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New Rights of the People, Deriving from the Content of the Right to Peace

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Abstract: Conceiving the 21st century as a century of international peace is to encourage enforcement and development of solidarity rights, as a category of major importance, as a proof of human civilization as such, of reaching the necessary level of maturity and surpassing the old traditional perceptions about a general culture of aggression and suspicion among states. Instead, improving the legal content of the right to peace may represent an effort made by the entire international society to build a new level of mutual trust, cooperation and dialogue among cultures and states. Our paper focuses on exploring new legal rights derived from the content of the right to peace, as legal methods of shaping a culture of respect, tolerance, harmony and cooperation for peace that our century insistently claims.

Keywords: solidarity rights, right to peace, rights of nations, Westphalian system.

1. The Right to Peace and the Duties of the States to Ensure Peace: Expansion and Consolidation of the International Legal System in the 21st Century

According to the doctrine, we must make a distinction between the law of *peace* and the right to *peace*, with the former being an overall set of regulations and principles meant to ensure and observe a climate of international peace (Mazilu, 1998, pp. 148-149).

The right *to peace* is a distinct right, in the category of solidarity rights, beside the right to a clean and healthy environment, the right to development, the right to international security and stability etc. The right to peace can also be regarded as *an individual right* (as a *human right*, acknowledged for every human being, *indirectly* based on the stipulations of the Universal Declaration of Human Rights, art. 28, by defining the right of every person to "to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized") (*Universal Declaration of Human Rights,* 1948).

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The right to peace is defined again, *in an indirect manner*, in art. 20, paragraph 1/ International Covenant on Civil and Political Rights (December 16th, 1966). This article stipulates a national ban ("by law") on any form of propaganda in favour of war.

The right to peace is also present *in its international dimension,* at the level of inter-state relations, as a *collective* right *of the peoples* to enjoy a peaceful, safe and stable international environment. Thus, the first UN objective stipulated in the current Charter of the United Nations is the following: "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." (*Charter of the United Nations*, *and Statute of the International Court of Justice,* 2008, p. 5)

Another reference to the "universal peace" can also be found in the Charter of the United Nations, art. 1, paragraph 2, i.e. "to develop friendly relations among nations (…) and to take other appropriate measures to strengthen universal peace" (*Charter of the United Nations*, *and Statute of the International Court of Justice,* 2008, p. 5).

Art. 2, paragraph 3 in the Charter of the United Nations (2008, p. 6) stipulates an active legal obligation of the UN member states to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Technically, *the entire Chapter 1* includes direct or indirect references, express or implicit legal obligations for the UN member states, regarding the right to peace.

The doctrine considers that a violation of the right to peace (or of the "right of the peoples to tranquillity, peace, free, independent and sovereign development") (Mazilu, 1998, pp. 148-151) is "the most severe crime against humanity".

In *a global order of peace,* the right to peace becomes a right (both individual and collective) acknowledged *on the basis of regulatory global regimes* regarding the setup, maintaining, control of peace keeping at global level (not only in the relations among states, but also in relations among non-state actors). It becomes *a right that authorizes global institutions with special peace-keeping competences* (among which the global institution of the Global Mediator of Peace or the Global Council of Peace) *to intervene and manage the global peace*, in order to provide concrete protection to the peoples, as global actors.

In our opinion, the right to peace must be regarded as a fundamental right of the human being, *as well as of the peoples.* In a Westphalian system, *the*

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states have the obligation to ensure for their peoples the exercise of the right to live, develop in a peaceful, harmonious and conflict-free international and internal climate. Each people has the normal aspiration to live and develop in peace, in conditions of international safety, in a peaceful international climate, stable, based on trust and friendly cooperation among nations, in an international environment built on the universal obligation of the states to solve their disputes in a peaceful manner and not to use force and the threat of force, in international relations (Mazilu, 1998, pp. 148-149).

The right to peace is also *an overall fundamental right of the humanity*. Peace is a vital prerequisite for the survival and progress of the human civilization, also considering the technological and scientific progress of our age (nuclear weapons etc.)

As defined implicitly or in a series of express stipulations, in Chapter 1 of the Charter of the United Nations, the right to peace is a right *with complex legal content,* as seen above.

