Civil Society*, 15 SPANISH Y.B. INT'L L. 151 (2009).
  59. Carlos Villán Durán, Statement at an Open Seminar on the Right to Peace at the University of Oslo (Jan. 30, 2013). For information on the seminar see *The Right to Peace*, UNIV. OF OSLO, DEPT. OF PUB. & INT'L LAW (Jan. 30, 2013, 9:00 AM – 0:115 PM), <http://www.jus.uio.no/ior/english/research/events/conferences/2013/20130130-right-to-peace.html> [hereinafter Durán, Statement at Univ. of Oslo Seminar]. *See also* Santiago Declaration, *supra* note 57.
  60. Durán, Statement at Univ. of Oslo Seminar, *supra* note 59.

- 2) Human Security
- 3) Disarmament
- 4) Peace Education and Training
- 5) Right to Conscientious Objection to Military Service
- 6) Private Military and Security Companies
- 7) Resistance and Opposition to Oppression
- 8) Peacekeeping
- 9) Right to Development
- 10) Environment
- 11) Rights of Victims and Vulnerable Groups
- 12) Refugees and Migrants
- 13) Obligations and Implementation; and
- 14) Final Provisions.<sup>61</sup>

Interestingly, Durán characterizes the UN Human Rights Council as the institution that would be responsive “to the demands of Southern States with regard to human rights.”<sup>62</sup> This is because the African and Asian states are in the majority, there is no veto, and resolutions are adopted by majority. The draft became politicized within the UN Human Rights Council and resulted in polarization; it was promoted by Cuba and supported by developing countries, while developed countries either abstained or voted against it.

This prompted me to contact the Rapporteur of the UN Working Group on the Right to Peace, Wolfgang Heinz, who confirmed that the draft had resulted in dividing the UN Human Rights Council in the vote on the promotion of the Right to Peace in July 2012.<sup>63</sup> The countries of the East and the South voted in favor.<sup>64</sup> In particular, both Russia and

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61. U.N. Draft Declaration on the Right to Peace, *supra* note 31, arts. 1-14.

62. Durán, *supra* note 52, at 65.

63. E-mail from Wolfgang Heinz, Rapporteur for the U.N. Working Group on the Right to Peace, with author (08. 22 2012). *See also* Human Rights Council Res. 20/15, ¶ 1, U.N. Doc. A/HRC/RES/20/15 (July 17, 2012) (resolving to establish an open-ended intergovernmental working group to negotiate a draft U.N. declaration on the right to peace). A collection of statements made by states during the first session of the open-ended intergovernmental working group is available at the U.N. Human Rights Council’s website. *See States, First Session of the Open-ended Intergovernmental Working Group on the Draft United Nations Declaration on the Right to Peace* (Feb. 18-21, 2013), U.N. HUMAN RIGHTS COUNCIL, <http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace1stsession.aspx>[hereinafter *IGWG Statements*].

64. Countries in favor included Angola, Bangladesh, Benin, Botswana, Burkina Faso, Cameroon, Chile, China, Congo, Costa Rica, Cuba, Djibouti, Ecuador, Guatemala, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda, and Uruguay. *See Press Release, Human Rights Council, Human Rights Council Establishes a Working Group to Negotiate a Draft Declaration on the Right to Peace*, U.N. Press Release HRC12/091E (July 5, 2012), [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/741DF607AF802BAAC1257A320053916E?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/741DF607AF802BAAC1257A320053916E?OpenDocument) [hereinafter U.N. Press Release HRC12/091E].

China recognized this right as an important collective right.<sup>65</sup> This may also be interpreted as in line with the Asian tradition of valuing social harmony through social relations, thereby rejecting the use of force or intervention.<sup>66</sup>

The United States voted against the declaration.<sup>67</sup> It explained its vote, noting that the declaration:

would cover many issues that are, at best, unrelated to the cause of peace, and at worst, divisive and detrimental to efforts to achieve peace. . . . Efforts to move forward with a “right to peace” have always ended in endorsements for new concepts on controversial thematic issues, often unrelated to human rights. We do not agree with attempts to develop a collective “right to peace” or to position it as an “enabling right” that would in any way modify or stifle the exercise of existing human rights.<sup>68</sup>

The United States stated that key concepts remained undefined or not sufficiently defined and that it was filled with overly broad or vague formulations.<sup>69</sup> It also objected to human rights being assigned to groups or peoples rather than individuals, refuting the communitarian perspective.<sup>70</sup> Further, the United States asserted that it duplicated other human rights instruments or mechanisms, such as those that address environment and security issues.<sup>71</sup>

The European nations, however, changed from voting against to abstaining.<sup>72</sup> The European nations explained their vote of abstention:

[w]e do not recognize that a “right to peace” exists in international law, whether as a collective or individual human right, or otherwise. Given the deep conceptual flaws of the alleged “right to peace” and the potentially undermining effect of a future declaration on human rights law . . . . We will abstain.<sup>73</sup>

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65. *See id.*

66. *See* H. PATRICK GLENN, LEGAL TRADITIONS OF THE WORLD 335-37 (4th ed. 2010).

