

Peace & Law

This Peace and Law section is meant to serve as an introduction to various concepts related to peace and how domestic and international law may be used to implement measures to realize all of the components of peace. Some of these elements include education, tolerance, equality, security, disarmament and development, and respect for human rights and the rule of law.

Following the short introduction below, you will find a list of definitions; sub-sections on Peace and Law at the international level, including the role of the United Nations and the issue of peacebuilding, and the national domestic level; and links to more information as well as different national and international civil society campaigns for peace.

Within peace studies, different concepts are categorized as part of **negative** and **positive** peace. Using legal means to promote and implement peace falls under the framework of positive peace. The [Final Report of the 1978 UNESCO Expert Meeting on Human Rights, Human Needs, and the establishment of a New Economic Order](#) states that there are four levels that promote positive peace: cultural, economic, political, and judicial. It goes on to state that all actors have responsibility to promote a culture of peace, while States have the primary responsibility to implement positive peace in the economic and political levels. Yet there remains an open question on how to implement positive peace on the final level: the judicial.

One possibility for implementing the judicial level of positive peace, and therefore the individual right to peace, is to successfully consolidate peace and the rule of law, namely through national and eventually international law. There already exists at the domestic level a small, but growing, number of peace constitutions and Ministries of Peace in some countries around the world, as well as a number of countries with no standing armies.

Right to Peace

As part of the solidarity rights of the 'third generation' of human rights, the right to peace guarantees all individuals and groups not only the right to life without violence, but also the right to positive peace.

Positive peace includes the 'economic, social, and cultural development of peoples as a condition for satisfying the basic needs of human beings and...effective respect of all human rights'; this includes the right to life without violence but also life without conditions such as malnutrition, disease, and poverty. A key principle of positive peace is that equity and social justice in and between all societies would eliminate the need for violence, and the culture of war that legitimizes violence, as forms of interaction between peoples, communities, and States.

Under the United Nations, the promotion of the collective right of peoples to peace has its origins in the foundation of the UN Charter and following resolutions of the General Assembly (please see International section). There is currently an important campaign within international civil society led by the Spanish Society for International Human Rights Law (SSIHRL) to include the right to peace as an individual right in the Universal Declaration of Human Rights. The right to peace, detailed in the Luarca Declaration (summary below), is seen by its advocates as essential to the concept of human security, which if properly implemented would be a force for reconciliation between peace and justice. That is to say, in implementing the right to peace and human security as overall policy goals, there is the possibility to integrate humanitarianism and development concerns on one hand, and the rule of law and international security on the other, rather than view them as two competing concepts (see [A/HRC/6/NGO/62](#)).

Luarca Declaration

The Luarca Declaration declares peace as an individual right which is not only the absence of conflict but also a culture of peace, which must contain the 'values, attitudes, modes of behavior...that reject violence and prevent conflicts' by addressing root causes of conflict. The right to peace can be enforced by international law, as the commitment to peace is a principle of international law (see the **UN Charter**). This commitment is essential for disarmament and therefore development. The Luarca Declaration takes a holistic view of peace and incorporates a number of perspectives, built on the foundation of peace education, including justice and the fight for impunity, refugees and migrants, racism and xenophobia, gender roles, arms trafficking, indigenous peoples, and environmental protection, in the right to peace. Finally, the Luarca Declaration declares the entire international community responsible for the realization of the right to peace, where the primary duty to protect that right should be the responsibility of States and the United Nations.

[Link to the Luarca Declaration](#)

In international law there is a gap between policy and implementation, between passing law and using it, and there is no police force to hold States responsible for their actions or compel them to comply with the International Criminal Court or International Court of Justice. Only citizens of a state can hold it responsible to initiate, uphold, and protect the right to peace. The permanent establishment of administrative institutions, such as Ministries or Departments of Peace, to inform the public and provide means to implement a culture of peace and the human right to peace, protected by law, are the first steps for individuals and communities to take action to promote a more peaceful world within a legal framework.

Definitions

1. Rights: Negative and Positive

Negative rights are rights that must be preserved by the prohibition of a certain action, for example the freedom from violent crime, war, invasion, or poverty is dependent on an individual or group of individuals refraining from the use of violence. **Positive rights** are those that are respected by obliging proactive action to protect such a right, such as the right of police protection, the right to counsel, or the right to social justice. Of the three generations of human rights, civil and political rights are associated with negative rights, and economic, social and cultural rights as well as solidarity rights are categorized as positive rights.

[“Positive and Negative Rights” from Philosophy, etc.](#)

2. Peace: Negative and Positive

Negative peace is the more traditional concept of peace, conceived only as the absence of violence. Disarmament is one of the most important aspects of negative peace, as it permanently removes the option to resort to violence and can act as a bridge to building the social and economic conditions for positive peace. **Positive peace** encompasses not only the absence of violence, but also the absence of conditions, such as nationalism, sexism, or racism, also known as structural violence, that create social injustice and economic inequality. Achievement of both conditions, especially the latter, requires multiple stakeholders (governments, NGOs, individuals, communities, society as a whole) to collaborate in order to ensure respect for human rights, justice and the rule of law, and to ensure the basic needs of all individuals are provided for.