2. The Necessity to Reform the UN, an Institution Specific to a 21st Century International System

The issues surrounding the UN reform and the UN system constitute an entire doctrine. Although the principles of the UN Charter continue to maintain their value and be current in the 21st century, in our opinion, *the institutional framework and the competences* of the UN institutions are no longer sufficiently adapted to the post-state order of the 21st century. More precisely, *we are talking about a post-Westphalian order,* in which it is rather difficult to ignore the global, regional actions of the non-state actors, the lack of regulatory bodies at international and global level, able to *regulate and penalize* the action of these new actors, actions with consequences for the international economic, legal and political order, for the world of states (which are no longer the sole decision-makers) (Evans & Newnham, 2001, pp. 210-211).

What we have in view is a *post-sovereign order*, an order in full process of globalization, increasingly alienated from the international world, that of sovereign states, as defined in the 20th century (Held, et. al., 2004, pp. 81-82).

The ever changing order of the 21st century is an order in which the states are fully challenged by and in competition with the *non-state actors*; the states are considered to be obsolete declining entities, incapable for coping with the characteristics of this new world (the international liberalism, borderless trade and market dictate, among others) (Held, et. al., 2004, pp. 222-223), in which the new dominating actors are particularly the

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corporations, multinational or transnational companies. The contemporary international law, which focuses on the world ordered, regulated and controlled by the sovereign states, is incapable of understanding and providing *global regulatory and frameworks, able to penalize* the action of these non-state actors (which are not even acknowledged by the contemporary international law as subjects of international law).

The bodies, agencies and institutions in the UN system (an original and complex institutional system, which is however built around the concept of the nation-state as central and effective decision-maker, in the international world of the second half of the 21st century) must be regarded from a new perspective, i.e. that of the fundamental mutations witnessed at the beginning of the 21st century. We are talking about a *transfer from the old world of nation-states*, a world of sovereign states, with equal rights, with obligations clearly assumed at international level, *to a post-sovereign world* of transnational entities, corporations and other non-state actors, regarding which the current international contemporary law continues to be *unable to assume any position* (it does not acknowledge them as subjects of international public law, it does not consider them entities which can be penalized in the international public law, there are no mechanisms, institutions, methods or competences of the states, to hold the corporations and other non-state actors liable, in the international public law).

Thus, at the beginning of the 21st century, *the international public law continues to be characterized by fundamental regulatory gaps* regarding the legal status of the non-state actors, as well as the competence of the states, international institutions (controlled by the states, such as the UN) or the new global institutions (global institutions stemming from the competence of the states) to control, manage, and somehow regulate the activity and decision-making effects of the corporations and other non-state actors.

3. Solidarity Rights. The Right to Peace and the Obligation of the States to Engage in International Cooperation

The category of 3rd generation rights (also known as the category of "solidarity rights") includes rights such as: the right to peace, the right to a safe and peaceful international environment, the right to a clean and healthy environment.

In addition, one of the obligations assumed by the UN member states *when applying the fundamental principles of international law* (including the principle of cooperation among states) is the legal obligation of the UN member states to cooperate with each other, in good faith and according to

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the principle of mutual advantage (a principle of international law, closely connected to the principle of sovereignty and equality of rights and obligations of all the states).

Resolution 3281 (XXIX), *Charter of Economic Rights and Duties of the States,* adopted by the UN GA on December 12th 1974, defines in the Preamble, item c., the engagement of the signatory states in the "encouragement of co-operation, on the basis of mutual advantage and equitable benefits for all *peace-loving States*"; it further acknowledges the importance of "strengthening instruments of international economic co-operation *as a means for the consolidation of peace for the benefit of all*".

Chapter 1 of the Charter, article 11, defines the engagement of the signatory states to cooperate in order to "strengthen and continuously improve the efficiency of international organizations in implementing measures to stimulate the general economic progress of all countries, particularly of developing countries", while art. 12 stipulates the right of the states "to participate in *sub-regional, regional interregional* co-operation in the pursuit of their economic and social development", according to the principles of the Charter. Art. 17 in this legal international document of reference for the definition of many solidarity rights (as collective rights of the peoples, in this case) expressly refers to the obligation of the signatory states to pursue "international co-operation for development", i.e. cooperation "with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty".

