

Scienza e Pace

Rivista del Centro Interdisciplinare Scienze per la Pace
Università di Pisa

ISSN 2039-1749

The complementarity of the Security Council and the Human Rights Council in the promotion and protection of the right to life in conflict situation

Christian Guillermet Fernández

David Fernández Puyana

Research Papers

n. 26 – Marzo 2015



The complementarity of the Security Council and the Human Rights Council in the promotion and protection of the right to life in conflict situation

by Ambassador **Christian Guillermet Fernández*** and Dr. **David Fernández Puyana****

Abstract - The article will analyze the human cost and suffering caused by armed conflict and violence and its consequences over the right to life. The United Nations was created to save generations from the scourge of war. In particular, in a context of conflict the arbitrary deprivation of life, mass killings and genocide is a common practice. Afterwards, the nexus between the Security Council and the Human Rights Council through the notion of life as a paramount right and the protection of this right in its international practice will be studied. In addition, the linkage between peace, justice and life will also be analyzed. In particular, the accountability for genocide, crimes against humanity, war crimes and other egregious crimes will be studied taking into account that there is a strong opposition to accept the impunity. Finally, the prevention of armed conflict through the promotion and protection of all human rights for all, in particular the right to life, in both the Security Council and Human Rights Council will be analyzed.

1. The Charter of the United Nations

The United Nations is a response to the two world wars and the intention of the member States to suppress war¹. The maintenance of international peace and security is the most important goal of the United Nations in accordance with Art.

* Deputy Permanent Representative of Costa Rica to the United Nations in Geneva and Chairperson/Rapporteur of the Working Group on the right to peace.

** PhD and LLM, Legal assistant of the Chairperson/Rapporteur, Permanent Mission of Costa Rica in Geneva.

1 SIMA, B., KHAN, D.E. and PAULUS, A., *The Charter of the United Nations, A commentary*, Oxford Commentaries on international law, third edition, Volume II, November 2012, p. 102.

1.1². Chapter VII grants the Security Council extensive powers in this field. The conditions to use these powers remain very vague, mainly due to the very broad notions used in Art. 39³. The Security Council enjoys considerable discretion in the determination whether a threat to the peace, a breach of peace, or an act of discretion exists⁴. Although the International Criminal Tribunal for the former Yugoslavia has recognized the Council's broad discretion, it has also emphasized that it is not unlimited⁵.

The United Nations has been always guided by a conception of peace understood in a wider and more positive way, in which the well-being of individuals and societies, including economic welfare, social security and human rights, has a clear prevalence over a conception of peace related exclusively to use of violence or force⁶.

The Charter recognizes that peace is more than the absence of war and therefore, it includes outstanding legal provisions of international human rights law to be applied by the international community as a whole, which should be aimed to eliminating progressively those issues likely to cause war. The analysis of international human rights instruments confirms the conviction that respect for human rights is at the basis of peace⁷.

2 Art. 1.1: "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, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace".

3 Art. 39: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security".

4 SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 1, p. 1.275.

5 Prosecutor v. Dusko Tadic, para. 28.

6 LIVA TEHINDRAZANARIVELO, D. and KOLB, R., "Peace, Right to, International Protection", *Max Planck Encyclopedia of Public International Law*, December 2006, p. 12.

7 SYMONIDES, J., "Towards the Universal Recognition of the human right to peace", *International Affairs Review*, 2006, No. 1 (153), p. 6.

After a lively debate during the negotiation process of the Charter⁸, a consensus was reached among all States that the efforts should no longer be limited to stopping direct threats of war, but should also include to fight against its roots causes, including “poverty, disease, ignorance, insecurity, unemployment, inequality and not least lawless tyranny and lack of human dignity”⁹.

Recent practice has stressed the strong linkage and interdependence of peace and security with broader conditions of social development. As indicated by the Security Council declaration, adopted at the level of Head of State and Government in 1992, “peace and prosperity are indivisible and lasting peace and security require effective cooperation for the eradication of poverty and the promotion of a better life for all in larger freedom”¹⁰.

The International Court of Justice (hereinafter: ICJ) stated in the Advisory Opinion on *certain expenses*¹¹ that

The purposes of the United Nations are set forth in Article of the Charter. The first two purposes as stated in paragraphs 1 and 2, maybe summarily described as pointing to the goal of international peace and security and friendly relations. The third purpose is the achievement of economic, social, cultural and humanitarian goals and respect for human rights.... The primary placed ascribed to international peace and security is natural, since the fulfillment of the other purposes will be dependent upon the attainment of that basic condition.

While social, economic, development, and human rights matters are primarily the domain of the General Assembly (hereinafter: GA) and the United Nations Economic and Social Council (hereinafter: ECOSOC), the scope of the

8 The Soviet Union initially supported the position that the “primary and indeed the only task of the international organization should be the maintenance of peace and security and for the economic and social matters a separate organization should be created”, in HILDEBRAND, R., *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security*, University of North Carolina Press, 1990, p. 87-88.

9 "MACLAURIN, J., *The United Nations and Power Politics*, George Allen and Unwin Ltd, 1951, p. 10.

10 "UNSC Presidential Note (31 January 1992), UN Doc. S/23500, 5.

11 "Case *Certain expenses of the United Nations* (1962, rep. 167-168) of the International Court of Justice.

Council's action is limited to issues of peace and security. Therefore, broader policies for social and economic development and human rights promotion should not be seen as part of the Council powers. This latter body will be more focused in some form of organized violence¹².

The positive approach of peace goes in the line of the wide notion of peace supported by the former Secretary-General Kofi Annan in his report "In larger freedom": "The threats to peace and security in the twenty-first century include not just international war and conflict but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease and environmental degradation..."¹³.

Taking into account that peace and human rights are a cornerstone of the further elaboration of the human security framework and that this concept is inseparable from conditions of peace¹⁴, it could safely be concluded that the broader meaning of peace deals with the generic causes of conflict¹⁵. As one human right expert highlighted, "real peace is much more than stability, order or absence of war: peace is transformative, about individual and societal progress and fulfillment; and peace within and between societies is as much about justice as anything else"¹⁶. Thus, an integrated approach to human security would be related to the deepest causes of war, such as economic despair, social injustice and political oppression¹⁷.

Among the key structural causes of instability and conflict are poverty, inequality

12 "SIMA, B., KHAN, D.E. and PAULUS, A., *op.cit.*, note 1, p. 1.277.

13 "In [*Larger Freedom*](#) - Towards Development, Security and Human Rights for All, Report of the Secretary-General of the United Nations for decision by Heads of State and Government in September 2005. Doc. A/59/2005 of 21 March 2005, para. 78.

14 HAYDEN, P., "Constraining war: human security and the human right to peace", *Human Rights Review*, 6(1) Oct./Dec. 2004, p. 46.

15 LINARELLI, J., "Peace-building", *Denver Journal of International Law and Policy*, Vol. 24, 1996, p. 253-83.

16 CORNISH, P., "Terrorism, Insecurity and Underdevelopment", *Journal of Conflict, Security and Development*, Vol. 30, 2001, p. 147-52.

17 "Report of the Secretary-General: *An agenda for peace. Preventive diplomacy, peacemaking and peace-keeping*. Doc. A/47/277 - S/24111 of 17 June 1992, paragraphs 43-44.

and lack of economic opportunity. Although diplomacy might be useful in the short-term effort to maintain peace, long-term solutions require economic development and greater social justice¹⁸.

