International Regulations on War and Peace

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Abstract:
Peace and war represent two realities that are inter-related in a dual perspective: the conceptualization prospective and the juridical prospective that is focused upon the regulation process. The queries resulted from the theoretical approach and from the practical application of the legal aspects concerning war and peace are combined, supposing a simultaneous approach that will be customized by means of some nuances that derive from the peculiarities of each element. In the present paper we aim to highlight the peculiarities of the legal recognition of peace as a human right enshrined within the category of solidarity rights and also the peculiarities of war and of its regulations under the guise of ensuring a connection between the two realms. The connection between peace and war is upheld at the theoretical level- from this deriving, at a practical level, the unspoiled link between the two socio-juridical realities that are studied. This article does not reclaim as a scientific objectiv the descriptive reminder of the defining elements related to war and peace; rather it aims to place the previously mentioned elements within the analytical and interpretive paradigm. Consequently, amongst the research methods hereby implemented we mention the deductive method (considering the progressive exposure of information because their difficulty is gradually revealed from general aspects to the special aspects of the discourse) and the hemeneutical method (centered on developing arguments and critics upon the study of war and peace).
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Analysing the connection war-peace within the framework of multidisciplinarity

War and peace are complementary notions within the international law system. First, both concepts bring into discussion human rights and the protection of the individual. Second, from a theoretical point of view, both terms share a multidisciplinary character, evoking philosophical and juridical implications.

At the conceptual level, the complementary quality results from the idea according to which peace is defined by virtue of war and war is defined through the signification of peace. In his studies, Johan Galtung attaches to the concept of *peace* two senses thus distinguishing between *negative peace* – the absence

of war and *positive peace*- cooperation and solidarity between individuals, States and Peoples. [1] Keeping in mind the positive and the negative pattern of peace, doctrinaire studies [2] have advanced the proposal of defining the notion of *war* according to the *positive-negative rationale.* In this sense, Myres S. McDougal advances in his work the *negative conceptualization* of war as the absence of peace meanwhile the *positive conceptualization* of war consists in the presence of violent acts.

The demonstration of the complementary nature of the war-peace relation by refering to the standard of human rights was achieved in doctrine by introducing the concept *human security.* In simple terms, human security relates to the protection of the individual through guaranteing his fundamental rights. Specialized studies [3] associate human security with the significance established in the Development Programme upheld by the United Nations Organization in 1994 that has the purpose of solving socio-humanitarian problems like famine, maladies, oppression and any other circumstance that may disrupt the natural manifestation of human life. The main issues of war and of post-conflict period consists in the re-establishment of human rights that were violated and in ensuring reparations in favour of victims. Hence, human security expresses an ideal established around human solidarity and around the objective of ensuring the highest level of fulfilment of human attributes. According to the previously cited doctrinaire opinion, peace and human security are presented in inter-related connection within the Atlantic Charter of 1941 – a document by means of which United States and United Kingdom desired to establish the objectives that would be fulfiled when the Second World War will end. Formally structured as a declaration, the Charter presents in paragraph 6 the connection between *peace* and *human security : after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want.* The cited content underlines first the importance of respecting the

independence and sovereignity of the Peoples as a *sine qua non condition* of maintaining peace and of obtaining human security. Granting all nations the possibility of living in safety within their own borderlines is in compliance with other dispositions of the Atlantic Charter that underline the need of supressing the expansionist desires of States (of territorial nature or of other nature), the right of the Peoples to choose their own form of government and the restoration of self-government and sovereignity to those Peoples that were deprived, during conflicts, of such prerogatives. If the aspects that were commented up to this point are linked to the theory of international law and constitutional alw, we observe that the final formulation of paragraph 6 of the Charter *freedom from fear and want* has a peculiar character. The latter relates to mutidisciplinarity because freedom from fear and want represents a request that has psychological, philosophical and juridical implications. In order to limit our comments to the juridical field and in compliance with the aspects that were evoked within the field of international and constitutional law, freedom from want and fear represents, in our opinion, limiting the expansionist desires of all nations regardless if they are originated in the scope of political and territorial domination or of economic domination. Hence, the formulation *freedom from fear and want* comprised within the Atlantic Charter of 1941 is the juridical premise that allows enclosing the mention of equality between large and small nations within the Preamble of the UN Charter of 1945. In this token, we construe *equality between Peoples, the right of Peoples to self-determination and the respect for State sovereignity by means of limiting the expansionist tendencies* as premises of ensuring peace and human rights.