Art. 26 in the Charter clearly refers to *another solidarity right*, i.e. *the right of peaceful coexistence among the states*; thus, the signatory states take upon the obligation to "*coexist in tolerance and live together in peace*, irrespective of differences in political, economic, social and cultural systems, and to facilitate trade between States having different economic and social systems.", while art. 30 stipulates the express responsibility of all the states to ensure the "protection, preservation and enhancement of the environment for the present and future generations"; "all States shall endeavour to establish their own environment and development policies in conformity with such responsibility".

In the key-document called *The 2030 Agenda,* the cooperation among states becomes a *global obligation* (concerning the *special type* of legal protection granted, *the recipient* and *the scope of protection*, all linked to the principle of

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durable development, which places the concept of 'peace' in a holistic and environmental perspective). According to the Preamble (the "*Planet*" pillar), the cooperation among states also aims to *"protect the planet* from degradation, including through *sustainable* consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can *support the needs of the present and future generations"*. In article 35, The 2030 Agenda considers that "sustainable development cannot be realized without peace and security; and peace and security will be at risk without sustainable development". The factors leading to violence, insecurity, injustice, factors such as poor governing, corruption, inequality, arms trafficking and illicit financial trafficking are considered *threats to peace*, as newly interpreted from the perspective of the global order of peace. In addition, Goal 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels") on the 2030 Agenda expressly stipulates the engagement of the signatory states to "broaden and strengthen the participation of developing countries in the institutions of global governance".

3.1. The Right to Peace, a Solidarity Right

The new diplomacy of the 21st century (built as a "*century of peace*", actual proof of reaching a certain maturity threshold in the history of the human civilization, of progress from the culture of aggression and destruction caused by war, to a culture of dialogue, tolerance, based on the principle of human being living in harmony with nature, of the human civilization living in harmony with nature, of cooperation and trust among peoples and states) must also be built starting from a consolidated and developed concept of the right to peace.

The UN GA Resolution no. 39/11 – *Declaration on the Right of Peoples to Peace* – adopted on November 12th 1984 stipulates the "will and the aspirations of all peoples to eradicate war from the life of mankind" (UN GA Resolution no. 39/11, 1997, pp. 340-341). It is therefore a right of the peoples to peace, which would entail their will "to eradicate war from the life of mankind" and "to avert a world-wide nuclear catastrophe". Upon careful reread of the Declaration text, we note that it defines a right of the *peoples* to peace, not a right of the *states*, as the latter are merely a means of expressing (including in their quality of subjects of international law) "the will and the aspirations of all peoples to eradicate war from the life of mankind and, above all, to avert a world-wide nuclear catastrophe".

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In the sense of the Declaration, the *states* have the fundamental legal obligation, associated with the right of the peoples to peace, to ensure a peaceful life for the peoples, to protect the right of the peoples to peace and to contribute to exercising this right; to lead a policy "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" (UN GA Resolution no. 39/11, 1997, p. 341). The states have the obligation to cooperate with international organizations, in order "to do their utmost to assist in implementing the right of peoples to peace through the adoption of appropriate measures at both the national and the international level" (UN GA Resolution no. 39/11, 1997, p. 341).

The right of the *peoples* to peace is *completed with other rights* (the right of the *individuals* to live in peace, the right of the *humanity* to live in peace), which broadens at all levels (individual, national, regional, international and at humanity level, overall) the content of the right to peace, as a fundamental right of the human being, as well as a collective right, in the category of solidarity rights (3rd generation of human rights).

The UN GA Resolution no. 33/73 – *Declaration on the Preparation of Societies for Life in Peace* –, adopted on December 15th 1978 (1997, p. 330), states that "peace among nations is mankind's paramount value" (1997, p.330) and that our age, an age of technical and scientific progress, "to take measures and pursue policies to strengthen international peace and security" (1997, p. 331). The arming race, the process of improving newer and newer types and systems of arms represent a "threat to the world peace" (1997, p. 331), in the sense of the Declaration and the principles in the Charter of the United Nations.