2. The deprivation of right to life in a context of war and peace

The human cost and suffering caused by armed conflicts and violence is really high. The Charter's preamble is offered not in the name of nations, states, or leaders, but as commitment by and to the «peoples» of the United Nations. The founding vision of the United Nations is the creation of a world in which those artificial political constructs we refer to as «states» are at the service of the people who populated them, rather than the other way around¹⁹. In the UN Charter the «peoples of the United Nations » reaffirmed their « faith in fundamental human rights, in the dignity and worth of the human person, in equal rights of men and women and of nations large or small » ²⁰. These commitments assumed by the international community in 1945 still remain no less important so today.

In a context of armed conflict and violence the right to life is the most relevant fundamental human right violated. The arbitrary deprivation of life, the practice of ethnic cleansing, mass killings and genocide are considered war crimes and crimes against humanity.

The right to life as a fundamental and universal human right of everyone has been spelled out in the Universal Declaration of Human Rights²¹, International Covenant on Civil and Political Rights²², the African Charter on Human and

18 "MCFARLANE, H. and FOONG KHONG, Y., *Human security and the UN: A critical history*. Bloomington, Ind. : Indiana University Press, 2006, p. 151.

19 BROOKS, R. "Civilian and armed conflict" in GENSER, J. and STAGNO UGARTE, B, *The United Nations Security Council in the age of human rights*, Cambridge University Press, New York, 2014, p. 36.

20 Preamble, paragraph 2, Charter of the United Nations.

21 Art. 3: "Everyone has the right to life, liberty and security of person".

22 Art. 6 (1): "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December

Peoples' Rights²³, the European Convention on Human Rights²⁴ and the American Convention on Human Rights²⁵. In accordance with these legal provisions, States Parties are expressly obligated to protect the right to life.

The right to life has traditionally been linked to the notion of human dignity, because it has become a ubiquitous idea and central concern of international law²⁶. As a foundational norm within the United Nations, "human dignity served to signify that moral consensus, indeed universality, was a necessary response to the war's atrocities"²⁷. The inclusion of human dignity in the contemporary international law is a response to the widespread revulsion of the horrors of the Second World War²⁸. Therefore, it prohibits the worst excesses possible in war (International humanitarian law) and claims the observance of minimal standards of civil, political and social recognition (human rights law).

Consequently, human dignity is a basic norm which "can be read as a reaction against pre-war sovereigntist conceptions of legality which allowed positive law to become the tool of crimes against humanity apparently without contradiction"²⁹. Human dignity is not as an autonomous right, but instead as a

1966, entry into force 23 March 1976.

23 Art. 4: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right". Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

24 Art. 2 (1): "Everyone's right to life shall be protected by law...." Signed on 4 November 1950 in Rome.

25 Art. 4 (1): "1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life". Signed at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969.

26 RABKIN, J., "What we can learn about human dignity from international law", *Harvard Journal of Law and Public Policy*, Fall 2003, n. 27, p. 145-147.

27 RILEY, S., "Human dignity: comparative and conceptual debates", *International Journal of Law in context*, 2010, n. 6, p. 119.

28 WICKS, E., "The meaning of life: dignity and the right to life in international human rights treaties", *Human Rights Law Review*, 2012, Vol. 12:2, p. 206.

29 RILEY, S., *op.cit.*, note 27, p. 123-124.

legal principle with constitutional status³⁰.

The Human Rights Committee has issued two General Comments interpreting the content of Art. 6 on the right to life contained in the International Covenant on Civil and Political Rights. Both comments focus on the duty of States to prevent mass violence such as war and emphasize the duty of States to adopt positive measures to protect the right to life³¹.

The right to life has properly been characterized as the supreme human right, since without effective guarantee of this right, all other rights of the human being would be devoid of meaning³². Since the right to life is non-derogable right in accordance with Art. 4(2) of the ICCPR³³, it may never be suspended in time of public emergency which threatens the life of the nation. In addition, the right to life has been deemed *ius cogens* under international law³⁴. The right to life is not only the legal foundation for other rights, but also an integral part of all the rights which are essential to guarantee a better life for all human beings.

Since the right to life should not be narrowly interpreted, it has traditionally been linked to peace and security matters. However, the linkage between the concept of life and peace was included for the first time in a speech delivered by President Roosevelt on 4 March 1933 before the United States Capitol in Washington³⁵. This elaboration was later inserted in both the Preamble of the

30 BARROSO, L.R., "Here, there and everywhere: human dignity in contemporary and in the transitional discourse", *International and Comparative Law Review*, 2012, n. 331, p. 354.

31 Doc. General Comment No. 6: The right to life (art. 6): 30 April 1982; Doc. General Comment No. 14: The right to life (art. 6): 9 November 1984.

32 NOWAK, M., *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, Engel Publisher, Kehl/Strasbourg/Arlington, 2005, p. 104.

33 Art. 4 (2): "No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision".

34 RAMCHARAN, B., "The Right to Life", *Netherlands International Law Review* (NILR), 1983.

35 "In the field of world policy I would dedicate this Nation to the policy of the good neighbor — the neighbor who resolutely respects himself and, because he does so, respects the rights of others — the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbors". [Statement](#) delivered in the First inaugural Address on 3 March 1933.

UN Charter³⁶ without being discussed in substance in the San Francisco Conference and the North Atlantic Treaty³⁷. The UNGA has quite often referred to this commitment³⁸. However, some resolutions use the term “neighbours” in a narrow geographical sense³⁹, while others have a more far-reaching meaning⁴⁰.

3. The protection of the right to life in a context of war

3.1. Security Council

Since 1951 until today there is a constant practice within the Security Council, which considers that the deprivation of life constitutes a threat to international peace and security. In particular, this qualification can be found in some resolutions adopted by the Security Council in relation to four international⁴¹ and twenty-two internal⁴² conflicts.

In a conflict situation all parties are bound to take all feasible steps and to develop modalities to ensure the protection of affected civilians, including

36 Preamble, paragraph 5: “...to practice tolerance and live together in peace with one another as good neighbors...”

37 Preamble, paragraph 1: “The Parties to this Treaty reaffirm their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all governments...” The [Treaty](#) was signed in Washington on 4 April 1949.

38 Doc. UNGA Res. entitled “Peaceful and neighborly relations among States”, A/RES/1236(XII) (14 December 1957); UNGA Res. entitled “Measures aimed at the implementation and promotion of peaceful and neighborly relations among States”, A/RES/1301 (XIII) (10 December 1958) and UNGA Res. entitled “Development and strengthening of good neighborliness between States”, A/RES/34/99 (14 December 1979).

39 Doc. UNGA Res entitled “Development and strengthening of good neighborliness between States: 34/99 (14 December 1979); 36/101 (9 December 1981) and 37/117 (16 December 1982).

40 Doc. UNGA Res 2625 (XXV) of 24 October 1970.

41 Israel/Palestine, Kuwait/Iraq, Pakistan/India and former Yugoslavia.

42 Sierra Leone, Afghanistan, Tajikistan, Burundi, Republic Democratic of Congo, Georgia, Libya, Angola, Benin, Sudan, South Sudan, Lebanon, Iraq, Syria, Mali, Somalia, Central African Republic, Yemen, Cambodia, South Africa, Zambia and Rwanda.

children and women⁴³. It follows that all parties to the conflict are obligated to comply with their obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949⁴⁴, which clearly prohibits the arbitrary deprivation of life in all circumstances.

