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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Report of the Office of the High Commissioner on the outcome of the expert workshop on the right of peoples to peace

Summary

The present report summarizes the discussions held during the expert workshop on the right of peoples to peace, as requested by the Human Rights Council in resolution 11/4.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–8	3
II. Session 1: Different dimensions of the right of peoples to peace.....	9–21	4
III. Session 2: Content of the right of people to peace	22–30	7
IV. Session 3: The right of peoples to peace from a human rights perspective	31–47	9
V. Session 4: Measures and actions to raise awareness and to promote the right of peoples to peace.....	48–59	13
Annex		
List of experts participating in the consultation		16

I. Introduction

1. In its resolution 11/4 on promotion of the rights of peoples to peace, the Human Rights Council requested the United Nations High Commissioner for Human Rights to convene, before February 2010, and taking into account previous practices, a workshop on the right of peoples to peace, with the participation of experts from all regions of the world, in order to: (a) further clarify the content and scope of this right; (b) propose measures that raise awareness of the importance of realizing this right; and (c) suggest concrete actions to mobilize States, intergovernmental and non-governmental organizations in the promotion of the right of peoples to peace. The Council further requested the High Commissioner to report on the outcome of the workshop to the Council at its fourteenth session. The present report is submitted in accordance with that request and provides a summary of the discussion by the experts. The draft was circulated to the experts for their comments.

2. The expert consultation was announced on the website of the Office of the High Commissioner for Human Rights (OHCHR). On 3 December 2009, notes verbales were sent to all permanent missions in Geneva. The expert workshop was held in Geneva on 15 and 16 December 2009. Representatives from 21 Member States of the United Nations: Argentina, Armenia, Bahrain, Belgium, Bolivia (Plurinational State of), Brazil, Cuba, Egypt, Finland, Greece, Jordan, Philippines, Russian Federation, Senegal, Singapore, Slovenia, South Africa, Sri Lanka, Sweden, Venezuela (Bolivarian Republic of) and Viet Nam, as well as a representative from the Holy See and representatives from civil society organizations, attended the workshop.

3. The United Nations Deputy High Commissioner for Human Rights opened the expert workshop. She recalled that peace and human rights were intricately related. She also recalled that the Charter of the United Nations provided that strengthening universal peace and promoting and encouraging respect for human rights without discrimination were among the main purposes of the organization. During the past few decades, the United Nations had worked, with the support of Member States and civil society organizations, towards creating a peaceful environment in which all persons could fully enjoy their fundamental human rights. The existence of armed conflict and other situations of violence had claimed millions of innocent lives and displaced tens of millions of people.

4. The Deputy High Commissioner recalled that the preamble to the Universal Declaration of Human Rights as well as a number of human rights treaties stated that respect for human rights and recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family served as the foundation of freedom, justice and peace. In 1984 the General Assembly, through resolution 39/11, had adopted the Declaration on the Right of Peoples to Peace, which stated that life without war served as the prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations. The Declaration solemnly proclaimed that peoples had a sacred right to peace and declared that the preservation of the right of peoples to peace and the promotion of its implementation constituted a fundamental obligation of each State. It also stressed the importance of peace for the promotion and protection of all human rights for all. The Commission on Human Rights and the Human Rights Council had further reaffirmed the idea that the preservation of the right of peoples to peace and the promotion of its implementation constituted a fundamental obligation of all States.

5. The Deputy High Commissioner pointed out that human rights treaties also contained references to the importance of peace as a precondition for the full enjoyment of fundamental human rights, as well as to the impact of respect for human rights on the creation of a peaceful society. She recalled that the International Convention on the

Elimination of All Forms of Racial Discrimination stated in its preamble that discrimination between human beings on the grounds of race, colour or ethnic origin was an obstacle to friendly and peaceful relations among nations and was capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State. She also noted that the Convention on the Elimination of All Forms of Discrimination against Women provided that the full and complete development of a country, the welfare of the world and the cause of peace required the maximum participation of women on equal terms with men in all fields. The Convention on the Rights of Persons with Disabilities also reaffirmed the crucial role that human rights in general played in creating fair and equal societies founded upon freedom, justice, development and peace.

6. The Deputy High Commissioner recalled that in the 2005 World Summit Outcome the General Assembly had acknowledged that, among others, peace and security, development and human rights were the foundations for collective security and well-being. Moreover, peace and respect for human rights, along with the right to the rule of law and gender equality, among others, were interlinked and mutually reinforcing. Furthermore, the General Assembly had reaffirmed that the promotion and protection of the full enjoyment of all human rights and fundamental freedoms for all were essential to advance development and peace and security.