67. U.S. *Explanation of Vote: Resolution on Promotion of the Right to Peace Sponsored by Cuba*, MISSION OF THE U.S., GENEVA, SWITZ. (June 29, 2012) <http://geneva.usmission.gov/2012/07/05/20538/>.

68. *Id.*

69. Statement of the United States, *States, First Session of the Open-ended Intergovernmental Working Group on the Draft United Nations Declaration on the Right to Peace* (Feb. 18-21, 2013), U.N. HUMAN RIGHTS COUNCIL, <http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace.aspx> [hereinafter U.S. Statement].

70. *Id.*

71. *Id.*

72. Countries in abstention include Austria, Belgium, Czech Republic, Hungary, India, Norway, Poland, Republic of Moldova, Romania, Spain, and Switzerland. U.N. Press Release HRC12/091E, *supra* note 64.

73. Human Rights Council, Action on Resolution on the Promotion of the Right to Peace (July 5, 2012), [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/741DF607AF802BAAC1257A320053916E?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/741DF607AF802BAAC1257A320053916E?OpenDocument).

On February 12, 2013, there was a meeting of the Open-ended Intergovernmental Working Group on the United Nations Draft Declaration on the Right to Peace, which resulted in various critical commentaries.<sup>74</sup> The European Union noted that “the European Union itself is a peace project,”<sup>75</sup> but reiterated its concern for the lack of a legal basis for the right to peace (either individual or collective), the impossibility of finding a common definition, and vagueness that would impede justiciability, and called for strengthening of the International Criminal Court (ICC) and the Rome Statute to pursue accountability for crimes against humanity, war crimes, and genocide.<sup>76</sup> The European Union encouraged the process to pursue realism.<sup>77</sup>

Canada noted:

[i]t makes many assertions to rights which have no basis in international law, including “the right to peace” itself as well as other aspirational concepts such as “the right to live in a world free of weapons of mass destruction” (Article 3.3), “the right to a comprehensive peace and human rights education” (Article 4.1), and “the right to a safe, clean and peaceful environment” (Article 10).<sup>78</sup>

Canada also was critical of the “right to resist and oppose oppressive colonial, foreign occupation or dictatorial domination.”<sup>79</sup> Australia was concerned that the right to peace would ignore the fact that both international law and the Security Council under Chapter VII permit the use of force in individual or collective self-defense.<sup>80</sup>

The United States reiterated its position that there is no right to peace, and that the issues within the draft are being addressed by other forums, such as disarmament, peacekeeping, and refugees; that other issues are already under discussion at the Human Rights Council, such as the right to development and the environment; and that some issues are more appropriate for domestic regulation, like PMSCs (private military and security companies).<sup>81</sup> The Republic of Korea also was unable to recognize a right to peace in either the individual or collective form, and considered the concept to be vague and duplicitous of other endeavors.<sup>82</sup> Singapore objected to the right to human security and the right to demand from a government the effective observance of the norms of

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74. See *States, First Session of the Open-ended Intergovernmental Working Group on the Draft United Nations Declaration on the Right to Peace* (Feb. 18-21, 2013), U.N. HUMAN RIGHTS COUNCIL, <http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace.aspx> [hereinafter *IGWG Statements*].

75. General Statement of the European Union, *IGWG Statements*, *supra* note 74.

76. *Id.*

77. *Id.*

78. Canadian Position, *IGWG Statements*, *supra* note 74.

79. *Id.*

80. Statement by Australia *IGWG Statements*, *supra* note 74.

81. U.S. Statement, *supra* note 69.

82. Statement of the Republic of Korea, *IGWG Statements*, *supra* note 74.

international law saying they were lacking in “conceptual clarity.”<sup>83</sup> Moreover, it opposed the right to conscientious objection to military service as infringing on the sovereign state’s right to defend and preserve itself.<sup>84</sup> Nevertheless, Singapore stated that the document should be “directed towards the elimination of the threat of war and aggression, the renunciation of the use of force in international relations, and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations.”<sup>85</sup> Sri Lanka indicated concern that “the ever increasing gap between the developed and developing countries, the north and the south [sic], pose a major challenge to the enjoyment of the right to peace. Education in this regard, is an important tool that can foster the realization of the right to peace.”<sup>86</sup> Yet, Sri Lanka considered the document overly broad, intrusive, and ambiguous in scope and content, while indicating concern that it excluded terrorism.<sup>87</sup> It also favored recognition of exceptions for the use of force according to the UN Charter.<sup>88</sup>