The Security Council has recognized that all parties in a conflict are obligated to take all measures necessary to preserve « human life » and to apply in full the humanitarian provisions as regards the protection of the wounded and sick, prisoners of war and civilian population⁴⁵.

Consequently, the Council has expressed that the high number of human casualties⁴⁶ and deaths⁴⁷ in a conflict situation, including the loss of «life»⁴⁸, «human life»⁴⁹ or « civilian life»⁵⁰, is a clear ground of concern and alarm for the international community as a whole. In addition, the Security Council has showed its concern due to « ...the prolongation of the conflict between the two countries –Iran and Iraq- resulting in heavy losses of human lives and considerable material damage and endangering peace and security »⁵¹.

Additionally, the Security Council has repeatedly requested the Secretary

43 Preambular paragraph 15, Res. S/RES/2169 (2014) on Iraq.

44 Para. 12, Res. S/RES/1193 (1998) on Afghanistan.

45 Para. 3, Res. S/RES/307 (1971) on the situation between Pakistan and India.

46 Preambular paragraph 4, Res. S/RES/2169 (2014) on Iraq; Para. 3, Res. S/RES/931 (1994) on Yemen; Preambular paragraph 5, Res. S/RES/1076 (1996) on Afghanistan.

47 Preambular paragraph 3, Res. S/RES/2139 (2014) on Syria; Preambular paragraph 2, Res. S/RES/1073 (1996) on Middle East; Para. 1, Res. S/RES/273 (1969) on Senegal.

48 Preambular paragraph 5, Res. S/RES/1052 (1996) on Lebanon; Preambular paragraph 8, Res. S/RES/1132 (1997) on Sierra Leone.

49 Preambular paragraph 2, Res. S/RES/661 (1990) on the situation between Iraq and Kuwait; Preambular paragraph 3, Res. S/RES/405 (1977) on Benin; Preambular paragraph 3, Res. S/RES/733 (1992) on Somalia.

50 Para. 1, Res. S/RES/268 (1969) on Zambia; Preambular paragraph 10, Res. S/RES/93 (1951) on the situation between Israel and Palestine.

51 Preambular paragraph 3, Res. S/RES/582 (1986) on the situation between Iran and Iraq.

General to continue investigations into alleged mass killings of prisoners of war and civilian in specific conflicts and to submit the reports to the General Assembly and the Security Council⁵². In accordance with the practice of the Security Council, mass and extrajudicial killings or massacres constitute a threat to the international peace and security⁵³ and those responsible for violations of international humanitarian law and human rights law must be held accountable⁵⁴. In these circumstances, the Council always acts under Chapter VII of the Charter of the United Nations⁵⁵.

Other types of arbitrary deprivation of life, in which the Security Council has concluded that there exists a threat to the international peace and security, are the ethnic cleansing⁵⁶ and summary executions⁵⁷.

As also indicated by the Security Council, the international community should be committed to help post-conflict societies to regain a normal, «peaceful life», while recognizing that the people of this community bear the ultimate responsibility for national reconciliation and reconstruction of their own country⁵⁸.

3.2. Human Rights Council

In a context of war and armed conflict, there is always a gross and systematic violation of all human rights and fundamental freedoms⁵⁹, including, among

52 Para. 12, Res. S/RES/1193 (1998) on Afghanistan; Preambular paragraph 12, Res. S/RES/2158 (2014) on Somalia.

53 Preambular paragraph 3, Res. S/RES/1072 (1996) on Burundi; Preambular paragraph 1, Res. S/RES/134 (1960) on South-Africa; Preambular paragraph 9, Res. S/RES/2149 (2014) on Central African Republic.

54 Preambular paragraph 5, Res. S/RES/2155 (2014) on South Sudan.

55 Para. 2, Res. S/RES/2170 (2014) on Syria.

56 Preambular paragraph 5, Res. S/RES/873 (1993) on Georgia.

57 Preambular paragraph 19, Res. S/RES/2164 (2014) on Mali; Preambular paragraph 11, Res. S/RES/2136 (2014) on Democratic Republic of the Congo.

58 Preambular paragraph 4, Res. S/RES/865 (1993) on Somalia and Preambular paragraph 6, Res. S/RES/886 (1993) on Somalia.

59 Statement delivered by Peru, Italy, Mexico, Greece, Norway, Chile on Myanmar, 2 October 2007; Switzerland, African Union, Pakistan, United Kingdom, Ghana, Panama, Maldives,

other human rights violations⁶⁰, extrajudicial killings or summary executions⁶¹. In particular, the right to life and security of people and their fundamental dignity is always under threat, even violated, in this type of dreadful situation⁶². To achieve a genuine peace and stability, the country in conflict should firstly immediately cease all type of violence (i.e. cease-fire)⁶³. Secondly, States should re-establish again the full respect and implementation of fundamental rights and freedoms⁶⁴.

Belgium on Democratic Republic of the Congo, 28 November 2008; Jordan, Egypt, Sweden, Australia, European Union, Norway, United States of America, Maldives, Republic of Korea, Brazil, Burkina Faso, Mauritius on Cote d'Ivoire, 23 December 2010; Zambia, European Union, Indonesia, Switzerland, France, Malaysia, Argentina, Netherlands, Azerbaijan, African Union, Estonia, United States of America on Darfur, 12 December 2006; Norway, Japan, Malaysia, Belgium, Jordan, Republic of Korea, Guatemala, Germany, Honduras, Turkey, OIC, Liechtenstein, Romania, Afghanistan, African Union, Iran, Bulgaria, Canada, Lithuania, Costa Rica, Portugal, South Africa, Sweden, Luxembourg on Libyan Arab Jamahiriya, 25 February 2011; Peru, Chile, United Kingdom of Great Britain, Algeria, Germany, Gabon, Montenegro, United States of America, Japan, Italy, Morocco, Romania, Austria, Estonia, South Africa, Viet Nam, Republic of Congo, Brazil, Togo, Lithuania, Spain, Belgium, Norway, Canada, Hungary, Slovakia, Holy See, Luxembourg, Paraguay, Chad, Israel on the Central African Republic, 20 January 2014.

60 Sexual violence, looting, forced displacement, large-scale of arrest, abductions, forced recruitment of children, beatings, disappearance, torture, arbitrary detention, forced labour practices or lack of fundamental economic rights.

61 Statement delivered by France, Peru, Switzerland, Australia, Norway, Sweden, Luxembourg, Denmark, Finland, Czech Republic, Slovakia, Poland, Belgium on Myanmar, 2 October 2007; Switzerland, United Kingdom, Zambia, Canada, Italy, Slovakia, Chile, Ghana, Argentina, Germany, Uruguay, Republic of Korea, Nigeria, Norway, Denmark, Holy See, Ireland, Panama, Finland, Israel, New Zealand, Maldives, Belgium on Democratic Republic of the Congo, 28 November 2008; Austria, Spain, European Union, United Kingdom, Norway, United States of America, Maldives, Republic of Korea, Brazil, Mauritius, Zambia, Switzerland, Mexico, Chile on Cote d'Ivoire, 23 December 2010; Sudan, Ghana, Germany, France, United Kingdom, Poland, Canada, UNFPA, Ireland, Albania, Sweden, Chad, UNICEF, Slovakia, Luxembourg, UNHCR, Slovenia, Norway on Darfur, 12 December 2006; European Union, Nigeria, France, Poland, Maldives, Uruguay, Spain, Belgium, Jordan, Ireland, Netherlands, Indonesia, Denmark, Liechtenstein, Romania, Bulgaria, Portugal, South Africa on Libyan Arab Jamahiriya, 25 February 2011; African Union, European Union, Mexico, Argentina, France, Czech Republic, United Kingdom of Great Britain, Ireland, Germany, Montenegro, United States of America, Morocco, Austria, Mexico, Estonia, South Africa, Viet Nam, African Union, Lithuania, Spain, Belgium, Australia, Norway, Hungary, Slovakia, Luxembourg, Croatia, Latvia, Paraguay, Poland, Niger, Liechtenstein, Switzerland on the Central African Republic, 20 January 2014.