7. Concerning the issue of the diverse dimensions of the right of peoples to peace, the Deputy High Commissioner indicated that the notion of the right of peoples to peace should be understood in a wider context, including through the experiences of United Nations organs' practice concerning peace and security, disarmament and peacekeeping. All those different aspects had a bearing on the effective enjoyment of human rights, including through the recognition of the effects of armed conflict and other forms of violence on fundamental human rights.

8. The Deputy High Commissioner concluded by recalling that respect for human rights was often more critical in times of conflict, noting that many of the worst human rights violations, including genocide, crimes against humanity and war crimes, occurred in situations of armed conflict and other forms of violent situations. Accountability for gross human rights violations was a crucial component of human rights and could often be conducive to peace. She noted that the protection of human rights and, therefore, the creation of a stable and peaceful environment, were significantly advanced when individuals were held to account for their acts. The challenge was to reflect on more effective ways to ensure that the conditions for all individuals to enjoy their individual human rights were created in all situations.

II. Session 1: Different dimensions of the right of peoples to peace

9. The first panel started with a presentation by Vera Gowlland-Debbas, an honorary professor at the Graduate Institute of International and Development Studies, who recalled that the expansion and increasing complexity of international law had led to a greater need for overarching principles to sustain the unity of the system as a whole. The development of a right to peace, for instance, was not contained in the framework of human rights but was dependent on the links which were being forged between human rights and humanitarian law on the one hand, and between the Charter of the United Nations, the normative framework on the use of force, disarmament or arms control, development and the regime of international peace and security on the other. She noted that the right to peace had never been formalized into a treaty. No international human rights instrument as such mentioned the right to peace in its operative provisions, except for the African Charter on Human and

Peoples' Rights. In recent years, however, there had been a proliferation of soft instruments proclaiming the right to peace as a human right. The core pronouncement could be found in General Assembly resolution 39/11, which solemnly proclaimed that the peoples of our planet have a sacred right to peace. That proclamation was reaffirmed in subsequent General Assembly resolutions, in particular resolutions 53/243, 57/216, 60/163 and 63/189. The right to peace had also been included in Commission on Human Rights resolution 2002/71 and Human Rights Council resolutions 8/9 and 11/4. In addition, civil society organizations such as the Spanish Society for International Human Rights Law and the International Association of Democratic Lawyers had reaffirmed a conviction of the existence of a right of peoples to peace.

10. The expert indicated that the meaning given to the term "peoples" for the purposes of peoples' right to peace still remained unclear, leading to an uncertainty as to the rights holders. The term "peoples" might have different meanings for the purposes of different rights of peoples. Concerning the duty bearers, she recalled that the 1984 Declaration provided that the preservation of the right of peoples to peace and the promotion of its implementation constituted a fundamental obligation of each State. That obligation had been reaffirmed by the General Assembly in subsequent resolutions and reiterated by the Human Rights Commission and the Human Rights Council. The question was whether the duty bearers were individual States, States acting collectively through the United Nations, or the international community as a whole.

11. Ms. Gowlland-Debbas recalled that there was an intimate linkage between human rights and peace. According to the Universal Declaration of Human Rights, peace appeared to be a prerequisite to all human rights in the sense that without peace the exercise of all human rights was illusory. Similarly, the General Assembly, in its resolution 60/163, stressed that peace was a vital requirement for the promotion and protection of all human rights for all. On the other hand, the Charter of the United Nations included the promotion of human rights and fundamental freedoms as instrumental to peace. The preamble to the International Covenant on Civil and Political Rights stated that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family was the foundation of freedom, justice and peace in the world, showing again human rights as a stepping stone to peace. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations stressed the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights. Therefore, there was a circular relationship between peace and human rights, each serving as the foundation for the other.

12. The expert indicated that there had also been an evolution in the functions of the Security Council. In its practice, the Security Council had determined under chapter VII that conduct in violation of norms which served to protect the individual, such as genocide and other serious breaches of human rights, including the right to self-determination, and grave breaches of humanitarian law, even if emanating from intra-State conflicts, constituted threats to international peace and security. The Security Council had increasingly focused on the protection of populations from human rights and humanitarian law violations.

13. Concerning the justiciability of the right to peace and the question of effective remedies, Ms. Gowlland-Debbas recalled that efforts had been made to bring claims before judicial and quasi-judicial bodies, linking weapons of mass destruction and human rights. To date, all such cases had been declared inadmissible on the grounds that the petitioners had failed to demonstrate standing to sue because they could not prove that they had suffered or faced any imminent damage or injury. The International Court of Justice had in recent years become involved in armed conflicts not only from the perspective of the rights

and duties of States, but also from the perspective of the rights of individuals, addressing human rights in armed conflict situations, the relationship between State and individual responsibility, as well as questions of restitution and compensation to individual persons.

14. The expert concluded by indicating that the right to peace had not yet crystallized as a human right within the context of human rights law. Nevertheless, the distinct linkages which were being forged between human rights law and peace and security and disarmament needed further analysis and might be useful in situating and further understanding an emerging right to peace.