By approching the multidisciplinary argument which expresses another common point of war and peace, we observe that some philosophical implications of the analysis are bound to be manifested. The philosophical approach promotes the correlation between war and peace as a natural aspect, validating the argument of complementarity of the two notions. The introduction within the juridical framework of the issues that relate to war and peace was

detailed by Immanuel Kant in the work *Towards Perpetual Peace. A Philosophical Sketch* [4]. In Kant's work, the diffciulties generated by conflicts are countered through the concept *pax aeterna* which aims to ensure permanent peace between Peoples by applying a set of moral principles. Amongst the kantian legal laws advanced in the scope of limiting conflicts and preserving peace is first enunciated the law according to which *a peace agreement is not valid if it is made under the mental reserve of engaging in a future war.* The peace agreement closed under the reserve of engaging in a future war is immoral and, consequently, it cannot create moral obligations for the Contracting Parties. In the same token, it is against the peace-keeping process between Peoples the possibility of dominating a State as a consequence of receiving an inheritance or a gift. Likewise, it is contrary to *pax aeterna* – being deprived of moral sense- the act of mobilizing the national army and of benefiting from military services as it may be construed as an agression act by other Powers/States. In the same vein, it is mentioned the principle of non-intervention in the organization and governance of States (reminded within the Charter of the United Nations Organization, article 2, paragraph 4) and the principle of applying universal hospitality in achieving the concept of World Citizenship. The latter is elaborated within the previously cited kantian work as being applicable in juridical sciences under the guise of the *foreigners' right of not to be treated as enemies*.

The transition from political philosophy to religious philosophy in the conceptualization process of peace and war is obvious through the use of the term *ahimsa* – moral principle of jainist inspiration that pleads for the removal of all forms of violence (physical and moral) with the scope of obtaining peace between individuals and social equilibrium. [5] On the other hand, the conceptualization of peace and war from a multidisciplinary perspective is highlighted also in African philosophy. The latter has a peculiar existence created from myths and customs developed within the collective mental and its applications are both moral and juridical. For instance, the principle *benyaogba ukpikator* promotes the need to mitigate the conflict and to re-establish peaceful

relations between potential adversaries. As specialized studies have demonstrated [6] African philosophy in the field of war and peace pursues the conservation of equilibrium (therefore, of peace) between individuals with the scope of ensuring social development. Peace is not in itself a simple philosophical premise that is needed so that the African society may subsist; rather it is the main premise needed so that the African individual expresses its identity by afirming its adherence to the community. The practice of the African society of preventing conflicts must be accepted by each individual so that it can persist in time.

Theoretical assumptions on the juridical approach of war

Within the relationship peace-war we observe the issue of legitimacy (of morality) that is formulated in reference to war as peace is the desirable state. The main juridical issue concerning peace may be elaborated in connection to the acknowledgement of *the right to peace* as an autonomous juridical prerogative.

Commenting upon the lawfulness of war, Hugo Grotius imposes as a rule in the process of establishing the just or injust character of war the evaluation of the motives that determine conflict. [7] The criterion of the motives that determine the conflict is very important but it must be interpretated in a dynamic sense rather than in a static sense; the author argues in his paper that there is the possibility that the war starts from just causes and during conflict the causes become unjust. From our point of view, the alteration of the character of the cause and implicitly the transformation of the cause from just to unjust does not necessarly entail the replacement of that particular cause with another but it entails the alterations of the conditions, of the initial circumstances that were taken into account at the begining of the conflict. For instance, the author presents as unjust reasons of starting a war (1) a simple act of aggression against a stat or (2) the possible material advantages acquired as a consequence of pursuing the war. Denying that aggression is a lawfull reason to

engage within a war does not equate with the interdiction of retort in case of self-defence. On the contrary, the exclusion of a simple aggression from the category of the causes of just war must be understood in the sense that not every inamical act between States legitimate a violent response but only those acts that directly violate the right to self-determination of the Peoples and national sovereignity.

Refering to the morality of war or to just war, doctrinaire studies [8] identify the main rules that are ought to be respected in order to qualify the war as just/moral : *(1) the equal morality of the belligerents, (2) the immunity of non-belligerents, (3) the privileged status of prisioners.* We feel that the rule of equal morality of the belligerents expresses both equality in rights and liberties (as equality of juridical status) and equality in dignity.