62 Statement delivered by Romania, Netherlands, Australia, Denmark, Colombia, Poland, Belgium on Myanmar, 2 October 2007; Holy See on Democratic Republic of the Congo, 28 November 2008; Turkey, Switzerland, Mexico on Cote d'Ivoire, 23 December 2010; Zambia, Senegal, Albania, United States of America on Darfur, 12 December 2006; European Union, Maldives, Norway, Jordan, Slovakia, Guatemala, Ecuador, Netherlands, Germany, India,

4. The protection of the right to life in a conflict situation

Both the Security Council and the Human Rights Council deals with situations of armed conflict in which human rights, and in particular the deprivation of life, are massively violated. While the Security Council is the competent body to determine whether the violation of the right to life, among other rights, threaten international peace and security, the Human Rights Council investigates on the field the human rights situation in the specific country.

Unlike the Security Council, the HRC is not the competent body to deal with matters linked to the maintenance of international peace and security in the world⁶⁵. Pursuant UNGA resolution 60/251 of 2006, the HRC is trusted to work in some of the purposes and principles contained in the UN Charter (i.e. friendly

Australia, Turkey, Liechtenstein, New Zealand, Colombia, Iran, Lithuania on Libyan Arab Jamahiriya, 25 February 2011; Holy See on the Central African Republic, 20 January 2014.

63 Statement delivered by the United Kingdom, Germany, Romania, Indonesia, Mexico, Netherlands, New Zealand, Finland, Chile, Poland on Myanmar, 2 October 2007; Switzerland, Pakistan, India, United Kingdom, Canada, Italy, Angola, Ghana, Bangladesh, Germany, Uruguay, Indonesia, Nigeria, Norway, Holy See, Ireland, Finland, New Zealand on Democratic Republic of the Congo, 28 November 2008; Ecuador, Indonesia, Austria, Peru, Sweden, European Union, Norway, Maldives, Republic of Korea, Brazil, Malaysia on Cote d'Ivoire, 23 December 2010; Algeria, European Union, Switzerland, Malaysia, United Kingdom, Poland, India, Senegal, Azerbaijan, Egypt, Democratic People's Republic of Korea, Ireland, African Union, Luxembourg, UNHCR, Brazil, Australia, Chile, Iran, United States of America, Hungary, Norway, on Darfur, 12 December 2006; Pakistan, France, Poland, Norway, Chile, Japan, Malaysia, Angola, Belgium, Jordan, Slovakia, Netherlands, Peru, OIC, Afghanistan, Colombia, African Union, Bulgaria, Canada, Lithuania, Costa Rica, Czech Republic, Sweden, Luxembourg on Libyan Arab Jamahiriya, 25 February 2011; African Union, Republic of Congo, United Kingdom of Great Britain, Indonesia, Germany, Italy, Estonia, Sierra Leone, Maldives, South Africa, Brazil, Turkey, Egypt, Tunisia, Croatia, Latvia, Thailand, Poland, UNICEF, Switzerland on the Central African Republic, 20 January 2014.

64 Statement delivered by Zambia, France, United Kingdom, Germany, Romania, Republic of Korea, Australia, Greece, New Zealand, Denmark, Slovakia, Colombia, Belgium, Estonia on Myanmar, 2 October 2007; Netherlands, Italy on Democratic Republic of the Congo, 28 November 2008; Ecuador on Cote d'Ivoire, 23 December 2010; Argentina, Iran on Darfur, 12 December 2006; United Kingdom, Mexico, Maldives, Chile, Argentina, Republic of Korea, United States of America, Thailand, Netherlands, India, Indonesia, Australia, Holy See, Paraguay, Bolivia, Lithuania, Costa Rica, Czech Republic on Libyan Arab Jamahiriya, 25 February 2011; European Union, Mexico, Indonesia, Germany, Egypt on the Central African Republic, 20 January 2014.

65 GUILLERMET FERNANDEZ, C. and FERNANDEZ PUYANA, D. , «From a Culture of Conflict to a Culture of Peace, Human Rights and Development», *Pace diritti umani*, 2-3, maggio-dicembre 2013, p. 26-27.

relations among nations, self-determination of peoples, international cooperation and promotion of human rights and fundamental freedoms for all)⁶⁶, but never on matters related to breach of peace, the use or threat of force or the crime of aggression.

The UNGA clearly decided that the Council should address situations of gross and systematic violations of human rights⁶⁷ and also contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies⁶⁸. Therefore, the HRC is exclusively focused on those who truly suffer in a conflict: human beings and peoples.

The HRC is competent to approach to conflicts situations, but always through the human rights perspective, and in particular the right to life, but never through the notion of the peace and international security understood in light of the Charter VII of the United Nations (i.e the threat or use of force).

Because of human rights violations and high number of casualties in conflict situation, the HRC has convened several special sessions at the request of one third of the membership of the Council⁶⁹. Most of these sessions have finished with the adoption upon consensus of a resolution, by which the Council decided to dispatch a Fact-Finding Mission or independent commission of inquiry with the mandate to assess the human rights situation in the specific country in conflict. These missions are usually comprised by one or several highly qualified persons, whose are appointed by the President of the HRC after consulting with the members of the Council.

In particular, the HRC has created upon consensus in its special sessions some human rights mechanisms to monitor the implementation of the respective

66 Preamble, paragraph 1, UNGA res. 60/251 on the Human Rights Council.

67 Doc. A/RES/60/251 on the Human Rights Council, 3 April 2006. Art. 3.

68 Doc. A/RES/60/251, *op. cit.*, note 57. Art. 5.f.

69 Doc. A/RES/60/251, *op. cit.*, note 876. Art. 10.

resolutions in Darfur⁷⁰, Myanmar⁷¹, Democratic Republic of the Congo⁷², Cote d'Ivoire⁷³, Libyan Arab Jamahiriya⁷⁴ and Central African Republic⁷⁵. In all these conflicts the arbitrary deprivation of life of unarmed civilian, in particular women and children, was a widespread practice⁷⁶.

The positive added value of the HRC, and in particular its special sessions, is to focus on those who truly suffer in a conflict. It is a forum for dialogue, not confrontation, which always works, by and for the victims⁷⁷. Its primary objective is to safeguard the human rights of all persons⁷⁸ and to address the desperate human rights crisis⁷⁹. It follows that the obligation of the Council is to respond, examine, denounce, intervene and react to egregious human rights violations in

70 Doc. A/HRC/S-4/101, situation of human rights in Darfur, 13 December 2006.

71 Doc. A/HRC/S-5/1, situation of human rights in Myanmar, 2 October 2007.

72 Doc. A/HRC/S-8/1, situation of human rights in the east of the Democratic Republic of the Congo, 1 December 2008.

73 Doc. A/HRC/S-14/1, situation of human rights in Cote d'Ivoire in relation to the conclusion of the 2010 presidential election, 23 December 2010.