Algeria added that reference to a right to internal peace should include recognition of the principle of non-intervention in domestic affairs of states, and echoed Sri Lanka’s concern that there should be reinforcement of the link between peace and security by recognizing the threat of terrorism on the international community.<sup>89</sup> Egypt voiced concern for the draft’s “undefined, ambiguous, and un-grounded [sic] concepts that lack any consensus in international law and international human rights law. . . .”<sup>90</sup> Syria<sup>91</sup> and Iran<sup>92</sup> objected to the inclusion of issues such as human security, responsibility to protect, conscientious objection to military service, peacekeeping, sexual orientation, democratic oversight of military establishments and budgets, and refugees and migrants.<sup>93</sup> Iran also failed to recognize links between discrimination against women or gender perspectives in peacekeeping and peace.<sup>94</sup> On the other hand, both Syria and Iran considered the issues of PMSCs, the right to development, environment, peace education, and training, as very important issues in relation to peace.<sup>95</sup> Iran called for recognition of

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83. Statement of Singapore: Pointers for Geneva Mission Statement on the Draft Declaration on the Right to Peace at the IGWG, *IGWG Statements, supra* note 74.

84. *Id.*

85. *Id.*

86. Statement by Sri Lanka, *IGWG Statements, supra* note 74.

87. *Id.*

88. *Id.*

89. Intervention by Algeria, *IGWG Statements, supra* note 74.

90. Statement by Egypt, *IGWG Statements, supra* note 74.

91. Intervention of the Syrian Arab Republic, *IGWG Statements, supra* note 74—[hereinafter Syria Statement].

92. Statement by the Islamic Republic of Iran, *IGWG Statements, supra* note 74 [hereinafter Iran Statement].

93. *See* Syria Statement, *supra* note 91 and *see* Iran Statement, *supra* note 92.

94. Iran Statement, *supra* note 92.

95. *See* Syria Statement, *supra* note 91 and *see* Iran Statement, *supra* note 92.

the “legal and legitimate exceptions for the use of force established by UN Charter including article 51 on self-defense and use of force sanctioned by UN according to chapter 7.”<sup>96</sup>

The majority of states considered the document too long and called for a more succinct, concise, and focused document.<sup>97</sup> The NGOs each presented arguments in favor of their niche areas of concern, e.g., women’s rights, migrant’s rights, etc., thereby representing the vast diversity within civil society.<sup>98</sup> This illuminated the dilemmas resulting from NGO engagement in human rights lawmaking at the international level. SSIHRL presents its initiative as law making from below, giving voice to developing nations’ interest in articulation, and recognition of norms addressing prohibition of the use of force and structural violence.<sup>99</sup> This initiative, however, is being interpreted as too convoluted to constitute a viable legal initiative.<sup>100</sup> The utopian normative language in the UN Draft Declaration on the Right to Peace that merges *lex lata* with *lex ferenda* varies from pragmatic, positivistic legal cultures.<sup>101</sup> Although SSIHRL claims to have a broad network with other civil society organizations, neither Amnesty International nor Human Rights Watch have engaged this issue.<sup>102</sup> It may be argued that the state of the normative language reflects their absence, as the draft may be viewed as a conglomeration of particular issues raised by specialized NGOs with niche interests. Further, NGOs may adopt broader social justice policy perspectives, which sacrifice technical finesse for normative output. The current draft is still subject to evaluation at present.

The students in the Right to Peace class were given copies of the UN Draft Declaration on the Right to Peace and asked to provide an evaluation and critique. They were very critical of the broad expanse of subjects covered, utopian language, vagueness of concepts, lack of clarity, coherence, consistency, and weak enforcement potential. The next lectures turned to empirical examples that explored peace-building and post-conflict reconstruction in practice.

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96. *Id.*

97. *See IGWG Statements, supra* note 74.

98. *See NGOs Statements, First Session of the Open-ended Inter-governmental Working Group on the Draft United Nations Declaration on the Right to Peace*, (Feb. 18, 2013), U.N. HUMAN RIGHTS COUNCIL, <http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace1stsession.aspx>.

99. *See* Carlos Villán Durán, *supra* note 58. *See also*, Carlos Villán Durán, *Civil Society Organizations Contribution to the Universal Declaration on the Human Right to Peace*, 17 INT’L J. ON WORLD PEACE 59 (2011).

100. Cecilia M. Bailliet & Kjetil Mujezinovic Larsen, *Nordic Expert Consultation on the Right to Peace: Summary and Recommendations*, 31 NORDIC J. HUM. RIGHTS 262-78 (2013).

101. *Id.* at 263, 268.

102. Response to query posed by Cecilia M. Bailliet to Carlos Villán Duran at the Nordic Expert Consultation on the Right to Peace, held at the University of Oslo, Norway on January 19, 2013.