By corroborating equality in dignity and in rights results that life –as a human value and as a fundamental right of the belligerents is guaranteed equaly and independently from the premise under which fight the respective beligerents. In other words, we cannot apply the criterion of just or injust cause of war with the purpose of prioritising the lives of the belligerents. The equality of moral status of the belligerents determines the consequence of non-discrimination between the combatants that are engaged in war by virtue of injust causes and the belligerents who entered the war by virtue of just cases. The second rule of just war is established in correlation to the first one : if there is equality between belligerents than between belligerents and non-belligerents will exist discrimination. The latter is natural in the relation belligerents/nonbelligerents because of the difference in status and of the difference in war involvement. Belligerents and non-belligerents are different categories thus equality is present exclusively between belligerents and/or between non-belligerents, without crossing the two categories. The belligerents are differents from the non-belligerents because the latter are considered to be innocent of any act of war. War would become injust if the attack would extend including upon individuals who are not directly involved in acts of aggression. In the given case, discrimination between combatants and non-combatants is not only necessary

but also natural being in accordance with the humanism principle. In the same token, the privileged status of prisoners is justified taking into consideration the fact that they were initially involved in the conflict fighting alongside the enemies but when they were captured they can no longer exert their hostile actions. Taking into consideration the impossibility of exerting the attributions circumscribed by the status of belligerent, prisoners must be treated with dignity and humanity, non-discriminatory, in compliance with the provisions of article 13 of the Geneva Convention regarding the treatment of war prisoners of 12 August 1949. The cited article protects human dignity in reference to the aspect of prohibiting medical/scientifical experiments, reprisals, violent acts, or intimidation, physical mutilations and any other acts that might cause the death of a prisoner or the damage to a prisoner's health.

Theoretical assumptions upon the juridical approach of peace

As we have argued in the content of the previous section of our paper, the lawfulness of war represents a problem of moral and legal assessment. The ethical manner of developing war (or just war) combines the moral and the legal element thus establishing by the provisions of the Geneva Convention the fair manner of treating war prisioners. The respect for human dignity- as the main juridical and moral value -is the essential premise for leading a just war. The dilemmas concerning peace are not of moral nature but of juridical nature. The recognition of peace as a moral value expresses the conception of the international community taking into consideration the fact that the United Nations Organization afirms as a main purpose of its activities the achievement of peace and security. The recognition of peace as a juridical value does not equate to the *the plano* recognition of the right to peace. The organization of human rights in three generations advanced by Karel Vasak allows the highlighting of solidarity rights that comprize *the right to peace.* The distinction between the three generations of rights and the qualification of peace as an autonomous human right produces multiple problems. First, the generation of solidarity rights –

although enjoys an extended recognition within doctrinaire studies,- it is little theorized. The difficulty of identifying the peculiarities of solidarity rights resides in the complexity of the signification attached to them. Third generation rights refer to the human value of *solidarity* – which evokes the commitment of the individuals towards others. Hence, upon the correct understanding of solidarity depends the understanding and the coherent application of solidarity rights and, by default, the understanding and coherent application of the right to peace which is included within the latter category.

We feel that *solidarity rights* do not equate to *collective rights/the rights of groups.* Between the two categories there are theoretical differences that must be born in mind. First, solidarity rights are different from collective rights due to the fact that *the values that are protected within the sphere of the two categories of rights are different.* In this sense, we observe theat collective rights have as objective the *conservation of the traits that are specific for certain groups (traits that are needed for establishing the identity of the individual- we refer to religious identity, linguistic identity, ethnic or rasial identity, etc.).* Solidarity rights circumscribe *social values that are more comprehensive and that refer to the progress of human kind, achieving harmony between Peoples and individuals.* Pursuing to highlight the essential human values that are protected through solidarity rights, the final act of the symposium that took place in Mexico in 1980 concerning issues related to third generation rights, [9] underlines the idea that solidarity is a value which imposes a *new ethical code upon humanity* that is necessary in order for all individuals to recognize the existence of a common destiny of human kind. Secondly, the difference between solidarity rights and collective rights (or group rights) is enhanced by means of *the type of interests that are protected.* The previous argument was centered upon *the human values* that were protected and the character of the values determines *the type of interests* that are to be promoted by means of the rights that are studied. If the common values of human kind make the object of solidarity rights then the logical consequence consists in the fact that *the protected interest* is an extended one

as it regards the whole human family. In the case of group/collective rights, the interests are specific for a certain human category (such as minority groups). Regarding the values circumscribed to the two categories of rights, we deem that some clarifications are nedeed: *the values that are protected* by means of solidarity rights represent common aspirations of human kind meanwhile *the values promoted by collective rights* express the aspirations of certain groups.

Thirdly, solidarity rights do not cause problems regarding the violation of certain categories of human rights as it is the case with collective rights. Doctrinaire studies [10] argue that collective rights are opposed to the individualist perspective upon human rights that is promoted by the Western doctrine given the fact that, in time, serious violations of human rights were commited by communities by virtue of the collective rights that they have assumed. The most common example resides in the violation of women's rights in African and Asian States by relating to cultural practices that were promoted by the membership community. Solidarity rights have humanist and universal vocation so that through their nature they cannot lead to specific violations of human rights. The social values that are protected and the interests that derive from these exclude the the possibility that solidarity rights may violate some categories of human rights.

