The Right to Peace: A Mischievous Declaration

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This Liber addresses the shortcomings of International Law. This contribution focuses on the draft Declaration on the Right to Peace. It will be argued that this draft Declaration is a disservice to international law, with the UN Human Rights Council dealing with political issues behind the veil of human rights. Based on geographical and ideological concepts, the draft has veered into the political realm therefore rendering it unfit to truly contribute to the development of international law and human rights. Indeed, this may simply be construed as adhering to the common critique of international law, namely, its ability to further political and ideological purposes.

The December 10th 1948 General Assembly (GA) vote in Paris, on the Universal Declaration on Human Rights, was met with a total of eight abstentions. Two of these stemmed from local and cultural reasons (South Africa on apartheid; Saudi Arabia on the change of religion). The remaining six (the Soviet bloc) abstained because they were of the opinion that the Declaration was lopsided, on the basis that too much attention was given to civil and political rights (the so-called first generation rights) and not enough to social and economic rights (second generation rights). Efforts to develop the Declaration into just one instrument therefore failed and in 1966 two human rights covenants were adopted, each of them focusing on just one of the two generations. Much attention has been paid to the (idealistic) idea that the first- and second generation rights are indivisible, interdependent and interrelated, a proposition the present author finds difficult to uphold.1 It is to be emphasized that the relationship between the individual and the community (state) differs greatly depending on the generation of rights. The state needs to “abstain” where it concerns first generation rights (house, family, body, expression, religion), whereas it needs to play an active role when education, jobs or health (second generation) are at stake. Yet, all rights can be covered more or less under the “respect, protect and fulfill” adage.

1966, the year the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural

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1 World Conference on Human Rights (Vienna); Declaration and Action Plan, 25 June 1993: All human rights are universal, indivisible and interdependent and interrelated.
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Rights were adopted, was very much part of the decolonization decade. For this reason, both Covenants contained an Article 1 which is to some extent disconnected from the rest of the Covenant, mostly because it addresses peoples, rather than individuals. Article 1 deals with the right to self-determination, reading: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. This holds some relevance for the particular decade in question (Zeitgeist) yet has detrimental effects for the human rights debate and the many conflicts based on the perceived notion that self-determination amounts to independence. The problems with the right to self-determination date back to the 1960 GA resolutions (1514/1541). However, due regard shall be had to the reparative action needed in this respect, as laid down in both the 25th and 50th anniversary GA resolutions 2625(XXV) and 50/6, in which the right to self-determination has been reformulated as a result of a perceived need to exercise a degree of damage control. This was also the case with the 1993 Vienna Declaration. Reference must also be made to the involvement of the ICJ on these particular issues, as witnessed, for example, in the Namibia, Western Sahara and Kosovo cases. The fact that the ICJ advised in the Kosovo case that the Unilateral Declaration of Independence involved was not contrary to international law (quite different from stating that it is in accordance


3 Article 1 in full:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

4 See for instance para. 2 of the Vienna Declaration 1993.

5 ICJ Advisory Opinion of 22 July 2010, V. General Conclusion (122) The Court has concluded above that the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently the adoption of that declaration did not violate any applicable rule of international law.