15. The second speaker, Alfred de Zayas, a professor at the Geneva School of Diplomacy and International Relations, indicated that many rights were both collective and individual. There was a tendency to perceive the right to peace primarily from the perspective of collective rights. Yet, peace was also a personal right, prior to and indispensable to other rights. In that respect, Mr. de Zayas indicated that it was necessary to abandon the paradigm of first, second and third generation rights, because that paradigm had inherent fallacies and biases. He indicated that peace must be seen as an enabling right that empowered individuals to enjoy civil, political, economic, social and cultural rights. Moreover, one should not be limited to considering peace as the absence of war. Humanity needed to ensure positive peace in the form of social justice. He stated that the right to peace must be understood and implemented in a holistic manner through, among other things, respect for civil and political rights, and must include a focus on the obligations that peace imposed both on States and on individuals.

16. Mr. de Zayas indicated that there was consensus that the responsibility to promote and protect human rights belonged to the territorial State. He indicated that the questions arose when the violations of human rights were so grave and unbearable that it became the responsibility of the international community to intervene. The United Nations had not been established to make war or to engage in military interventions into the domestic affairs of States. He observed that there were situations where international action might have been necessary, and yet it had not been forthcoming. There were other cases where observers had argued that the threshold of violence in the countries concerned had not been reached and yet there had been international action, without the approval of the Security Council.

17. The expert recalled that in July 2009, the General Assembly had started revisiting the doctrine of responsibility to protect. The President of the General Assembly had identified four benchmark questions that should determine whether and when the system of collective security could implement the responsibility to protect doctrine, namely:

(a) Do the rules apply in principle, and is it likely that they will be applied in practice equally to all States, or, in the nature of things, is it more likely that the principle would be applied only by the strong against the weak?

(b) Will the adoption of the responsibility to protect principle in the practice of collective security more likely enhance or undermine respect for international law?

(c) Is the doctrine of responsibility to protect necessary and, conversely, does it guarantee that States will intervene to prevent another situation like in Rwanda?

(d) Does the international community have the capacity to enforce accountability upon those who might abuse the right that the responsibility to protect principle would give States to resort to the use of force against other States?

18. Mr. de Zayas concluded by indicating that the Charter of the United Nations imposed certain *erga omnes* obligations on States. One of those obligations was to condemn the illegal use of force and to deny recognition of the territorial changes arising from the illegal use of force. He noted that while there was a responsibility to protect, there was first and foremost a responsibility to protect humanity from the scourge of war, and

most importantly to protect humanity from weapons of mass destruction, including nuclear weapons.

19. Thierry Tardy, a faculty member at the Geneva Centre for Security Policy, stated that in the context of contemporary peace operations, the notion of peace could be seen from different perspectives. The nature of contemporary peace operations was that they were aimed at transforming a situation of negative peace into a situation of positive peace. He indicated that they did so by transforming the society in which they intervened, through programmes relating to security sector reform, democratization, power-sharing, rule of law and others.

20. Concerning the link between the concepts of peace and human security, the expert observed that the activities of a peace operation took place at both the State and individual levels. At the State level, contemporary peace operations aimed at recreating a Weberian State that had the monopoly of the legitimate use of violence, that embodied a good governance model, and that had running State institutions, including police and armed forces. Mr. Tardy noted, however, that peace operations were also centred on the individual, aimed at ensuring the security of people. He also noted that human security was understood as complementing State security, because it enhanced human rights and strengthened human development. It sought to protect people against a broad range of threats to individuals and communities and to empower them to act on their own behalf. As a consequence, positive peace was dependent upon security at the individual level. That human security dimension was being translated in the mandates of peace operations through different types of activities that targeted people, the most important one being the protection of civilians in post-conflict environments. Protection of civilians was about physical security, which was a key component of human security.

21. Mr. Tardy concluded by recalling that there had been debates on the nature of the peace that the international community was trying to establish through peace operations. One criticism had been that peacebuilding was about replicating a liberal, Western-style model in countries that were not necessarily ready to absorb it. Peacebuilding, however, was articulated around two pillars: the establishment of a democratic system and of a market economy. The problem was that the processes of political and economic liberalization had proved to be destabilizing, mainly because those processes were inherently conflict-ridden. They required a certain ability of the recipient society to absorb the changes. Yet, in many cases those societies had proved to be unprepared for those drastic evolutions. They lacked the institutional structures that would allow them to manage the types of competition that were induced by political and economic liberalization. As a result, in some cases peacebuilding processes had become counterproductive. That had raised the issue of the legitimacy of an external presence, as well as of the degree of local ownership that recipient societies enjoyed. On those two fronts, the expert noted, it seemed that even if peace were provided in a consent-based manner, in reality, it was by and large a peace that was imported, and rarely home-grown.