Amongst solidarity rights, the right to peace is in direct connection to the protection of human rights because only by preserving a peace climate there is the possibility of ensuring the promotion and the effective achievement of human rights. As we have previously mentioned, the actual recognition of the right to peace as an autonomous prerogative represents a difficult juridical demarche. The doctrine [11] has identified two theoretical perspectives in the assessment of the right to peace : (1) the recognition of the right to peace by virtue of promoting it within international instruments of soft law and (2) the rejection of the right to peace as an autonomous prerogative and the recognition of the right to peace exclusively as a consequence of the fulfilment of human rights. We join the first opinion because mentioning the right to peace in non-binding instruments of

international law is a process that, from our point of view, may lead to multiple juridical consequences. In order to underline the juridical consequences brought by the stipulation of the right to peace in non-binding juridical documents we deem that is necessary, from systemizing reasons, to exemplify the main soft law documents that attest the right to peace.

Thus, we are bound to mention that in 1984 the General Assembly of the United Nations Organization approves through resolution 39/11 of 12 November the *Declaration on the Right of Peoples to Peace* establishing in this manner the basis for recognizing the right to peace as an autonomous right. The Declaration re-afirms the objectives of maintaining peace and security which initially were the foundation of the activities of the United Nations Organization according to its Charter. Mainly, the Declaration establishes the righ to peace upon two coordinates : (1) peace as a sacred right of all Peoples and (2) the maintainance and the promotion of peace implementation as a fundamental obligation of each State. Likewise, it is interesting to notice point 3 of the Declaration which exposes the negative conception concerning peace, underlining in this sense *that the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations.* The Declaration approaches at a basic level the problem of the right to peace and the exposing of the manner of achieving the right to peace is inspired by the provisions of the Charter of the United Nations Organization.

The recognition of the right to peace by means of the UN's Declaration [12] of 1984 has represented a pattern of good practices at both regional and national levels. In Spain, the legal initiatives concerning the recognition and the promotion of the right to peace were developed inclusively at sub-national level. The Luarca Declaration regarding the right to peace adopted at 30 October 2006 constitues the juridical product resulted from other sub-national initiatives undertaken in Spain : the Universal Declarations concerning the Human Right To

Peace adopted in Guernica (30 November-1st December 2005), Oviedo (27-28 July 2006), Las Palmas de Garn Canaris (17-18 August 2006), Bilbao (15-16 September 2006), Madrid (21-22 September 2006), Barcelona (28-29 September 2006), Sevilla (13-14 October 2006). [13] Unlike its predecessor, the Luarca Declaration refering to the right to peace develops many moral aspects (mostly in its Preamble) and also some technical aspects of theoretic nature by means of which is pursued the explanation of the application of the right to peace. From the structural point of view, the Declaration comprizes three categories of norms : (1) norms that are bound to clarify the juridical peculiarities of the right to peace (*exempli gratia* the holders of the right to peace-article 1, the right to human security- article 3, the right to resists and to oppose barbaric acts- article 6, the right to obtain a refugee status- article 7, the right to disarmament – article 11), (2) norms that establish correlative obligations with the purpose of achieving the right to peace (article 16), (3) norms that create mechanisms of supervising and implementing the Declaration (articles 17 and 18). Through the Santiago Declaration regarding the right to peace [14] the structure and the content of the Luarca Declaration are reiterated – aspect that expresses the idea according to which there is a national consensus upon the conceptualization/the explanation of the right to peace and upon the qualification of the right to peace as an autonomous prerogative enshrined in the category of human rights.

Taking into consideration the propositions made at national level, the UN has appraised the possibility of expressly qualifying the right to peace by means of organizing in 2012 a working group which had a mandate of negociating the progressive redaction of a technical document that pursued the establishment of the juridical status of the right to peace. In 2013, the initial form of the Declaration draft was modified, being upheld an innovatory and a comprehensive prospective upon the right to peace, especially oriented towards respecting human rights, human dignity and inserting women in the process of peace-bulding. [15] The Declaration's draft regarding the recognition of the juridical status of the right to peace was a fragile initiative in the realm of human rights protection because in

the frames advanced by the expert group for debating are not identified the relevant measures for counteracting violences, for preventing potential conflicts and for protecting human rights in this types of cases. UN States were reluctant to accept the right to peace in the circumstance in which the drafts of the Declaration that were advanced did not presented peace in its negative conceptualization – that is in relation to war -and the consequences that conflict brings upon the process of respecting human rights. In april 2013, when discussing the draft of the UN Declaration concerning the right to peace, was underlined the idea according to which although there are some aspects of the right to peace (in its negative conceptualization) like security, non-resorting to force and to the threat of force, non-interfering in the internal affaires of States- that are already circumscribed in documents with binding legal force amongst which the most eloquent is the UN Charter, the UN member States are skeptical in regard to the enforcement of the right to peace and its effective implementation.