#### **IV. Transitions to Peace: Peace-building and Post-Conflict Reconstruction**

Among the various challenges to peace is the phenomenon of failed states or failing states, which may be the result of internal conflict, violence, and/or corruption. The process of strengthening institutions and healing civil society after war or violence is essential to create peace. The field of transitional justice provides rich empirical cases to discuss the progress and setbacks in peace-building and post-conflict reconstruction. Hence, I invited Jemima Garcia-Godos, a Peruvian social scientist who has conducted fieldwork and research on the Peruvian Truth Commission and other transitional justice mechanisms, to lead a discussion. Students were given copies of the UN Agenda for Peace to understand the categories of peacekeeping, peace enforcement, and post-conflict peace-building.<sup>103</sup> Garcia-Godos explained the concept of transition to peace/democracy from authoritarian rule or armed conflict following regime change by collapse, negotiation, or force. She cited cases from Europe, Latin America, Africa, and the Middle East. She explained the tension between schools of thought on how to combine democracy with justice and how to combine peace with justice. Discussion focused on empirical cases involving retributive justice (including prosecutions under the Rome Statute and the ICC, as well as international ad hoc tribunals like those in Rwanda and Yugoslavia), hybrid tribunals, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. They also included domestic courts, such as the Bosnia and Herzegovian War Crimes Chamber, the Colombia Peace and Justice Process, the trials against Fujimori in Peru, the trial against Rios Montt in Guatemala, truth commissions, reparations, and use of amnesty.

The students discussed the concept of a right to truth and its relationship to reconciliation, justice, accountability, and needs of victims—truth as a form of reparation. There was examination of the international legal framework for accountability, the role of civil society and NGOs, and the continuing vulnerability of human rights defenders and victims' rights activists. The link between transitional justice, development, and peace was also explored.

Garcia-Godos delineated the role of the UN peacekeeping missions and political missions in Namibia, Angola, El Salvador, Cambodia, Bosnia, Somalia, Mozambique, Croatia, Guatemala, Kosovo, East Timor, Sierra Leone, and Afghanistan. The students reviewed the UN peacekeeping mandate to maintain peace, facilitate the political process, protect civilians, assist in disarmament, demobilize and reintegrate former combatants, support the organization of elections, promote human rights, and assist in restoring the rule of law. Post-conflict reconstruction was assessed through references to

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103. U.N. Secretary-General, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping: Rep. of the Secretary-General*, U.N. Doc. A/47/277-S/24111 (June 17, 1992).

theory and empirical examples from World War II, decolonization, wars of liberation, and (after the Cold War) humanitarian intervention. Garcia-Godos explained Roland Paris' critique of liberal peace, and how democratization plus marketization can negatively affect vulnerable peace.<sup>104</sup>

The students explored transitional justice and whether justice and accountability are premises for peace. They analyzed specific examples of transitional justice and accountability mechanisms in societies emerging from armed conflict and authoritarian regimes. One of the students was from Colombia and this student facilitated a discussion on possible peace models to be used in Colombia. The class also discussed the perspectives of victims, ex-combatants, and other social actors.

This lecture was followed by another led by political scientist Bård Anders Andreassen who queried whether there is a relation between specific forms of government and peace and whether democratic governance is a guarantor of peace.<sup>105</sup> He also presented power-sharing models from Kenya as a strategy for peace.<sup>106</sup> Finally, he discussed a contentious issue within the UN Draft Declaration on the Right to Peace, regarding whether there is a right to resistance. The preamble to the Universal Declaration of Human Rights recognizes that “[i]t is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.”<sup>107</sup> Traditionally, this issue has addressed cases involving foreign occupation, colonial oppression, and self-determination. The current issue is whether it applies to “tyranny,” domestic oppression or genocidal regimes, emphasizing current examples, such as Syria.

The value of these lectures is that the social scientists were able to illustrate conflicts arising between the pursuit of justice, truth, democracy, and peace, highlighting the actual impact of UN agencies and tribunals among stakeholders, and underscoring the influence of politics when measuring law's legitimacy.

## V. Equality and Non-Discrimination as Components of Peace: Race and Gender

At present, law students may not have received in-depth exposure to the relation between non-discrimination and the pursuit of peace. This is ironic given the strong links between civil rights activists, feminists, and peace movements throughout history.<sup>108</sup> In order to illustrate the importance of addressing equality and non-discrimination as

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104. See ROLAND PARIS, *AT WAR'S END: BUILDING PEACE AFTER CIVIL CONFLICT* (2004).

105. See also James Lee Ray, *Does Democracy Cause Peace?* 1 ANN. REV. POL. SCI. 27 (1998).

106. See also SCOTT GATES & KAARE STRØM, *POWER SHARING, AGENCY AND CIVIL CONFLICT: POWER-SHARING AGREEMENTS, NEGOTIATIONS AND PEACE PROCESSES*, CTR. FOR THE STUDY OF CIVIL WAR (2007), available at [http://www.prio.no/sptrans/-336950081/Theoretical\\_framework\\_report.pdf](http://www.prio.no/sptrans/-336950081/Theoretical_framework_report.pdf).