III. Session 2: Content of the right of peoples to peace

22. Jarmo Sareva, Deputy Secretary-General of the Conference on Disarmament, recalled that, as declared in article 1 of the Charter of the United Nations, one of the purposes of the United Nations was to maintain international peace and security. However, there was no explicit reference to the right to peace in the Charter. The drafters had delegated to Member States the task of determining the nature and scope of that right, which was outlined in the Universal Declaration of Human Rights and other documents. He noted that the right to peace was underdeveloped and had not yet been incorporated in the body of international law. It was moreover unclear how that right could impinge on the

right of States to self-defence and on their duty to maintain international peace and security. Therefore, if the right to peace were to be determined in absolute terms, it might not be consistent with the right to self-defence or military steps which might be taken by the Security Council under chapter VII.

23. Mr. Sareva indicated that there was an important disarmament dimension in realizing, promoting and clarifying the right to peace. There was a distinct connection between national security and the right to life. Even during armed conflict, States had the responsibility to protect their peoples, especially civilians. Over centuries, prohibitions had been made on certain kinds of weapons which did not distinguish between civilians and combatants, and severe restrictions had been laid on Governments in the use and development of weaponry. That had become part of international customary law and international humanitarian law. For example, with regard to weapons of mass destruction, concerns about the right to life had found their way into many multilateral treaties governing such weapons. Bans had been instituted on chemical weapons and biological weapons in international treaties that were close to being universally ratified.

24. Mr. Sareva concluded that there remained serious challenges in clarifying the content and scope of the right to peace, in particular from the disarmament perspective, in which national security concerns were of paramount importance to States. Given the complex relationship between the right to peace and the right to self-defence and the obligations to collective security, it would be necessary to take into consideration those potentially conflicting rights in clarifying the scope and content of the right to peace.

25. Mario Yutzis, former Chairperson of the Committee on the Elimination of Racial Discrimination, indicated that the right of peoples to peace, traditionally claimed by both the General Assembly and the Commission on Human Rights in previous decades, had garnered new interest which might considerably enrich its content. Since the cold war, States had accepted that peace and security, development and human rights were the pillars of the United Nations system and the foundations of collective security and welfare. In parallel, the progressive development of international human rights law had favoured the emergence of solidarity rights. Among them, the States had codified the human right to development. For its part, in recent years civil society had also exhibited interest and had worked to develop the human right to peace.

26. Mr. Yutzis recalled that there was an inextricable relationship between solidarity rights and the human rights which were recognized 61 years ago in the Universal Declaration of Human Rights and in the American Declaration of the Rights and Duties of Man. They include a set of rights that the Vienna Declaration and Programme of Action characterized as universal, indivisible and interdependent, including the right to development.

27. Based on the developments and interest in recent years, Mr. Yutzis stated that it was possible to say that the right of peoples to peace had at least five new dimensions. First, it claimed the defence of the value of life, which was the most fundamental of human rights. That close relationship between the values of peace and life led to the assertion that there was a human right to peace, which both peoples and individuals held. In terms of positive law, the Human Rights Committee had affirmed the relationship between the right to life, prevention of war and the prohibition of propaganda for war, including the proliferation of nuclear weapons. Second, it involved the recognition of others, acknowledging the oneness of humankind overcoming all forms of prejudice, whether due to race, class, colour, nation, gender, degree of civilization or anything else that served in arguments to support and impose the superiority of people and/or social groups. Third, it was a valuable resource against violence arising from armed conflict and structural violence, because conflict was incubated in discrimination and undue restrictions on human rights. All forms of violence impeded the consolidation of peace. Fourth, other instruments of universal scope explained

the basis on which peace rested as a right with individual and collective application. Thus, Mr. Yutzis noted, through its dual character — individual and collective — the right to peace made it possible to assert the broader notion of the human right to peace. Fifth, the right to peace had a definite individual dimension, which was assessed through the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

28. Mr. Yutzis recalled that specialized agencies of the United Nations also pursued the same aspirations for peace. In international and regional organizations there were equally abundant provisions relating to peace as an individual and collective right. The links between peace and security and respect for human rights inside and outside nations highlighted in the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Convention on the Rights of Persons with Disabilities.

29. Finally, Mr. Yutzis recalled that the private encoding of the human right to peace by civil society also reflected both the collective and the individual dimension of that right. Thus, in the Luarca Declaration on the Human Right to Peace, a document which was adopted by a committee of experts from civil society organizations, several articles detailed the scope of the individual applications of the right, which can be understood to apply to peoples as well. The Declaration also contained the generally accepted principle of dual ownership of the human right to peace. He noted that peace was indivisible, and thus manifested itself as a collective right of the human community of peoples and States while, at the same time, directly affecting each human being as an individual right.