The soft law initiatives of qualifying the juridical status of the right to peace are usefull because they establish standards (good practices) that may be further used in international regulations of hard law category. From our point of view, the juridical relevance of mentioning the right to peace in international non-binding legal instruments consists in the following : (1) to underline the concern of the international community in regard to the right to peace, (2) identifying, within the international community, of the need to counteract the protential threats addressed to order and security, (3) acknowledging the need to consolidate the degree of human rights protection and the promotion of the concept of human security.

The main argument by virtue of which we sustain the juridical relevance of mentioning the right to peace within the content of international documents belonging to the soft law category consists in providing benchmarks of good practices on the basis of which we can subsequently consecrate the right to peace in international juridical documents of hard law category. In other words,

the soft law juridical instruments forseen problems that would be consequently taken and implemented by means of some juridical instruments of hard law.

Regarding the right to peace, its provision in juridical soft law intruments has been doubled by its mentioning in juridical instruments of hard law like the African Charter on Human and Peoples' Rights, the Maputo Protocol [16], the Ibero-American Convention regarding the Rights of the Youth. Article 23 of the African Charter on Human and Peoples' Rights expressly establishes *Peoples' right to peace and national and international security.* We deem that article 23 corresponds with the legal philosophy prescribed in the Preamble according to which the aspiration of African Peoples resides in the supression of any form of colonialism. The colonisation of African territories represents a social reality that, once transposed into juridical coordinates is interwined with the breaching of democracy, of national sovereignity and of the right of African Peoples to self-determination. The right of every People to choose their own destiny – affirmed under the guise of the right to self-determination- entails a dual dimension (socio-economic and political and civil) and constitues the essential premise of asserting national sovereignty. Article 20, paragraph 2 of the African Charter on Human and Peoples'Rights expresses the right to self-determination of African Peoples as follows : *the right of colonized or opressed African Peoples to be set free from the bounds of domination through the resort to the measures recognized by the international community.* By means of interpretation we infer that the expression *measures recognized by the international community* evokes the resort to dialogue, cooperation, diplomacy and other peaceful means given the fact that within the UN Charter violent measures are excluded from being applied. Thus, the right to self-determination and the right to peace-as they are exposed within the African Charter on Human and Peoples' Rights – present some connection to the juridical content.

The Additional Protocol to the African Charter on Human and Peoples' Rights presents the right to peace in connection to women's rights as human rights. Furthermore, article 10 of the Protocol consecrates within the content of

the right to peace the possibility of women to actively participate to the process of ensuring peace by means of being involved in programmes and structures whose objective consists of establishing the right to peace. It is worth noting that article 10, paragraph 3 of the Additional Protocol establishes as an obligation of States Parties to take the necessary measures of restricting the expansion of military structures and of investing in social development and, particularly, in the protection and promotion of women's rights. Specifically, article 10 of the Protocol establishes the equivalence between women's right to a peaceful existence and the right to peace. The Protocol advances a juridical advantage by comparsion to the provisions of the Charter because article 10 of the Protocol defines the right to peace as the right to a peaceful existence. Article 23 of the African Charter is restricted to establishing the right to peace and national and international security without attaching an explicit definition to the right to peace. Although it doesn't offer an explicit definition to the right to peace, article 23 has the merit of enumerating the premises that concur to the juridical guarantee of the right to peace (1) developing State relations by virtue of the principles of security and friendship enshrined in the UN Charter, (2) the individual who exerts the right to asylum cannot engage in subversive activities and (3) the territories of States cannot be used as the basis for developing terrorist and subversive activities against the Peoples of the State Parties to the present Charter.

The Iberoamerican Convention On Rights of Youth [17] declares peace as a human right in article 4, without expressly establishing the meaning of the respective right. The right to peace is associated with a series of peculiar values like *life witthout violence, fraternity between human beings, the culture of peace, the stimulation of creativity, the education in the spirit of fundamental human values so that democracy, justice, solidarity, friendship, tolerance and understanding are promoted.* The highlighting of youth's education in achieving the right to peace constitues a practical provision as it transforms education in an instrument that shapes the spirit of future generations in the sense of obtaining a culture of peace.