107. Universal Declaration of Human Rights, G.A. RES. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

108. See DAVID CORTRIGHT, *PEACE: A HISTORY OF MOVEMENTS AND IDEAS* 217-22, 255-59 (2008).

components of peace, I showed the students an episode from the documentary *A Force More Powerful* (2000), which chronicles the civil rights movement in Nashville, Tennessee.<sup>109</sup> The students were also given Martin Luther King Jr.'s *Letter from Birmingham City Jail*,<sup>110</sup> as well as copies of the UN Convention on the Elimination of Racial Discrimination,<sup>111</sup> and the Human Rights Council Joint Written Statement on the Human Right to Peace versus Racism, Racial Discrimination, Xenophobia and other forms of Intolerance.<sup>112</sup> I invited Ronald Craig, an African American expert on discrimination who spent his childhood and early youth in Louisiana during the civil rights movement, to lead a discussion. We discussed the concepts of direct and indirect discrimination and reviewed historical examples of the severe consequences of discrimination, including slavery, genocide, and apartheid. *A Force More Powerful* highlighted the roles of students who fought segregation in America by participating in sit-ins in diners and boycotts of stores.<sup>113</sup> My students were impressed to see the care with which young people of the same age sought to pursue their cause in a non-violent manner that maintained their dignity, in spite of being subject to derision, attack, and arrest. Craig asked the students if they thought they could engage in demonstrations in a similar manner, but the majority of students claimed the “lack of a cause” for action. Coincidentally, the award of the Nobel Peace Prize to the European Union was announced that very morning,<sup>114</sup> hence, we used part of the session to discuss how the European Union addresses refugees, migrants, and minorities, such as Roma gypsies, thereby indicating that perhaps the alleged “lack of cause” was not necessarily true.

The second session presented the need to increase the role of women as key participants in peace negotiations, commissions, and peacebuilding initiatives. Students were given copies of the UN Convention on the Elimination of Discrimination Against Women,<sup>115</sup> the Protocol to the African Charter on Human Rights,<sup>116</sup> and a chapter by Christine Chinkin and Hilary Charlesworth titled *Building Women into Peace: The*

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109. A FORCE MORE POWERFUL (York Zimmerman, Inc. 2000).

110. Letter from Birmingham Jail, Open letter by Martin Luther King, Jr., (Apr. 16, 1963), available at [http://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html).

111. G.A. Res. 2106 (XX), U.N. Doc. A/RES/2106(XX) (Dec. 21, 1965).

112. See Press Release, ASIA: Human Right to Peace versus Racism, Racial Discrimination, Xenophobia and other Forms of Intolerance, Asian Human Rights Comm'n (Feb. 23, 2009) <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc10/ALRC-CWS-10-09-2009>.

113. A FORCE MORE POWERFUL, *supra* note 109.

114. *The Nobel Peace Prize 2012: European Union*, NOBELPRIZE.ORG, [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/2012/](http://www.nobelprize.org/nobel_prizes/peace/laureates/2012/).

115. G.A. Res. A/34/830, U.N. DOC. A/RES/34/830 (Dec. 18, 1979).

116. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005.

*International Legal Framework*.<sup>117</sup> I showed the students the documentary *Pray the Devil Back to Hell* (2008), which tells the story of Liberian women (of Christian and Muslim background) who cooperated in non-violent resistance to force Charles Taylor and his opponents to renounce violence.<sup>118</sup> The women staged sit-ins and physically prevented the male leaders from abandoning the peace negotiation session. The irony is that these powerful women were left outside the negotiating room itself. This class prompted a spirited debate among the students as to whether peace is feminine and war is masculine, and whether it should be a requirement that women participate in peace negotiations.

It is essential that non-discrimination and equality be presented as an important foundation of positive peace. The elimination of structural violence within and among nations remains a challenge.

## VI. Regulation of Arms Trade and Disarmament

Lawyers must get over the notion that arms control and disarmament are subjects that only generals and scientists are competent to talk about. Disarmament is at the heart of the effort to create a world rule of law, and lawyers must of necessity become involved in it and must master its intricacies.<sup>119</sup>

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Disarmament and regulation of arms trade are issues that have evolved in conjunction with the peace movement and have benefitted from the engagement of civil society. The class commenced with a video interview of the American political activist Jody Williams from the film *Nobelity* (2006),<sup>120</sup> who described the process of bringing about the ban on anti-personnel mines, later followed by the prohibition of cluster munitions. Williams explained the importance of engaging with all stakeholders in order to pursue real normative change. This was followed by a lecture by Gro Nystuen of the International Law and Policy Institute in Oslo, who described the gaps within the framework of law addressing nuclear weapons.<sup>121</sup> She also noted the absence of provisions on incendiary weapons and autonomous weapons systems.

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117. Christine Chinkin & Hilary Charlesworth, *Building Women into Peace: The International Legal Framework*, 27 *THIRD WORLD Q.* 953-57 (2006).

118. *PRAY THE DEVIL BACK TO HELL* (Fork Films 2008).