[IPB’s Disarmament for Development Program](#)

“Positive peace is more than the absence of violence; it is the presence of social justice through equal opportunity, a fair distribution of power and resources, equal protection and impartial enforcement of law.”
[Johann Galtung, founder of TRANSCEND International: A Network for Peace and Development](#)

3. Human Security

The concept of human security was formally introduced in the UNDP’s 1994 *Human Development Report*. **Human security** is an evolving, multi-dimensional concept, but at its core, it is a movement away from the traditional concept of national and military security towards one that is “based on the respect for all human rights and democratic principles”. Human security emphasizes the protection of individuals by a multitude of stakeholders; its objectives are “peace, international stability and protection for individuals and communities”. The main catalyst for the shift from traditional security perspectives to human security was the rise in intra-state conflicts in the latter half of the 20th century and the end of the Cold War. These are not the only catalysts, however, as human security approaches seek to address new transnational security threats, such as terrorism, trafficking, natural disasters and climate change, as well as development gaps. There is no universally accepted definition of human security, but the concept has gradually been absorbed into state doctrines and official discourse and incorporated in the humanitarian and development field. This has begun to lead to some controversy, however, as some developing nations see the concept of human security as a way for the developed world to override their inherent rights as a sovereign State.

More info:

[Ch.1 “The Human Security Concept” in IPB’s publication Warfare or Welfare?](#)
IPB Bibliography on Human Security

[UNESCO: Human Security – Approaches and Challenges \(2008\)](#)

UNESCO Human Security Report 2008 – *need hyperlink to PDF page.*

[Human Security Network](#)

Commission on Human Security

4. Sustainable Development

The most widely used definition of **sustainable development** was coined [by the World Commission on the Environment and Development](#) in 1987; ‘Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’ In the context of human rights, this means improving the quality of life for all through social development and economic growth that protects and respects the environment. General Assembly resolutions on the right to peace state that the growing development gap ‘poses a major threat to global prosperity, peace and security and stability’.

Sustainable development is criticized by some ecologists because it promotes economic and industrial growth that is beyond the ecological limits of our planet. For more information, see the [Development Education Project website](#).

[Our Common Future: Report of the World Commission on the Environment and Development](#)

5. Peacebuilding

There are many differing definitions of peacebuilding, but most fall into two broad categories. The first is a more holistic definition of peacebuilding, seen as a long-term process that seeks to ‘prevent, reduce, and transform’ violence, either structural violence or civil unrest, through intensive coordinated efforts by all actors from varying backgrounds.¹

The more traditional interpretation presented by the United Nations is that peacebuilding is an attempt to rebuild a post-conflict society, as ‘it encompasses a wide range of political, developmental, humanitarian and human rights programs and mechanisms’.² The concept was first defined by former United Nations Secretary General, Boutros Boutros-Ghali, who emphasizes the importance of peacemaking and peacebuilding as mutually reinforcing; ‘only sustained, cooperative work to deal with underlying economic, social, cultural and humanitarian problems can place an achieved peace on a durable foundation. Preventive diplomacy is to avoid a crisis; post-conflict peace-building is to prevent a recurrence’.³

More information:

[Peacebuilding Portal](#)

[The Alliance for Peacebuilding](#)

¹ Dr. Lisa Schirch, *Strategic Peacebuilding*.

² *Global Education Website*, “[Peacebuilding](#)”

³ Boutros Boutros-Ghali, [An Agenda for Peace A/47/277](#)

International & UN Level

*The right to peace has its origins in the UN Charter and subsequent General Assembly Resolutions on the right of peoples to peace. To date, the UN recognizes only the collective right of peoples to peace, which is supposed to be protected within the UN system by **peacebuilding** efforts. Sadly, commitments on paper do not automatically translate to action on the ground, resulting in several failures in the last two decades, in places like Rwanda, Bosnia, Somalia, the Sudan, and Sri Lanka, to prevent violence and massive human rights abuses. This is one of the reasons that civil society has increased its efforts, in collaboration with the **Luarca Declaration** and campaign, to promote the individual right to peace by submitting documents to the UN Human Rights Council.*

Short summaries of the aforementioned documents and their related hyperlinks are provided below.

Chronology of UN Benchmark Documents:

[Charter of the United Nations 1945](#)

The preamble to the UN Charter seeks to prevent warfare, protect fundamental human rights, establish conditions for justice, and promote social progress. Article 2(4) of the Charter prohibits Member States from the threat or use of force in international relations. Article 26 requires the Security Council to ‘formulate plans for a system for the regulation of armaments’ ... ‘In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources’. Article 51 protects the right of Member States to resort to collective or self-defense upon attack, within the framework set forth by the United Nations.