In the rows above we have argued the fundamental necessity of recognizing the right to peace in international juridical binding documents as autonomous right, enshrined within the category of third generation. The binding character of the African Charter on Human and Peoples' Rights, of the Maputo Protocol, respectively the binding character of the Iberoamerican Convention on Rights of Youth cannot be denied. Likewise, we have highlighted the essential contribution brought in the realm of the juridical recognition of the right to peace in binding legal documents previously enumerated by means of the *soft law* process. The latter has ensured the recognition of the right to peace through international non-binding documents (declarations) thus guaranteeing the premises of the subsequent recognition of the right to peace by means of international binding documents. In the demarche of achieving the right to peace as an autonomous right through processes of *hard law* and/or *soft law* a main important observation is imposed: the international system of human rights protection developed under the auspices of the UN recognizes the right to peace through non-binding specific instruments meanwhile the regional systems of human rights protection (African and inter-American) suggest introducing the right to peace in binding juridical documents. The dissension international/regional is translated in the juridical field and in the realm of the right to peace within the dissension soft law/hard law. If we accept the idea according to which the international system enshrines within its structure regional legal systems, then the most adequate solution regarding the conceptualization of the right to peace derives from the acceptance of the influences exerted by the regional legal systems upon the international legal system, the result consisting in the recognition of the right to peace as self-standing perrogative in the sphere of the general theory of human rights. It is clear that at the regional level, the recognition of the right to peace as an autonomous prerogative by means of binding juridical documents resides in acting against the colonialist tendencies that existed, through history, within the region. In the given context, the pressure that is exerted by the regional system upon the international system with the

purpose of recognizing the right to peace within binding international documents are lawfull because preventing colonialism is a responsability that is bound to be affirmed at the level of the international community.

Theoretical and practical assumptions derived from the juridical recognition of the right to peace

As we have stated in a previous section of our paper, in the rationale of war and peace, only the aspects related to war can be questioned in the aspect of lawfulness. Weather it is established in documents with binding juridical force or in international instruments belonging to the soft law category, peace is recognized as a juridical value. As we have affirmed in the rows above, the main juridical dilemma created in relation to the right to peace resides in its official recognition through documents that have legal binding force under UN. The hypothesis of recognizing the right to peace as an autonomous right pertaining to third generation rights by virtue of adopting a document with binding force by the UN is able to produce some juridical issues. *Exempli gratia,* the effective assurance of the right to peace by the international community may produce, *de plano,* the assurance in favour of the international community, of the right to not be subjected to war? In other words, corroborating the negative and the positive understanding of peace (as both are exposed in the introductive section of the paper), the right to peace must be understood as that juridical prerogative that comprizes within its content (1) *the right of not being subjected to war* and *(2) the right of living in a climate of inter-State cooperation and human security?* By transfering the relation between war and peace in the legal paradigm the result will be double-sided. In this sense, specialized studies [18] underline the fact that the paradigm of war and peace is combined in dualism so that war is produced in the context of breaching human prerogatives meanwhile peace implies human security and the protection of human rights. *The dualism* evoked by doctrinaire studies mai evolve into *antagonism* – especially if we take into consideration the

negative conceptualization of war (the absence of peace) and the negative conceptualization of peace (the absence of war).

Second, the recognition of the right to peace as an autonomous right enshrined in binding international documents generates, besides the problem of clearly establishing the content of the right to peace (we refer to the option of choosing between the positive and negative conceptualization), the problem of *creating the adequate premises for ensuring the manner of applying the right to peace.* We deem that the main feature created in favour of applying the right to peace resides in *educating future generations in the spirit of cooperation and of eliminating violences.* In this sense, through a series of documents [19] UN has developed the concept of *culture of peace* in close connection with the individual mental and behavioural patterns. *In expresis,* the explanatory memorandum attached to document A/52/191 underlined the idea according to which the notion of *culture* is intrinsical connected to the notion of *culture of peace* so that the latter may be explained by reference to *people's manner of thinking and relationing.* In its elaborated form, *the culture of peace* entails an active process of transformation of the collective mentality by means of accepting, respecting and integrating the differences between individuals. The culture of peace designates the process of *individual formation* through which it will be ensured the guiding of the individual in the spirit of justice, solidarity, respect for human rights, equality, tolerance, political, religious, cultural pluralism.