119. Joseph S. Clark & Harry K. Schwartz, *World Peace Through Law: The Lawyer's Job*, 56 *A.B.A. J.* 953, 956 (1970). Appleby, *supra* note 40 at 347. The right to peace may be considered corollary of disarmament. *See also* Declaration on International Co-operation for Disarmament, G.A. Res. A/34/88, U.N. Doc. A/RES/34/88 (Dec. 11, 1989).

120. *NOBELITY* (Monterey Media Inc. 2006).

121. She presented the Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 *U.S.T.* 483, T.I.A.S. No. 6839, and the ICJ Advisory Opinion on the Legality of Nuclear Weapons. *See* Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 *I.C.J.* 226 (July 8,

Turning to arms trade regulation, Nystuen described the process of the UN Conference on the Arms Trade Treaty in New York in July 2012,<sup>122</sup> revealing the initial enthusiasm of African delegates for the Treaty, as they asserted that the vast influx of weapons in the continent was a primary obstacle towards their enjoyment of peace. Nystuen also depicted their subsequent deflation on account of the negative influence of the National Rifle Association (NRA) on the U.S. administration.<sup>123</sup> The NRA had conflated regulation of international arms with domestic sale of arms as it argued that the treaty would violate the Second Amendment to the United States Constitution.<sup>124</sup> It presented a letter signed by fifty-one U.S. senators opposed to the treaty.<sup>125</sup> This resulted in the United States' withdrawal from the session in July 2012 (along with Russia and China), thereby suspending negotiations until March 2013. At the same time, the United States experienced various episodes of gun violence, including the tragedy in Newtown, Connecticut, resulting in examination of this issue at the domestic level.<sup>126</sup> In April 2013, the UN General Assembly voted to approve the treaty (154 to 3, with the United States voting in favor), thereby setting up a framework to reduce international transfers of conventional arms to states with problematic human rights records.<sup>127</sup>

Nystuen identified the elements for a successful treaty process—political will generated by civil society (myth busting, expanding the group of stakeholders, shifting the burden of proof, focusing on humanitarian aspects), and process requirements—concluding that voting rules do not guarantee success, but consensus rules guarantee failure.

## **VII. Sustainable Development and Protection of the Environment as Preconditions of Peace**

Although peace was originally viewed as being threatened by war, at present, scholars are increasingly concerned with the impact of ecological disasters and climate change.<sup>128</sup>

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1996).

122. Peter Finn, *NRA Opposes UN Arms Treaty*, WASH. POST. (Mar. 16, 2013), [http://www.washingtonpost.com/world/national-security/us-nra-square-off-over-small-arms-treaty/2013/03/16/ae495dae-8d76-11e2-b63f-f53fb9f2fcb4\\_print.html](http://www.washingtonpost.com/world/national-security/us-nra-square-off-over-small-arms-treaty/2013/03/16/ae495dae-8d76-11e2-b63f-f53fb9f2fcb4_print.html).

123. *Id.*

124. *Id.*

125. *Id.*

126. Remarks of President Barack Obama, Weekly Address, The White House (Dec. 14, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/12/14/weekly-address-marking-one-year-anniversary-tragic-shooting-newtown-conn>.

127. Neil MacFarquhar, *UN Treaty is First Aimed at Regulating Global Arms Sales*, N.Y. TIMES (Apr. 2, 2013), [http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html?pagewanted=all&_r=0).

128. See Hans Günter Brauch, *Security and Environment Linkages on the Mediterranean Space: Three Phases of Research on Human and Environmental Security and Peace*, in SECURITY AND ENVIRONMENT IN THE MEDITERRANEAN: CONCEPTUALISING SECURITY AND ENVIRONMENTAL

Protection of the environment may be assessed as a precondition of peace. Christina Voigt, an expert in climate change law, commenced a lecture by showing Al Gore's Nobel Lecture,<sup>129</sup> and distributing the Human Rights Council Progress report on the right of peoples to peace<sup>130</sup> the UN Global Compact and Principles for Responsible Investment,<sup>131</sup> a report by UNEP on environment and peacebuilding<sup>132</sup>, and UN Security Council Resolution 2007/22 on the Maintenance of International Peace and Security.<sup>133</sup> She explained the link between climate change, conflict over natural resources, loss of territories, border disputes, and climate migration, all of which weaken the foundations of peace. Voigt reviewed the international climate agreements—the UNFCCC,<sup>134</sup> and the Kyoto Protocol<sup>135</sup>—and related the failure of the current climate negotiations due to the impasse between the developing and developed countries (rooted in the unfortunate language of “common but differentiated responsibilities”<sup>136</sup>). She described the Copenhagen Accord of 2009<sup>137</sup> as “one of the most successful failures in the history of multilateral diplomacy.” She concluded that durable peace depends on sustainable development, and added that the grim effects of climate change render the chances of peaceful coexistence dim. The students considered this presentation very innovative as this issue is not usually addressed in peace courses. Nevertheless, the majority supported recognition of the link between protection of the environment and peace.