74 Doc. A/HRC/S-15/1, situation of human rights in the Libyan Arab Jamahiriya, 25 February 2011.

75 Doc. A/HRC/S-20/1, situation of human rights in the Central Africa Republic and technical assistance in the field of human rights, 20 January 2014.

76 GUILLERMET FERNANDEZ, C. and FERNANDEZ PUYANA, D., "Building Human Rights, Peace and Development", *Russia Law Journal*, vol. III, 2015, issue I, p. 70.

77 Statement delivered by Spain, HRC special session on Darfur, 12 December 2006; Chile on Democratic Republic of the Congo, 28 November 2008.

78 Statement delivered by Sierra Leone, HRC special session on the Central African Republic, 20 January 2014; Philippines, Peru on Myanmar, 2 October 2007; Mexico and Chile on Cote d'Ivoire, 23 December 2010; Nigeria on behalf of African Group and Spain on Libyan Arab Jamahiriya, 25 February 2011.

79 Statement delivered by the European Union, African Group, Pakistan, France, New Zealand, Latvia on Myanmar, 2 October 2007; Netherlands and Republic of Korea on Democratic Republic of the Congo, 28 November 2008; Jordan, European Union, Sweden, Spain and Austria on Cote d'Ivoire, 23 December 2010; France, Norway, Chile, Bulgaria, Honduras, Denmark, Belgium, Republic of Korea, Slovakia, United States of America, Thailand and United Kingdom on Libyan Arab Jamahiriya, 25 February 2011; Israel on the Central African Republic, 20 January 2014.

concert with other UN bodies, putting an immediate end to ongoing violence⁸⁰ and finding a peaceful and durable solution to the specific conflict⁸¹. Furthermore, it is imperative of the Council to have a greater understanding of the causes and consequences of conflict in order to decrease and alleviate the suffering of victims⁸² through the adoption of particular recommendations⁸³.

On the other hand, the Security Council is the only competent body to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to make recommendations, or decide what measures to be taken⁸⁴. Although the Security Council has recognized the increasing linkage between human rights and the breach of peace, the operative section of resolutions in Darfur⁸⁵, Democratic Republic of the Congo⁸⁶, Cote d'Ivoire⁸⁷, Libyan Arab Jamahiriya⁸⁸ and Central African Republic⁸⁹ has not focused on specific matters of human rights, with the exception of a reference to the obligation of States to protect the right to life of the population or denounce the high number of casualties. The main purpose of the above resolutions is to make a call for all parties to the conflict to end violence, strengthen dialogue,

80 Statement delivered by Germany, Republic of Korea, Switzerland, Greece, Denmark, Liechtenstein, on Myanmar, 2 October 2007; Pakistan, the United Kingdom, Switzerland, Bolivia and Italy on Democratic Republic of the Congo, 28 November 2008; Peru, Republic of Korea and United Kingdom on Cote d'Ivoire, 23 December 2010; Iran and Canada on Libyan Arab Jamahiriya, 25 February 2011; Latvia, Liechtenstein and Thailand on the Central African Republic, 20 January 2014.

81 Statement delivered by Niger, HRC special session on the Central African Republic, 20 January 2014.

82 Statement delivered by Mexico, HRC special session on Democratic Republic of the Congo, 28 November 2008.

83 Statement delivered by Argentina on Myanmar, 2 October 2007.

84 Art. 39 of the UN Charter.

85 Doc. S/RES/1714 (2006), 6 October 2006.

86 Doc. S/RES/1857 (2008), 22 December 2008.

87 Doc. S/RES/1962 (2010), 20 December 2010.

88 Doc. S/RES/2016 (2011), 27 October 2011.

89 Doc. S/RES/2134 (2014), 28 January 2014.

sign a peace agreement, foster a transition process, respect human rights and humanitarian international law or create humanitarian corridors to assist population.

5. Linkage between the notion of justice, peace and life

As stated by Prof. Ramcharan, “as to the Council had emphasized, peacemaking and human rights must go hand in hand - while recognizing that the primordial nature of and the nexus between peace and justice was the right to life”⁹⁰.

The Convention on Genocide was among the first United Nations conventions addressing humanitarian issues. It was adopted in 1948 in response to the atrocities committed during World War II and followed G.A. Res. 180(II) of 21 December 1947. In its Preamble the State parties recognized that « ...all periods of history genocide has inflicted great losses on humanity, and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required ».

Article 2 stipulates that genocide is committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, in two specific circumstances: firstly, “killing members of the group” and secondly, “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”.

As indicated by the International Committee of the Red Cross, the jurisprudence of the ICJ considers the prohibition of genocide, and in particular the massive deprivation of life of specific groups, as peremptory norms of international law (see Reservations to the Convention on Genocide, 1951 I.C.J. Rep. 15, 23; see also Case Concerning Barcelona Traction, Light and Power Co. (Belg. v. Spain), 1970 International Court of Justice, Rep. 3, 32). Moreover, the ICJ recognizes that the principles underlying the Convention are principles which are recognized by civilized nations binding on States, even without any conventional obligation⁹¹.

90 RAMCHARAN, B. “Coordination with other UN organs” in GENSER, J. and STAGNO UGARTE, B. *The United Nations Security Council in the age of human rights*, Cambridge University Press, New York, 2014, p. 166.

91 RAMCHARAN, B. op. cit. 90, p. 166.

The ICJ has recently ordered provisional measures in a number of cases which have linked peace and justice through the right to life⁹², although these measures have on occasion had limited effect. The Advisory Opinion about the *legality of the use by a State of nuclear weapons in an armed*⁹³ conflict is a “significant example of the potential for using the Court’s advisory jurisdiction to curtail the abuse of human rights ... and in particular the right to life”⁹⁴.

As indicated by the Security Council, «the fight against impunity and the accountability for genocide, crimes against humanity, war crimes and other egregious crimes has been strengthened through the work on and prosecution of these crimes in the international criminal justice system»⁹⁵. Nowadays, there is a strong opposition to accept the impunity for serious violations of international humanitarian law and human rights law.

It follows that States has the responsibility « ... to comply with their relevant obligations to end impunity and, to that end, to thoroughly investigate and prosecute persons responsible for genocide, crimes against humanity, war crimes, or other serious violations of international humanitarian law and international human rights law, in order to avoid their recurrence and to seek sustainable peace, justice, truth and reconciliation »⁹⁶.

In 1993 the Security Council expressed its grave alarm at continuing reports of

92 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Yugoslavia), Provisional Measures Order, ICJ Reports 1993, 3; *Land and maritime boundary between Cameroon and Nigeria* (Cameroon v. Nigeria), Provisional Measures Order, ICJ Reports 1996, 13; *LaGrand* (Germany v. United States), ICJ Reports 1999 and *Vienna Convention on Consular Relations* (Paraguay v. United States) (“Bread”), ICJ Reports 1998.

93 Nuclear Weapons, Adv. Op., ICJ Reports 1996, 66.

94 GARLAND, R., “The International Court of Justice and human rights in the 1990s –linking peace and justice through the right to life” in YEE, S. and TIEYA, W., *International Law in the Post-Cold War World*, Routledge Studies in International Law, London and New York, 2001, p. 398-408.

95 Security Council Resolution 2175 (2014), 29 August 2014, Sets Out Steps to Halt ‘Increasingly Common’ Attacks on Humanitarian Workers, Preamble, paragraph 9.

96 Res. S/RES/2150 (2014) on genocide.

widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings and practice of ethnic cleansing. This situation was considered by the Security Council as a threat to international peace and security. In order to restore and maintain peace, the Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law⁹⁷.