Tertio, the recognition of the right to peace as an autonomous right through the binding international instruments adopted under the UN leads to another juridical issue : *the modus operandi in the implementation of the right to peace.* We think that the invocation of the right to peace as a juridical autonomous prerogative is highlighted in post-conflict situations. The latter illustrate both the negative conceptualization of peace (the absence of war) and the positive conceptualization of peace (the development of a climate of justice and of respecting human rights). The positive conceptualization of peace coincides with the peace reconstruction process undertaken in the post-conflict

situations. Doctrinaire studies [20] assess that the process of peace building entails, *inter alia,* the ensurance of social and positive human conditions for human rights protection and for preventing potential conflicts. In relation to the aspect of human rights protection there is the question of *of re-establishing the rights that were violated during conflicts.* Hence, amongst the positive socio-human conditions that are favourable to the fulfilment of human rights is *the elimination of impunity, respectively the assurance of helding legally liable all individuals that are guilty of acts of human rights violations.* As a consequence of the war of former Iugoslavia and of the Rwanda genocide, the process of peace reconstruction has etablished the objective of creating international criminal fora that are competent to re-establish the rights of the victims of human rights violations by holding responsible the criminals.

The main concern of the international community following the cessation of the conflict for the former Yugoslavia consisted in the peace-building process by means of improving the concept of *human rights.* The Dayton Peace Agreement [21] established the objective of ensuring the respect for human rights in the context of re-creating a regional democratic community. Annex number 6 to the Dayton Agreement enshrines regulations whose purpose consists in guaranteeing human rights to all persons who are found in the jurisdiction of Bosnia and Herzegovina. Doctrinaire studies [22] underline the fact that human rights that are guaranteed in favour of all individuals who reside in Bosnia and Herzegovina must be asured according to the Dayton Peace Agreement, at the highest level possible. It is expressly stipulated the fact that the degree of human rights protection that was ought to be guaranteed is built by considering the pattern set out by the European Convention on Human Rights and Fundamental Freedoms. Specifically, the Dayton Peace Agreement states that in Annex number 6 the rights guaranteed to all persons who reside within the jurisdiction of Bosnia and Herzegovina are detailed in the European Convention and in its Additional Protocols as well as in other international instruments amongst which we remind, for example, the Convention for Preventing and

Punishing the Crime of Genocide, the Convention for Eliminating All Forms of Racial Discrimination, the International Convenant for Civil and Political Rights, the International Convenant for Economic, Social and Cultural Rights. In Annex 6 of the Dayton Agreement are consecrated in an absolute manner (without indicating limitations/restrictions) 13 rights [23]; the latter are mostly enshrined in the category of first generation rights and have correspondance in the catalogue of civil and political rights contained in the European Convention on Human Rights and Fundamental Freedoms. Annex 4 of the Dayton Agreement creates the premises of instituting a democratic society in Bosnia and Herzegovina through the formulation of a Constitution that attests in article I, paragraph 2 that Bosnia and Herzegovina will be a democratic State organized by virtue of the the rule of law principle. We assess that the main constitutional provision in the realm of human rights is found in article II (2) : the rights and freedoms established in the European Convention and its Additional Protocols will be directly applied in Bosnia-Herzegovina and will have preeminence by comparison to other domestic laws.

Following the war for the former Yugoslavia, the right to peace is applied in both its senses : being mostly underlined its positive meaning. As we have previously argued in our paper, the peace-building process was oriented in particular towards the assurance of human rights and also towards consolidating a legal system inspired by European legal standards. In the South Sudan civil war, the violences have started since December 2013, amid the public declaration made on March 2013 by vicepresident Riek Machar according to which his main political objective resides in eliminating the president Kiir Salva from power. Consequently, vicepresident Riek Machar was dismissed. Although the recognition of South Sudan independence in July 2011 was regarded as an exercise of Peoples' right to self-determination and as the fulfilment of a peace condition for the region, the inner conflicts within South Sudand continued to escalate. The main cause of the inner conflict of South Sudan resides in the split between the two political leaders – Riek Machar and Kiir Salva- a split to which

has contributed the different tribal membership (Machar is ethnic Nuer and Kiir is ethnic Dinka). Doctrinaire studies [24] observe the historic circumstances amid which has appeared and escalated the conflict between ethnic tribes Nuer and Dinka : in the context of the Bor massacre – developed in November 1991- that determined the murder of 2000 Dinka civilians by the Nuer fighters led by Riek Machar. The Dinka ethnicity is notorious for undertaking agricultural activities meanwhile the Nuer ethnicity has as central preoccupation the breeding of animals and military training, outruning the Dinka ethnicity in military skills. The conflict of South Sudan has brought limitations in the field of human rights – especially in regard to the civil population- on account of the inability of Government forces to correctly manage violences. The application of the right to peace (understood in its positive sense) in the context of the civil war in South Sudan has generated the concern for inserting human rights in domestic juridical documents. *Exempli gratia,* until 2013, the legal framework of South Sudan did not transpose the main instruments adopted under the UN auspices in the field of human rights like the International Convenant for Civil and Political Rights, the International Convenant for Economic, Social and Cultural Rights, the UN Convention against Torture, the UN Convention for the Elimination of all Forms of Discrimination against Women, and others. We take notice of the fact that, similar to the process of peace reconstruction that was undertaken in Bosnia and Herzegovina following the termination of the Bosnian-Serb war, the process of peace reconstruction undertaken in South Sudan has in the center of its objectives the strengthening of the domestic legal framework in the realm of human rights. The peculiarity of the peace reconstruction process developed in South Sudan resides in the fact that it takes place in unsuitable conditions as violences continue at present. The Transitional Constitution of South Sudan adopted in 2011 mentiones in its Preamble the idea of establishing a democratic State based on justice, equality and on the respect of human rights and the Second Section of the Constitution – comprized between articles 9-34 enshrines