### VIII. Examining the Impact of Trade on Peace

The original intent of the international trade system was to promote prosperity and peace, and the UNESCO notion of a new economic order.<sup>138</sup> Nevertheless, the link

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CONFLICTS 35-143 (Hans Günter Brauch et al. eds., 2003).

129. Al Gore, Nobel Lecture, Oslo, Norway (Dec. 10, 2007), *available at* [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/2007/gore-lecture\\_en.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/2007/gore-lecture_en.html).

130. Rep. of the Human Rights Council Advisory Comm. on the Right of Peoples to Peace, 6th Sess., U.N. Doc. A/HRC/AC/6/CRP.3 (Jan. 17-21, 2011), *available at* [http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/docs/session6/A.HRC.AC.6.CR.P.3\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/docs/session6/A.HRC.AC.6.CR.P.3_en.pdf).

131. *U.N. Global Compact: About Us: The Ten Principles*, U.N. GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (last visited Mar. 8, 2014).

132. <http://www.unep.org/disastersandconflicts/Introduction/EnvironmentalCooperationforPeacebuilding/tabid/54355/Default.aspx>

133. S.C. Press Statement, 2007/22, U.N.Doc. S/PRST/2007/22 (June 25, 2007).

134. United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 164 [hereinafter UNFCCC].

135. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, U.N. Doc FCCC/CP/1997/7/Add.1, 37 I.L.M. 22 (1998) [hereinafter Kyoto Protocol].

136. UNFCCC, *supra* note 134, art. 3 and Kyoto Protocol, *supra* note 135, art. 10.

137. U.N. Climate Change Conference 2009, Copenhagen, Den., Dec. 7-19, 2009, *Rep. of the Conference of the Parties on its Fifteenth Sess.*, U.N. Doc. FCCC/CP/2009/11/Add.1 (Mar. 30, 2010).

138. *See* Declaration on the Establishment of A New International Economic Order, G.A. Res. 3201 (S-VI), U.N. Doc. A/RES/3201/S-IV (May 9, 1974), *reprinted in* 13 I.L.M. 715 (1974); and Program of

between trade and peace is considered to be undergoing strain and there are concerns regarding the “perception of inequity and imbalance in the multilateral trading system that must be rectified.”<sup>139</sup> Factors include variable compliance with the WTO dispute settlement system, politicization of cases, a need to create more inclusive decision-making and rulemaking processes in order to strengthen the voice of developing countries, fragmentation due to regional trade agreements and bilateral investment agreements, an ambiguous mandate as trade crosses with non-trade issues such as investment, sustainable development, competition, and labor standards; and legitimacy deficits due to the impact of trade on food safety, health, and the environment.<sup>140</sup>

As an empirical example of these dilemmas, Voigt presented the issue of blood diamonds and the Kimberly process certification scheme.<sup>141</sup> The students discussed the link between the diamond trade, conflict, and human rights abuses. They examined WTO and GATT provisions and waiver,<sup>142</sup> UN GA Resolution 55/56 (2000),<sup>143</sup> UN Security Council Resolution 1459 (2003),<sup>144</sup> the Kimberly Process Certification Scheme,<sup>145</sup> the Interlaken Declaration on the Kimberly Process Certification Scheme for Rough Diamonds (2002),<sup>146</sup> and UNSC embargoes on Angola, Sierra Leone and Liberia.<sup>147</sup> The class discussed problems related to WTO Council for Trade in Goods Waiver concerning the Kimberly Process Certification Scheme for Rough Diamonds, G/C/W/432/Rev.1 (24 February 2003),<sup>148</sup> noting that the waiver has the potential for undermining future trade restrictions imposed for humanitarian purposes. The students were very engaged by this discussion, as many had never heard about this initiative and found it useful when assessing strategies addressing the root causes of violence. It is clear that there is a need

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Action on the Establishment of a New International Economic Order, G.A. Res. 3202 (S-VI), U.N. Doc. A/RES/3202/S-VI (May 16, 1974), *reprinted in* 13 I.L.M. 720 (1974).

139. Debra P. Steger, *Lessons from History: Trade and Peace*, 37 *STUD. TRANSNAT'L LEGAL POL'Y* 12, 14 (2005).

140. *Id.* at 14-16.

141. *See About: KP Basics*, KIMBERLY PROCESS, <http://www.kimberlyprocess.com/en/about> (last visited Mar. 8, 2014).

142. *See WTO Legal Texts*, WTO, [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm) (last visited Mar. 8, 2014).

143. G.A. Res. 55/56, U.N. Doc. A/RES/55/56 (Jan. 29, 2001).

144. S.C. Res. 1459 (2003), U.N. Doc. S/RES/1459 (2003) (Jan. 28, 2003).

145. Kimberly Process Certification Scheme, *available at* <http://www.kimberlyprocess.com/en/system/files/documents/KPCS%20Core%20Document.pdf>.