30. Laurent Goetschel stated that the analysis of the content of the right of peoples to peace required a particular approach. Mr. Goetschel proposed a three-tiered approach to the right of peoples to peace. The first tier was the prohibition of the use of force in the Charter of the United Nations. A post-modern interpretation of the Charter could allow the right to peace to contribute to and strengthen the prohibition of aggression. The notion of active prevention policy could be a contribution to the systematic worldwide implementation of a right to peace. It could lead to new priorities of the Security Council and the Human Rights Council and might even lead to new institutions. The second tier was a process perspective, which had a timeline. That tier was not about the justiciability of the right to peace, but referred to the right to a certain process. Such a process, which was not yet defined, could lead to strengthening certain rights, such as to development, education or health, and could lead to the prioritization of those rights and their systematization in the light of each other. Defining a process could be one of the major objectives of defining the right to peace. The third tier was context relevance. There was no definition of the right to peace at the general level that could be applied to the concrete context-relevant levels. Peace at the overall policy level was still largely politicized and populated with particular agendas that not all States would share.

IV. Session 3: The right of peoples to peace from a human rights perspective

31. The third session opened with a keynote address by Antônio Cançado Trindade, a judge with the International Court of Justice. In the address he discussed five key aspects related to the right of peoples to peace. In 1990, when speaking at the Global Consultation on the Right to Development as a Human Right, Mr. Cançado Trindade had addressed conceptual aspects such as the subjects, legal basis and contents of that right, its obstacles

and possible means of implementation, and its relationship to other human rights, aspects which had a direct bearing on the peoples' right to peace. That had been, in his view, a worthwhile exercise, as, shortly afterwards, the right to development, as enshrined in the Declaration on the Right to Development (1986), had found significant endorsements in the final documents adopted by the United Nations world conferences that were held in the 1990s, which had brought it into the conceptual universe of international human rights law.

32. The other pertinent antecedent was the work undertaken in 1997 by the group of legal experts convened by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to prepare the Draft Declaration on the Human Right to Peace. The right to peace had been duly inserted by the UNESCO group into the framework of international human rights law; however, after the subsequent consultations with 117 member States, three main positions of the governmental experts had become discernible: those fully in support of the recognition of the right to peace as a human right, those who regarded it rather as a "moral right", and those to whom it was a human "aspiration" rather than a "legal right". That exercise as to the right to peace did not have the same outcome as the one pertaining to the right to development. In other words, the Declaration on the Right of Peoples to Peace had not yet generated a significant projection as did the Declaration on the Right to Development, despite the fact that, in a historical perspective, the right to peace had been deeply rooted in human conscience for a much longer period than the right to development.

33. Mr. Cançado Trindade argued that in approaching the right of peoples to peace, one was confronted with some disquieting interrogations. First, it was well known that the Charter proclaimed, in its preamble, the determination of the peoples of the United Nations to save succeeding generations from the scourge of war, and, to that end, to live together in peace with one another as good neighbours. The phraseology was quite clear: in disclosing the constitutional vocation of the Charter, its draftsmen had referred to the peoples, rather than the States, of the United Nations. He wondered why it had taken so much time for the legal profession to acknowledge that constitutional conception, further evidenced by such key provisions as articles 2, paragraph 6, and 103 of the Charter.

34. Mr. Cançado Trindade considered that the debates within the United Nations system on the human right to peace had proved inconclusive and consensus difficult to reach due to the apparent over-sensitiveness of States when it came to what they regarded as presumably touching on their so-called vital interests. He wondered why so many years had lapsed between the adoption of the Declaration on the Right of Peoples to Peace and the current seeming revival of the subject by the Human Rights Council. He expressed concern about the fact that the adoption of a definition of the crime of aggression had not yet been achieved, despite the fact that one could have built on the Definition of Aggression (1974). According to Mr. Cançado Trindade, those and other questions remained unanswered because States were unable to speak a common language when it came to reaching an understanding as to the fundamentals to secure the very survival of humankind.

35. Concerning the time dimension — the long-term outlook — of the right of peoples' to peace, Mr. Cançado Trindade indicated that its roots could be traced back to the search for peace, which had predated by far the adoption of the Charter of the United Nations. Yet, earlier projects had proved incapable of accomplishing their common ideal, precisely because they had overemphasized restricting and abolishing wars related to inter-State relations and overlooked the bases for peace within each State and the role of non-State entities. He noted that more recent attempts to elaborate on the right to peace had displayed a growing awareness that its realization was ineluctably linked to the achievement of social justice within and between nations. During the twentieth century, the conceptual construction of the right to peace in international law had antecedents in successive initiatives taken in distinct contexts at the international level. The current generation had

not yet grasped the lessons learned with so much suffering by previous generations. Yet, the exercise was to be pursued, as its purpose corresponded to an ancient human aspiration, which had been present in the human conscience for centuries.