the *domestic bill of human rights established (according to art. 9 of the Constitution) between the People of South Sudan and the Government.*

The manner of enforcing the right to peace in South Sudan is in nature *suis generis.* As we have previously mentioned, in the conflict for the former Yugoslavia, the application of the right to peace is acheived in both its coordinates (positive and negative) because the Dayton Peace Agreement pursued both the prevention of new conflicts and the democratic reconstruction of society thus highlighting the interest of protecting human rights. In the case of South Sudan, the conflicts continue so we cannot discuss the invocation and the application of the right to peace in its negative dimension (the absence of conflict and the prevention of future conflicts). On the other hand, the application of the right to peace is present in its positive dimension –respectively in the sense of ensuring the protection of human rights and of counteracting the violences against the civil population. The commitments adopted by the Republic of South Sudan in the field of human rights through : (1) joining the standards imposed within the framework of international customary law by means of the dispositions of the Universal Declaration on Human Rights and also through (2) the ratification of the instruments of international humanitarian law such as the fourth Geneva Convention refering to the protection of civilians in time of war and both the Additional Protocols [25], reflects the concern for the protection of human rights. The attention of the national community of South Sudan concentrated towards human rights issues is all the more important as UN authorities responsable with the managing of humanitarian problems in the region have assessed the factual situation as having the highest level of severity in the matter of human rights violations.

Conclusions

At the international level, violent manifestations and the assurance of peace represent aspects that are inter-related and that do not benefit from clear and coherent regulations. Mentioning the right to peace in both international

juridical binding documents and in international juridical *soft law* instruments and as well the complex conceptualization of the right to peace (by combining the positive and the negative senses) constitues aspects that determine practical consequences in the application of the right to peace from the perspective of its *content* and of identifying *the manner of application.* The recognition of peace as an autonomous juridical value elevated to the position of a human right enshrined in the category of solidarity rights generates some war related and *legitimacy* related issues. The purely theoretical aspects that characterize the right to peace discloses some difficulties that are underlined inclusively regarding the aspect of practising the right to peace. Thus, if the negative dimension of the right to peace is defined as the absence of war then the existence of peace is inherently connected and conditioned by the pre-existence of a conflict. Although war has as fundamental consequences the violation of human rights and the alteration of the democratic framework that exists within a given society, if peace (in its negative sense) cannot exist apart form conflict, then the question of the *legitimacy of conflict* is not *per se* a real juridical problem. On the other hand, if we choose the positive conceptualization of peace, the juridical paradoxes appear in the practical application of the right to peace. If in its positive form, peace supposes a process of re-establishing rights and re-constructing rights that means that, concretly, the state of conflict conditions the state of peace. The case of the former Yugoslavia and, more recently, the case of South Sudan highlight the fact that, in its positive form, peace implies the exercise of re-establishing order and democracy in post-conflict conditions (the former Yugoslavia) and even in the conditions of an on-going conflict (South Sudan).

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[14] Adopted at Santiago de Compostela at the meeting that took place on 9 and 10 December by the World Social Forum of Peace Education.
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[16] The Maputo Protocol is supplementary to the African Charter on Human and Peoples' Rights and it represents the juridical document at the regional level that is specialized in the protection of women's rights.
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[19] We take into consideration the Request for the inclusion of a supplementary item in the Agenda of the Fifty Second Session A/52/191 –Towards a culture of peace, Resolution A/RES/52/15- Proclamation of the year 2000 as the International Year for the Culture of Peace, Resolution A/RES/53/25-International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001–2010).
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[23] Amongst the guaranteed rights we mention : the right to life, the right to not be subjected to torture, inhuman or degrading treatment, the right of not being held in slavery or servitute and of not being subjected to forced labour, the right to freedom and security, the freedom of expression, the freedom of thinking, the freedom of conscience and of religion, the right to property, the right to education, the freedom of movement, the right to marriage and to have a family.
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