In 1994 the Security Council again expressed its concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law committed in Rwanda. For this UN body, this situation continued to constitute a threat to international peace and security. Acting under Chapter VII of the Charter of the United Nations, the Security Council decided to establish an international tribunal⁹⁸.

The Security Council has declared that the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace⁹⁹.

In addition, the Human Rights Council has reiterated¹⁰⁰ the «...responsibility of each individual State to protect its population from genocide, which entails the prevention of such a crime, including incitement to it, through appropriate and necessary means» (para. 2); «...the important role of the United Nations human rights system, including that of the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights and relevant special procedures and treaty bodies in addressing the challenge of collating information on massive, serious and systematic violations of human rights, thereby contributing to a better understanding and early warning of complex

97 Res. S/RES/827 (1993) on the situation of Former Yugoslavia.

98 Res. S/RES/955 (1994) on the situation of Rwanda.

99 Preambular paragraph 6, Res. S/RES/827 (1993) on the situation of Former Yugoslavia and Preambular paragraph 7, Res. S/RES/955 (1994) on the situation of Rwanda.

100 Res. A/HRC/RES/22/22, 12 April 2013, prevention on genocide.

situations that might lead to genocide (para. 11) and «...the importance of the universal periodic review mechanism of the Human Rights Council, which is an important instrument for advancing human rights» (para. 12).

6. The notion of the right to life or live in peace

The Human Rights Committee has issued two General Comments interpreting the content of Art. 6 on the right to life contained in the ICCPR. Both comments focus on the duty of States to prevent mass violence such as war and emphasize the duty of States to adopt positive measures to protect the right to life¹⁰¹.

In the first of these General Comments, adopted on 27 July 1982 (16th session), the Committee pointed out that: "... every effort they make to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life..."¹⁰². In its second General Comment, adopted on 2 November 1984 (23rd session), the Committee, after expressing its concern by the toll of human life taken by conventional weapons in armed conflicts, noted that: "... the very existence and gravity of this threat (nuclear weapons) generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights"¹⁰³.

This latter General Comment met with vehement criticism in the Social, Humanitarian Cultural Affairs Committee (GA Third Committee) because of the big opposition coming from Western States. Committee members Ermacora and Errera stated that the demand that the production and possession of nuclear weapons be recognized as crimes against humanity exceeds the Committee's competence. On the other hand, other members Opsahl, Coté-

101 MOLLER, J. TH. and ZAYAS, A. *United Nations Human Rights Committee Case Law 1977-2008: a Handbook*, Kehl/Strasbourg, Engel Publisher, 2009, p. 144.

102 Doc. General Comment No. 6: The right to life (art. 6): 30 April 1982, para. 2.

103 Doc. General Comment No. 14: The right to life (art. 6): 9 November 1984, para. 5.

Harper, Dimitrijevic and Tomuschat considered that “the Committee should take care not to undermine its own authority as the most important quasi-judicial organ of human rights protection within the framework of the United Nations by making political decisions in the area of “soft” international law”¹⁰⁴.

The right to life or live in peace have been constantly elaborated in the work of the Security Council and the Human Rights Council. It demonstrates that one of the nexus between both UN intergovernmental bodies is through the notion of life as a paramount right, which main mandate-holders are States and individuals.

In 1967 the Security Council unanimously adopted under Chapter VI the resolution 242 by which Council members recognized that a just and lasting peace in Middle East includes “...their right to live in peace within secure and recognized boundaries free from threats or acts of force”.

During the debate of this resolution the representative of India stated that «there was considerable agreement on the principle that every State has the right to live in peace and complete security free from threats or acts of war and consequently all States in the area should terminate the state or claim of belligerency and settle their international disputes by peaceful means » (para. 46).

Additionally, the representative of France and Argentina added that they were glad to see that the resolution stresses the second principle, the right to live in peace within its own boundaries (para. 113 and 164)¹⁰⁵.

This resolution is one of the most widely affirmed resolutions on the Arab–Israeli conflict and formed the basis for later negotiations between the parties. These led to include the notion of the «right to live in peace» into the Peace Treaties

104 NOWAK, M., *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, Engel Publisher, Kehl/Strasbourg/Arlington, 2005, p. 109.

105 Security Council Official Records, Twenty-second year 1382 meeting, 22 November 1967, New York.

between Israel and Egypt (1979)¹⁰⁶ and Jordan (1994)¹⁰⁷.

The “right to live in peace” is principally devoted to the relationship among countries without referring properly to international human rights law. This notion is principally referred to the principles included in Art. 2 of the Charter (i.e. prohibition of the threat or use of force against the territorial integrity or political independence of any State; settlement of international disputes by peaceful means; prohibition to intervene in matters within the domestic jurisdiction; cooperation among States; self-determination of peoples and sovereign equality of States).

In 1978 the General Assembly adopted the «Declaration on the Preparation of Societies for Life in Peace». Both this Declaration and the «Universal Declaration of Human Rights» share the same legal ways aimed at widely promoting the peace values and principles contained in human rights law, by proclaiming teaching and education as key elements to develop more peaceful societies. The human rights dimension is a key element in the «Declaration on the Preparation of Societies for Life in Peace». This human rights component can be found in its Art. 1, which recognizes that “Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace”.

The “right to life” and the “right to live” are not –or should not be– terms with necessarily different meanings and legal content by being considered as equivalent, interdependent and interrelated. However, the right to life is the manifest aspect of the right to live, and the right to live exists and is exercised as a result of recognition of, and respect for, the right to life¹⁰⁸. In other words,

106 Preamble: “peace requires respect for the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force”.

107 Preamble: “...Reaffirming their faith in the purposes and principles of the Charter of the United Nations and recognizing their right and obligation to live in peace with each other as well as with all states, within secure and recognized boundaries”; Art. 2: “The Parties will apply between them the provisions of the Charter of the United Nations and the principles of international law governing relations among states in times of peace. In particular: ... 2. They recognize and will respect each other’s right to live in peace within secure and recognized boundaries”.

108 GROSS ESPIELL, H., “Right to life and right to live”, in D. Premont, *Essays on the right to life*, Association of International Consultants on Human Rights, Brussels, 1988, p. 43 and OKECHUKWU, H., The right to life and the right to live: Ethics of international solidarity,

the right to live is the active exercise of inalienable right to life, which has as a main purpose the full and free development of the human dignity and personality¹⁰⁹. Therefore, the “recognition of the right to life and the affirmation of the right to live are intended to ensure that the authorities take measures to guarantee that life may be lived in a natural and dignified manner and that the individual has every possible means at his disposal for this purpose”¹¹⁰.

In order to progressively eliminate armed conflict and war over the earth and consequently to live in a context of peace, the protection of human rights and dignity should be in the center of all decision-making processes in both the national and international level. It follows that different stakeholders should adopt positive measures in the economic, social and cultural fields on peace matters through the promotion of human rights and human dignity¹¹¹.

7. Prevention of armed conflict and protection of human life

Both the Security Council and Human Rights Council play an important role in the prevention of armed conflict through the promotion and protection of all human rights for all, in particular the right to life.

The Security Council has showed its deeply concern on the consequences of armed conflict on relations between and among States, the economic burden on the nations involved as well as on the international community, and above all, the humanitarian consequences of conflicts for unarmed civilian¹¹².

As indicated by the President of the Security Council, this UN Body “...

Series XXIII, Theology, Vol./Bd. 387, European University Studies, Paris.