36. With that consideration in mind, Mr. Cançado Trindade addressed the question of the assertion of the peoples' right to peace before contemporary international courts and tribunals. He concentrated on the experience of two such tribunals, in which he had served or was currently serving as judge, namely, the Inter-American Court of Human Rights and the International Court of Justice, respectively. That experience showed that the rights of peoples had been acknowledged and asserted before contemporary international tribunals. The Inter-American Court of Human Rights, in the case of the *Community Mayagna (Sumo) Awas Tingni v. Nicaragua* (2001), had extended protection to the right of all the members of an indigenous community to their communal property of their historical lands. Furthermore, three other decisions had had a direct bearing on the rights of peoples, their cultural identity and their very survival, namely, in *Yakye Axa Indigenous Community v. Paraguay* (2005–2006), *Sawhoyamaya Indigenous Community v. Paraguay* (2005–2006), as well as in *Moiwana Community v. Suriname* (2005–2006), which had ruled on the case of the Moiwana massacre. Mr. Cançado Trindade added that such late jurisprudential development would have been unthinkable for the draftsmen of the American Convention on Human Rights. Massacres no longer fell into oblivion. Atrocities victimizing whole communities, or segments of the population, were being brought before contemporary international tribunals, for the establishment not only of the international criminal responsibility of individuals, but also of the international responsibility of States. That indicated that there had been clear advances in the realization of international justice in recent years, in cases of factual and evidentiary complexities.

37. Turning to the pertinent practice, in particular the pleadings before the International Court of Justice, Mr. Cançado Trindade recalled that the right of peoples to live in peace had been acknowledged and asserted before the Court in a number of cases. He also referred to the case law of the European Court of Human Rights, as well as of the African Commission on Human and Peoples' Rights.

38. Finally, Mr. Cançado Trindade focused on the peoples' right to peace and the lessons of history. After drawing extensively upon pertinent writings of some of the most prominent and influential historians of the twentieth century, he advocated a systemic approach to future consideration of the theme, relating the peoples' right to peace to other rights of peoples, and further relating the human right to peace to rights of peoples. He added that, current shortcomings notwithstanding, rights of peoples had lately been brought before contemporary international tribunals, including the International Court of Justice, despite the strictly inter-State character of the contentious procedure of the latter. He contended that the peoples' right to peace was justiciable, and that there was a path to be pursued to that end in the years to come.

39. William Schabas, Director of the Irish Centre for Human Rights, indicated that there was clearly no consensus yet concerning both the definition of the right to peace and its regulation under international law. The fact that Human Rights Council resolution 11/4 had been adopted with the opposition of a number of States, most from one geographic region, illustrated that lack of consensus.

40. Mr. Schabas recalled that there were important negotiations being undertaken on the definition of the crime of aggression in the context of the Rome Statute of the International Criminal Court. Those negotiations would continue during the Review Conference of the Rome Statute in 2010. Some member States had not yet expressed their views and it was uncertain what the final decision of the review conference would be. Yet Mr. Schabas considered that it was more disturbing that the major non-governmental organizations

working with human rights had been quite indifferent to the question of the crime of aggression.

41. The expert indicated that the right to peace was an underdeveloped value in human rights instruments. Universal human rights instruments did not give proper expression to the right to peace. There were, however, many references to peace in the preamble to the Universal Declaration of Human Rights. Those references also appeared in the preamble to the two human rights covenants. The preamble to the Universal Declaration of Human Rights was informed by the four freedoms referred to by Franklin D. Roosevelt, namely, freedom of belief, freedom of expression, freedom from want and freedom from fear. Freedom from fear was the expression of the right of peoples to peace.

42. Mr. Schabas further indicated that the International Court of Justice had been asked, in the context of its advisory opinion on the legality of nuclear weapons, to consider the relationship between international humanitarian law and international human rights law, specifically in the context of the right to life. The Court had indicated that international human rights law was applicable to armed conflict but that what constituted arbitrary deprivation of the right to life in the context of an armed conflict was to be interpreted in the context of international humanitarian law. The European Court of Human Rights had had a number of cases in which it had addressed the question of armed conflict without any reference to international humanitarian law, using instead the relevant human rights norms. Thus, in practice judicial organs had analysed the causes of armed conflict in order to determine whether human rights obligations had been violated. Therefore, international human rights law was not only concerned with the way in which parties behaved during an armed conflict, but also dealt with the causes of the conflict and with the question of whether the use of force was lawful.

43. Finally, Mr. Schabas recalled that the Human Rights Committee had dealt with the question of protecting the right to life in the context of armed conflict in its general comment No. 6. In its general comment No. 14 on nuclear weapons and the right to life, the Committee further drew a clear link between the prohibition of war and the right to life.