146. Interlaken Declaration of November 5, 2002 on the Kimberly Process Certification Scheme for Rough Diamonds, *available at* [http://www.worlddiamondcouncil.org/download/resources/documents/Interlaken%20Declaration%20\(5-11-2002\).pdf](http://www.worlddiamondcouncil.org/download/resources/documents/Interlaken%20Declaration%20(5-11-2002).pdf).

147. *See Security Council Sanctions Committees: An Overview*, U.N. SEC. COUNCIL, <http://www.un.org/sc/committees/> (last visited Mar. 9, 2014).

148. Council for Trade in Goods, *Waiver Concerning Kimberly Process Certification Scheme for Rough Diamonds*, G/C/W/432/Rev. 1 (Feb. 24, 2003).

for more research on the relationship between trade regimes and peace, and that law students may be encouraged to participate in exploring this area.

## IX. Conclusion—Lessons for Future Course Development

The Right to Peace class provides an example of how to couple international law studies with the law of peace. The class encouraged students to evaluate the current lawmaking initiative to recognize a right to peace. The students indicated that they remained unsure as to whether there is a “right to peace” and that this was frustrating. Only two student papers pursued the issue of whether there is a human right to peace: one concluded that there is no consensus at the international level, but some national courts have recognized a right to peace; the other student concluded that the human right to peace is in its initial phase of formation as a customary norm at the international level.<sup>149</sup> The class was unable to provide a clear answer; however, this mirrors the conundrum within the UN Human Rights Council as well. It is suggested that lectures or classes on the law of peace should include the study of the components of peace, the preconditions for peace, the role of institutions and actors (including states, IOs, NGOs, TNCs, groups, and individuals) in the promotion and safeguarding of peace, and the protection of victims of breaches of peace.

A possible weakness in the course design is that that I did not make institutions the principal focus of the class, rather, the lectures were divided topically, and thus emphasized normative analysis and use of empirical examples. Discussion of peace invariably requires a focus on institutions—should we reform the UN Security Council, strengthen the ICJ, or create a new mechanism to address emissions to the atmosphere?<sup>150</sup> Cassese bemoaned the fact that “[w]orld society still lacks an

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149. The students wrote papers on a variety of topics, including: establishing peace through power sharing agreements; the impact of disarmament, demobilization and reintegration programs; redesigning UN peacekeeping missions to promote a culture of peace; rehabilitation of former child soldiers; the use of sanctions and the right to peace; how corruption threatens positive peace; redefining democracy, towards a nuclear-free world; the responsibility to protect doctrine and UN Security Council Resolution 1973 on Libya; the right to peace and drone attacks in Pakistan; the peace policies of the German Green Party in a human security framework; human rights in the Dayton Peace Agreement; negative effects of women-centered peacebuilding efforts regarding sexual violence in the Democratic Republic of Congo; institutionalization before liberalization for peacebuilding; victim reparations for guerillas; linking the right to peace and the prohibition of racial discrimination; minority rights as a vehicle for managing ethnic conflict in China; Arab Muslim women in peacebuilding processes, assessing human rights trials as part of the Colombian peace process, and whether to pursue an ecological approach to peace.

150. *But see* John J. Mearsheimer, *The False Promise of International Institutions*, 19 INT'L SECURITY 5 (1995) (noting that institutions seem to have “little independent effect,” *id.* at 47, on state behavior and concluding that “misplaced reliance on institutional solutions is likely to lead to more failures in the future.”) *Id.* at 49. *See also* Michael Barnett & Raymond Duvall, *Power in International Politics*, 59 INT'L ORG. 41 (2005). The authors point out that “institutions shape the bargaining

institutional mechanism designed to ensure that international legal imperatives become immediately operational at the national level.”<sup>151</sup> Yet he also pointed out that international civil society has exposed “the individualistic, inward-looking attitude of the principal subjects of the international community, and [is] prodding them to pay heed to community values such as peace, the rule of law, respect for human rights and democracy.”<sup>152</sup> The international community regards peace to be an important common value for humanity; the problems are linked to whether there is a need to define the scope of peace in a way that is specific enough to enable it to be implemented by institutions. This merits renewed attention by law schools, legal researchers, and law students.

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advantages of actors, freeze asymmetries, and establish parameters for change that benefit some at the expense of others.” *Id.* at 41. The institutions that are established to help actors achieve mutually acceptable, even Pareto-superior, outcomes also create ‘winners’ and ‘losers,’ to the extent that the ability to use the institution and, accordingly, collective rewards—material and normative—are unevenly distributed long into the future and beyond the intentions of the creators.” *Id.* at 52 (footnote omitted). They note that this applies to the WTO, IMF, UNHCR, World Bank, and ICC. *Id.* at 58-59. “Many scholars and policymakers argue for a de-concentration of decisional authority, a substantial democratization of the institutions of global governance, or mechanisms of accountability.” *Id.* at 59-60.

151. Cassese, *supra* note 5, at xix.

152. *Id.*