Upon careful read, this international text reveals a *sustainable* view on peace, dating as far back as 1978, in which peace is a an asset, a value, as well as a political, economic, social, cultural context of peaceful cooperation among the states and peoples, which not only the present generations, but also *the future generations* must be able to enjoy. In other words, the text reveals a *legal projection into the future*, since the states have the duty both in the present and *in the future* to *contribute to the proper conditions for the exercise and preservation of peace*. Thus, the states have the duty to take measures and adopt policies which are compliant with the principle of peaceful resolution of international disputes, interdiction of the aggression war, interdiction of use of force and threat to use force in international relations, as well as policies with the clearly defined purpose to strengthen peace, international security and to build trust among the states and peoples.

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4. New Rights of the Peoples, from the Content of the Right to Peace

The right to peace is a right with *a complex legal content*. In the UN order (as a Westphalian order, based on the sovereign states and without legislative authority above them), the right to peace is the root of a series of *rights of the peoples, defined by default* in Chapter 1 of the UN Charter (the right of the peoples to enjoy a peaceful and safe international environment, the right of the peoples to enjoy collective and effective measures to prevent and remove threats to peace and enjoy collective and effective measures to eliminate acts of aggression and other violations of peace; the right of the peoples to enjoy resolutions to international disputes or situations which may lead to violations of peace, resolutions adopted by the states, *according to the international law and the principle of justice, and by peaceful means;* the right of the peoples to benefit from adequate measures to strengthen the universal peace and from an international climate based on trust and friendly cooperation among nations; the right of the peoples to benefit from the fulfilment in good faith of the obligations assumed by the states, according to the stipulations of the UN Charter; the right of the peoples to enjoy the resolution of all the international disputes among the states in a peaceful manner, for the international peace, security and justice not to be endangered; the right of the peoples to enjoy the safety resulted from the UN member states refraining from using force or the threat of force in their relationships).

In our opinion, if we look at the *global dimension* of the right to peace, the content of the right to peace reveals a series of *other rights,* besides the above-mentioned ones, *which make sense in a global order of peace:*

- Right of the peoples to enjoy a global order of peace and security
- Right of the peoples to enjoy a global order based on the principles of trust and respect, friendly cooperation among all the peoples and regions of the planet
- Right of the peoples to enjoy protection from the global organizations with special tasks in the management of the global peace, against any act of aggression which may pose a threat to their integrity and development
- Right of the peoples to benefit from a series of global institutions with tasks in the management of peace, and from a legislation of peace
- Right of the peoples to enjoy peace in prosperity
- Right of the peoples to enjoy a global peace, through sustainable development

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• Right of the peoples to enjoy the use of technological and scientific innovations for peace purposes

• Right of the future generations to enjoy a climate of peace and global security

Conclusions

The right to peace is *a constant* preoccupation of the humanity, considering the necessity to remove war from the inter-state relations and to create a set of interdictions against it.

The evolution of the human civilization and in particular its survival (in the context of a fast development of the military technologies, with potentially serious, irremediable impact on the very planet Earth and life on this planet, as well as on the right of the future generations to live in freedom, dignity, prosperity and peace, to be freed from hunger, misery, terror generated by a world of insecurity and wars) depend on a regulating the right to peace at global level as well, in a consolidated manner.

We consider that the contemporary international law, in the context of the current international legal level, is no longer capable of ensuring a set of regulations to guarantee a global peace, in an already globalized order, regulations to efficiently respond to and eliminate the non-conventional, asymmetrical threats generated by the non-state actors (for which the contemporary international law either does not have a response yet, or the response is weak and inefficient).

The elaboration and consolidation of a global set of principles and regulations of a right to peace (based on the model of globalized regulatory regimes regarding the law of environment, climate changes, human rights etc.), with *an advanced content* as compared to the current stipulations in the UN Charter, Chapter 1.

Peace becomes a complex concept, as it is closely connected to the concept of prosperity, sustainable development, eco-cities, green technologies, unconventional threats and non-state actors, for which the contemporary international law has yet to find the most efficient and evolved legal methods.

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