44. Fatimata-Binta Victoire Dah, Chairperson of the Committee on the Elimination of Racial Discrimination, noted that that Committee had been the first treaty body to function in the human rights system. The Committee had adapted to each new challenge, bearing in mind that racism found its expression in many varied and changing ways. The Committee had guided many States in their work and had achieved many of its goals. For example, the Committee held the view that political and social stability contributed to the enjoyment of human rights for all. Those who enjoyed rights should enjoy them without discrimination. The singularity of the International Convention on the Elimination of All Forms of Racial Discrimination rested on the identification of the rights holders. Claims of individuals or groups of individuals were recognized in the Convention under article 14. In order to assess State policy in the sphere of racial discrimination the rights evaluated were, among others, civil and political rights and economic and social rights, for example, the right to housing, education, and health. States must create the conditions for social coexistence in harmony through the respect of cultures and human rights, which was important considering that cultural differences were often at the root of conflicts. Ms. Daw stated that peace was possible when the State institutions worked properly and legitimate democratic systems were in place.

45. Ms. Dah indicated that from the Committee's experience it was possible to derive the message that peace was essential for the enjoyment of rights and that in the absence of peace victims could and should claim peace as a right along with other human rights. It was in that sense that the preamble to the International Convention on the Elimination of All Forms of Racial Discrimination stated that discrimination among human beings was an

obstacle to friendly and peaceful relations among nations and could jeopardize peace and security among peoples and harmonious coexistence.

46. The expert also indicated that the notion of peoples had undergone important developments in the African and in the Latin American contexts. For instance, the African Charter on Human and Peoples' Rights was the first regional human rights treaty to incorporate the notion of peoples' rights. Moreover, Latin American countries had been actively pursuing efforts to provide the notion of indigenous peoples with adequate substance in the context of the United Nations Declaration on the Rights of Indigenous Peoples. In that respect, the development of the notion of indigenous peoples, for example, was significant because it recognized, among other things, their right to their traditionally owned or occupied lands.

47. Finally, Ms. Dah stated that there was an urgent need to codify the right of peoples to peace, and that all actors should support moves in that direction, in particular States participating in the non-aligned movement that were current members of the Human Rights Council. In that respect, she supported the idea to invite the Council to create an open-ended working group charged with the codification of such right.

V. Session 4: Measures and actions to raise awareness and to promote the right of peoples to peace

48. Laurent Goetschel, Director of Swisspeace, opened the last session by stating that there were three sectors in which civil society organizations were working to make the right to peace operational. The first area was the area of dealing with the past. In that respect, mechanisms such as truth commissions had proven to be useful means to achieve peace in post-conflict societies and to ensure that the rights of victims were protected. The second was the right to compensation, which included not only financial reparation, but also acknowledgment of past violations or accountability for perpetrators. The right to participation in such processes was important and all groups needed to be included. Therefore, capacity-building was essential for discriminated or marginalized groups to be able to participate in those processes. The third issue was related to statehood. The debates on rights were framed by a certain definition of state and of statehood. That implied that there was a right to recognition, not of groups of people per se, but of various forms of political life and organization. Finally, from a peace process perspective, it was dangerous to confuse law and legal processes with politics and policy processes. To bring political issues into the realm of the discussions of the right to peace was not constructive and did not contribute to the clarification of such a right.

49. UNESCO representative Luis Tiburcio recalled that UNESCO had dealt with the question of the right to peace in the 1990s. The organization had developed a document on the right to peace which had met with two elements of resistance. On the one hand, a political element, driven by Western developed States, which had stated that UNESCO was not the proper forum in which to discuss that right and that it should rather be discussed in the Security Council. That opposition had led to a confrontation in the Executive Board and General Conference of UNESCO. With regard to the second element, States had questioned how the notion of peace was covered by the organization's mandate. Mr. Tiburcio pointed out that the preamble to the UNESCO constitution stated that war was born in the minds of men; therefore, peace had been set as the ultimate objective of UNESCO, through its work done in the fields of science, education and cultural diversity.

50. Mr. Tiburcio recalled that when UNESCO had launched the International Decade for a Culture of Peace and Non-violence for the Children of the World (2001–2010), there had been a strong reservation on the part of some States that criticized the rather limited

vision of the human right to peace as it had originally been presented. One instrument that had been used for the International Decade for a Culture of Peace was the Manifesto 2000 for a Culture of Peace and Non-violence, which had been signed by millions of people.

51. Mr. Tiburcio finally indicated that currently UNESCO had no specific position on the human right to peace. It supported, participated in and cooperated with organizations which were working in the field of peace education. The current UNESCO Director had decided that UNESCO peace activities needed to be strengthened. A decision had therefore been taken to re-establish the culture of peace as a cross-cutting UNESCO programme.