109 BALANDA, L., « Le droit de vivre »; VEUTHEY, M., « Le droit à la survie, fondement du droit humanitaire » and P. RICHARD, P., « Droits de l'homme, paix et désarmement. Éléments essentiels de la garantie du droit de vivre », in PREMONT, D., *Essays on the right to life*, Brussels, Association of International Consultants on Human Rights, 1988.

110 GROSS ESPIELL, H., *op.cit.*, note 108, p. 43-45.

111 GUILLERMET FERNANDEZ, C. and FERNANDEZ PUYANA, D. , *op. cit.* 65, p. 35.

112 Preambular paragraph 5, Res. S/RES/1366 (2001).

recognizes the link between the prevention of armed conflict, the facilitation of the peaceful settlement of disputes and the promotion of security for the civilian population, in particular the protection of human life”¹¹³.

The prevention of conflict remains a primary responsibility of States, and further there exists a primary responsibility to protect civilians and to respect and ensure the human rights of all individuals. In particular, the Security Council has the primary responsibility for the maintenance of international peace and security in accordance with the Purposes and Principles of the Charter of the United Nations. It follows that the Security Council has a continuing commitment to addressing the prevention of armed conflict in all regions of the world¹¹⁴.

In August 2014, the Security Council expressed “its determination to pursue the objective of prevention of armed conflict as an integral part of its primary responsibility for the maintenance of international peace and security” and called upon “all States to intensify efforts to secure a world free of the scourge of war and conflict”¹¹⁵.

The Security Council recognizes that peace is not only the absence of conflict, but requires a positive, dynamic, participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation¹¹⁶. It is important that peaceful settlement of disputes and mediation be launched at the earliest possible phases of conflicts, due to peace only can be achieved through full participation and genuine commitment of all parties in conflict¹¹⁷.

The Security Council has reiterated the need for a comprehensive approach to conflict prevention and sustainable peace, which addresses the root causes of armed conflict, including through strengthening the rule of law at international

113 Statement by the President of the Security Council, S/PRST/1999/34, 30 November 1999.

114 Preambular paragraph 5, Res. S/RES/2171 (2014).

115 Para. 1 and 2, Res. S/RES/2171 (2014).

116 Statement by the President of the Security Council, S/PRST/2000/25, 20 July 2000.

117 Statement by the President of the Security Council, S/PRST/2009/8, 21 April 2009.

and national levels and promoting economic growth, poverty eradication, social development, national reconciliation and respect for, and protection of, human rights¹¹⁸. Each individual State has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity¹¹⁹. It follows that the fight against impunity for this egregious crimes is an important element of conflict prevention¹²⁰. Therefore, the protection of human rights, and in particular the right to life, can be as valuable in preventing conflicts as in healing the wounds after conflicts have occurred.

In accordance with resolution 60/251, the General Assembly decided that the Human Rights Council should "... contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies"¹²¹.

The Human Rights Council resolution 14/3 of 2010 explicitly recalled the United Nations Declaration and Programme of Action on Culture of Peace, 1999, and the UNGA resolution 53/25 proclaiming 2001-10 as the International Decade for a Culture of Peace and Non-Violence for the children's of the world¹²² and "calls upon States and relevant United Nations bodies to promote effective implementation of the United Nations Declaration and Programme of Action on Culture of Peace"¹²³.

The Programme of Action of Culture of Peace has included some human rights topics, in which the Human Rights Council have already focused its attention, such as human security, poverty, education, development, environment, vulnerable groups, refugees and migrants. The international community should progressively elaborate these notions in order to promote a culture of prevention of armed conflicts.

118 Preambular paragraph 9, Res. S/RES/2171 (2014).

119 Statement by the President of the Security Council, S/PRST/2011/18, 22 September 2011.

120 Statement by the President of the Security Council, S/PRST/2013/4, 15 April 2013.

121 Art. 5 (f), A/RES/60/251, 3 April 2006, on the Human Rights Council.

122 Doc. resolution A/HRC/14/L.12, par. 4 of Preamble.

123 Doc. Resolution A/HRC/14/L.12, par. 11.

The President of the Security Council has recognized the importance of appropriate implementation of the Declaration and Programme of Action on Culture of Peace for preventing violence and conflicts as well as strengthening efforts aimed at the creation of conditions of peace and its consolidation through post-conflict peace-building¹²⁴. Additionally, the Security Council has stressed the need to create conditions for durable peace and sustainable development by addressing the root causes of armed conflict and to this end, has called upon, Member States and relevant bodies of the UN system to contribute to the effective implementation of the Declaration and Programme of Action on Culture of Peace¹²⁵.

The Declaration and Programme of Action on a Culture of Peace recognized in its Article 1 the interlinkage between the notions of peace, fundamental freedoms and life as follows: “a culture of peace is a set of values, attitudes, traditions and modes of behavior and ways of life based on...: “(a) Respect for life, ending of violence and promotion and practice of non-violence through education, dialogue and cooperation”; and (c) Full respect for and promotion of all human rights and fundamental freedoms”¹²⁶.

In 2014, the Security Council expressed its commitment to consider and use the tools of the United Nations system to ensure that early warning of potential conflicts translates into early, concrete preventive action, including towards the goal of protecting civilians. In addition, it recognized the important role to play by the OHCHR in conflict prevention¹²⁷.

In accordance with the statements delivered by the different stakeholders during the Special Sessions of the HRC, States should strengthen international cooperation with the human rights mechanism and among nations in order to reduce the cycle of violence and consolidate universal peace.

124 Statement by the President of the Security Council, S/PRST/2000/25, 20 July 2000.

125 Para. 21, Res. S/RES/1366 (2001).

126 *Declaration and Programme of Action on a Culture of Peace*, UNGA Doc. A/RES/53/243, 6 October 1999, art. 1.

127 Para. 17 and 20, Res. S/RES/2171 (2014).

The special procedures of the HRC are a useful way “...to monitor the human rights situation in the countries and take all action to avoid a repetition of past patterns when conflicts ravaging a country have made international headlines, only to be forgotten until a new crisis emerges”¹²⁸. Human rights violations are often a root cause of conflict and human rights are always an indispensable element in achieving peace and reconciliation. It follows that the failure to adequately address the root causes of the conflict will risk leading to further outbreaks of large-scale violence¹²⁹. The priority of the special procedures is that the interests of justice be served and to assist in ensuring that all human rights be protected¹³⁰.

By virtue of their independence and the nature of their mandates, the different mandate holders are “well placed to function as early warning mechanisms, as alarm bells,” according to the High Commissioner for Human Rights, [Navi Pillay](#). Since those special procedures cover all types of human rights, they are able to help defuse tensions at an early stage. The mandates focus on specific situations and make recommendations to governments to address problems, wherever they occur in the world.

In accordance with the Charter of the United Nations the Security Council could invite and actually, invite any other person whom it considers competent. The HRC might give its opinion to the Security Council about whether a situation of human rights emergency or violation constitutes a breach of international peace and security. However, it is for the Security Council to make the determination whether a situation breaches international peace and security. It will always be left to the judgment of the Security Council whether to act on such information or advice from the HRC. There can be no automaticity in the way the Security Council discharges its functions. “But if the HRC were to decide to make such a

128 Statement by Chaloka Beyani, Chairperson of the Coordination Committee of Special Procedures, Twentieth Special Session of the Human Rights Council on the situation of human rights in the Central African Republic, 20 January 2014.