52. Mr. Schabas indicated that there was currently some momentum to clarify the legal nature of the human right to peace. He expressed concern about the fact that the current debate on the crime of aggression in the context of the International Criminal Court could potentially harm that momentum. The review conference in June of 2010 that would decide whether to give the Court authority over the crime of aggression might or might not be successful. There were major obstacles to overcome, particularly because of the position of the permanent members of the Security Council. In the past it had proven very helpful to have an expert study on burgeoning rights. Having an in-depth academic study from a human rights perspective could help the Human Rights Council decide how to ensure that the right to peace found its place in international law.

53. Mr. de Zayas recalled that the United Nations must deliver on its mandate to save succeeding generations from the scourge of war. Peace and human rights could be considered as the object and purpose of the Charter of the United Nations. Moreover, disarmament was crucial to the survival of mankind. A world where human rights were respected was a world much less likely to engage in armed conflict. It was, thus, important to reaffirm the motto of the International Labour Organization “if you desire peace, cultivate justice”. Education for peace in its collective and individual dimensions was therefore necessary. Moreover, the work of civil society, including the drafting of the Luarca Declaration on the Human Right to Peace, must be welcomed.

54. Mr. de Zayas concluded by suggesting that the Human Rights Council could create the mandate of a special rapporteur or independent expert on the right to peace.

55. Mr. Yutzis indicated that no one doubted that peace was a long-awaited need, an indispensable achievement to transform the world into a home for all men and women who inhabited the planet. While it had never been easier to achieve peace, efforts were hampered by the negative currents that inhabited and were part of the human condition. Nevertheless, the will existed to create a humanity that was more united, more open to others and more humane, in peace and harmony. The end of the cold war and the disappearance of an identified enemy had not modified the structure of armies or slowed down the research and manufacture of weapons of mass destruction. For its part, peace was at the mercy of bilateral agreements related to arms control and was without relevant decisions to establish just relations between all human beings and a viable ethics of relations between humans and the environment. Peace remained an elusive dream in many parts of the world.

56. Mr. Yutzis also noted that currently, the Human Rights Council was divided on the meaning and scope of the right to peace, and even the existence of that emerging right. The division had been inherited from the previous work of the Commission on Human Rights and the General Assembly during the cold war. Since the adoption by the General Assembly of the Declaration on the Preparation of Societies for Life in Peace (1978) and the Declaration on the Right of Peoples to Peace (1984), States had found ways of consensus to significantly advance the definition, content and scope of the right to peace. Mr. Yutzis suggested that the right to peace could be addressed within international human rights law from three perspectives: as part of the emerging right to international solidarity;

as part of the right of all people and all peoples for a democratic and equitable international order; and as an essential element of the right of peoples to peace. Thus, in the work of the Human Rights Council the right to peace should be linked in its material formulation to emerging rights or solidarity, in particular the right to international solidarity, the right to a democratic and equitable international order as well as to the traditional right of peoples to peace.

57. Finally, Mr. Yutzis suggested that the Human Rights Council could reaffirm the right of peoples to peace as a collective and as an individual right. The Council could also initiate the codification of the human right to peace through the establishment of an open-ended working group, open to the participation of civil society organizations. It could also invite the Advisory Committee to prepare elements for the elaboration of a universal declaration on the human right to peace and to propose guidelines, norms and principles aimed at protecting and promoting that right. The Council could also invite human rights treaty bodies and special procedures to contribute to the development of the right to peace from the perspective of their respective mandates.

58. Throughout the meeting civil society organizations exchanged views with the experts and recalled that, *inter alia*, civil society organizations had been actively pursuing the progressive development of the notion of the right of peoples to peace. Their contribution was reflected, for instance, in the preparation and dissemination of the civil society group of experts' Luarca Declaration on the Human Right to Peace, as well as through their active participation in the context of the Human Rights Council discussions on the right of peoples to peace. Civil society organizations had also contributed with scholarly analysis aimed at contributing to the clarification of the content of the right of peoples to peace.

59. The expert workshop was concluded by Paul Seils, from the Office of the High Commissioner for Human Rights, who thanked the experts and all participants for their important contributions.

Annex

List of experts participating in the consultation

Antônio Augusto Cançado Trindade, Judge, International Court of Justice

Fatimata-Binta Victoire Dah, Chairperson, Committee on the Elimination of Racial Discrimination

Laurent Goetschel, Director, Swisspeace

Vera Gowlland-Debbas, honorary professor, Graduate Institute of International and Development Studies

Jarmo Sareva, Deputy Secretary-General, Conference on Disarmament

William Schabas, Director, Irish Centre for Human Rights, National University of Ireland, Galway

Thierry Tardy, faculty member, Geneva Centre for Security Policy

Luis Tiburcio, United Nations Educational, Scientific and Cultural Organization representative in Geneva

Mario Yutzis, former Chairperson of the Committee on the Elimination of Racial Discrimination

Alfred de Zayas, professor, Geneva School of Diplomacy and International Relations