129 Statement by Manuela Carmena Castrillo, Chairperson of the Coordination Committee of Special Procedures, Eight Special Session of the Human Rights Council on the situation of human rights in the East of the Democratic Republic of Congo, 28 November 2008.

130 Statement by Jose Luis Gomez del Prado, Chairperson of the Coordination Committee of Special Procedures, Eight Special Session of the Human Rights Council on the situation of human rights in the Libyan Arab Jamahiriya , 25 February 2011.

referral, it should do so by consensus –that is to say, without dissenting vote. Were this threshold to be achieved, the HRC, in its decision, could also request that the Security Council hear its President or other designee”¹³¹.

Article 30 of the Charter provides that the Security Council shall adopt its own rules of procedure. Rule 39 of the Provisional Rules of Procedure of the Council states that the Council may invite « any other person whom it considers competent » to participate in its proceedings. The request for the participation of “other persons” must be put forward by authorized UN organs¹³².

Since 1970, Rule 39 has been applied more and more often. The invitations has been extended to representatives of the UN Secretariat, SC missions, SC subsidiary bodies, representatives of other UN organs, programs, funds and agencies.

As indicated by Ramcharan, “the relationship between the High Commissioner and the Security Council started on a very tenuous basis. But it has since grown into stronger, although still limited, partnership, with the High Commissioner serving as a key agent for the provision of information; as a voice of conscience addressed to, and inside, the Council; as an advocate for justice in the face of criminal violations of human rights”¹³³.

Conclusions

The right to life has properly been characterized as the supreme human right, since without effective guarantee of this right, all other rights of the human being would be devoid of meaning¹³⁴. This fundamental right is the most relevant fundamental human right violated in a context of armed conflict and violence.

One of the nexus between the Security Council and the Human Rights Council

131 RAMCHARAN, B., op. cit. 90, p. 161.

132 BRUNO SIMMA et al. (eds), op. cit. 1, p. 1044.

133 RAMCHARAN, B., op. cit. 90, p. 165.

134 NOWAK, op. cit. 34, p. 121.

is through the notion of life as a paramount right, which main mandate-holders are States and individuals. In the Security Council, there is a constant practice which considers that the deprivation of life constitutes in many occasions a threat to international peace and security. In a context of war and armed conflict there is a gross and systematic violation of most of human rights and fundamental freedoms, including the right to life. Therefore, the right to life or live in peace have been constantly elaborated in the work of the Security Council and the Human Rights Council.

Both the Security Council and the Human Rights Council deals with situations of armed conflict in which human rights, and in particular the deprivation of life, are massively violated. While the Security Council is the competent body to determine whether the violation of the right to life, among other rights, threaten international peace and security, the Human Rights Council investigates on the field the human rights situation in the specific country.

The nexus between peace and justice is the right to life. The fight against impunity and the accountability for genocide, crimes against humanity, war crimes and other egregious crimes has been strengthened through the work on and prosecution of these crimes in the international criminal justice system. Nowadays, there is a strong opposition to accept the impunity for serious violations of international humanitarian law and human rights law.

Both the Security Council and Human Rights Council play an important role in the prevention of armed conflict through the promotion and protection of all human rights for all, in particular the right to life. Both UN bodies have showed its deeply concern on the consequences of armed conflict on relations between and among States and above all, the humanitarian consequences of conflicts for unarmed civilian.

There is a linkage between the prevention of armed conflict, the peaceful settlement of disputes and the promotion of security for the civilian population, in particular the protection of human life. It follows that the prevention of conflict remains a primary responsibility of States, and further there exists a primary responsibility to protect civilians and to respect and ensure the human rights of all individuals.

References

BALANDA, L. (1988), "Le droit de vivre"; in PREMONT, D., *Essays on the right to life*, Brussels, Association of International Consultants on Human Rights.

BARROSO, L.R. (2012), "Here, there and everywhere: human dignity in contemporary and in the transitional discourse", *International and Comparative Law Review*, 331.

BROOKS, R. (2014), "Civilian and armed conflict" in GENSER, J. and STAGNO UGARTE, B., *The United Nations Security Council in the age of human rights*, Cambridge University Press, New York.

CORNISH, P. (2001), "Terrorism, Insecurity and Underdevelopment", *Journal of Conflict, Security and Development*, 30.

GROSS ESPIELL, H. (1988), "Right to life and right to live", in D. Premont, *Essays on the right to life*, Association of International Consultants on Human Rights, Brussels.

GARLAND, R. (2001), "The International Court of Justice and human rights in the 1990s –linking peace and justice through the right to life" in YEE, S. and TIEYA, W., *International Law in the Post-Cold War World*, Routledge Studies in International Law, London and New York.

GUILLERMET FERNANDEZ, C. and FERNANDEZ PUYANA, D. (2013), "From a Culture of Conflict to a Culture of Peace, Human Rights and Development", *Pace diritti umani*, 2-3.

GUILLERMET FERNANDEZ, C. and FERNANDEZ PUYANA, D., (2015), "Building Human Rights, Peace and Development", *Russia Law Journal*, 3, 1.

HAYDEN, P. (2004), "Constraining war: human security and the human right to peace", *Human Rights Review*, 6, 1.

LINARELLI, J. (1996), "Peace-building", *Denver Journal of International Law and Policy*, 24.

LIVA TEHINDRAZANARIVELO, D. and KOLB, R. (2006), "Peace, Right to, International Protection", *Max Planck Encyclopedia of Public International Law*, December.

MACLAURIN, J. (1951), *The United Nations and Power Politics*, Harper & Brothers, New York.

MCFARLANE, H. and FOONG KHONG, Y. (2005), *Human security and the UN: A critical history*, Indiana University Press, Bloomington, Ind.

MOLLER, J. TH. and ZAYAS, A. (2009), *United Nations Human Rights Committee Case Law 1977-2008: a Handbook*, Engel Publisher, Kehl/Strasbourg.

NOWAK, M. (2005), *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, Engel Publisher, Kehl/Strasbourg.

OKECHUKWU, H. (1990), *The right to life and the right to live: Ethics of international solidarity*, European University Studies, Paris.

RABKIN, J. (2003), "What we can learn about human dignity from international law", *Harvard Journal of Law and Public Policy*, 27.

RAMCHARAN, B. (1983), "The Right to Life", *Netherlands International Law Review*, 30, 3.

RAMCHARAN, B. (2014), "Coordination with other UN organs" in GENSER, J. and STAGNO UGARTE, B., *The United Nations Security Council in the age of human rights*, Cambridge University Press, New York.

RICHARD, P. (1988), "Droits de l'homme, paix et désarmement. Éléments essentiels de la garantie du droit de vivre", in PREMONT, D., *Essays on the right to life*, Association of International Consultants on Human Rights, Brussels.

RILEY, S. (2010), "Human dignity: comparative and conceptual debates", *International Journal of Law in context*, 6.

SIMA, B., KHAN, D.E. and PAULUS, A., (2012), *The Charter of the United*

Nations, A commentary, Oxford University Press, Oxford, third edition.

SYMONIDES, J. (2006), "Towards the Universal Recognition of the human right to peace", *International Affairs Review*, 1.

VEUTHEY, M. (1988), "Le droit à la survie, fondement du droit humanitaire", in PREMONT, D., *Essays on the right to life*, Association of International Consultants on Human Rights, Brussels.

WICKS, E. (2012), "The meaning of life: dignity and the right to life in international human rights treaties", *Human Rights Law Review*, 12, 2.