Related Article: [ARTICLE 9 and ARTICLE 26](#):

[Twin campaigns to move the world towards peace and social justice](#)

[Essentials of Peace 1949 UN General Assembly \(GA\) Resolution 290 \(IV\)](#)

Outlines the basic UN Charter principles for peaceful relations between States, emphasizing that peace and security are two inseparable concepts.

[1984 Right to Peace Declaration ‘Declaration on the Right of Peoples to Peace of 1984’ UN GA Resolution 39/11 Nov 1984](#)

The 1984 Right to Peace Declaration was the first UN General Assembly declaration to explicitly declare a right to peace, though it extended only to peoples and not individuals. The Right to Peace declaration also emphasizes that States have the fundamental obligation to ensure that peoples live in peace, especially in the nuclear age, as this is a prerequisite for the further development of nations and assurance of respect for the United Nations Charter principles.

[‘Implementation of the Right of Peoples to Peace’ UNGA Resolution 45/14 Nov 1990](#)

The 1990 resolution reaffirms the objectives set forth in the 1984 Right to Peace declaration with one addition, it recalls the Universal Declaration of Human Rights. It also recalls, under principles of the UN Charter, the duties of states, such as respect for the principle of sovereignty, the political independence of states, and territorial integrity, while implementing the collective right to peace.

[‘Promotion of the Right of Peoples to Peace’ UNGA Resolution 57/216 Dec 2002](#)

After over a decade long gap in UNGA resolutions on the right to peace following the end of the Cold War, the *Promotion on the Right of Peoples to Peace* draws the important parallel between

disarmament and development and the culture of peace necessary to attain both: it affirms 'life without war'...as the 'primary international prerequisite' for development and the respect of UN principles. The resolution stresses the importance of the relationship between disarmament and development, and also specifies that resources made available from disarmament programs should be devoted to **sustainable development**.

UN Documents on Peacebuilding:

The emphasis of structural transformation and institutional reform to build governance structures capable of maintaining peace has been spearheaded by the UN.⁴ Boutros Boutros-Ghali identifies peacebuilding as essential to reinforcing conditions of peace achieved by peacemaking and peacekeeping. Peacebuilding is also essential to consolidate institutional mechanisms to maintain peace, such as legal and human rights institutions as well as dispute resolution systems.⁵

[An Agenda for Peace A/47/277 – S24111](#)

Boutros Boutros-Ghali, then UN Secretary General, presents in his report the four components necessary to achieve peace and their mutually-reinforcing roles: preventative diplomacy, peacemaking, peacekeeping, and post-conflict peacebuilding. *An Agenda for Peace* was one of the key documents to introduce and emphasize the need for peacebuilding, especially the role of disarmament, and more specifically demining, in the post-conflict process.

[In larger freedom: towards development, security and human rights for all A/59/2005](#)

This report of Secretary-General Kofi Annan analyzes and addresses the solutions and challenges of the progress of the [Millennium Development Goals](#), the freedom from want, the freedom from fear, the freedom to live in dignity and reform of the United Nations, including structure and finance elements. According to the report, the rise of intra-state conflicts, the role of non-state actors, and spread of global health pandemics, *inter alia*, reflect the imperative nature of development, security, and human rights; moreover, technological advances, increasing economic interdependence, globalization and dramatic geopolitical change necessitate that these three concepts are mutually-reinforcing. As Secretary-General, Kofi Annan also proposed the creation of a [Peacebuilding Commission](#) to address failures of the UN system in areas such as Rwanda, Bosnia, and Somalia, and improve peacebuilding operations in the future.

[A More Secure World: Our Shared Responsibility – Report of the High-level Panel on Threats, Challenges and Change \(2004\)](#)

The report, which also created the resolution establishing the [Peacebuilding Commission](#), outlines a vision for a new era of collective security for the 21st century, led by the United Nations. The report classifies six types of threats to international security: interstate war; intrastate conflict, including violation of human rights *en masse*; poverty, infectious diseases and environmental degradation; nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime. Development is to be the principal policy for defense of international security; at the same time, the UN needs to improve its response to pandemics, such as HIV/AIDS, and its peacemaking and mediation capacity. As for the action needed to implement new collective security policies, the report supports the use of force under the UN framework as a response to

⁴ Catherine Morris, [What is Peacebuilding? One Definition](#)

⁵ Ibid.

threats, highlights the growing importance of the responsibility to protect, and stresses the importance of post-conflict peacebuilding.

Civil Society Submissions to the Human Rights Council on the Individual Right to Peace:

[Peace as a solidarity right. A legal approach](#) (A/HRC/6/NGO/33)
[version française](#)
[versión español](#)

The basis for the legal recognition of the right to peace is in the UN Charter and principles of international law, as well as the recognition of several UNGA resolutions of the collective right to peace, or peoples' right to peace. The independent expert on human rights and international solidarity considers the right to peace should be classified as a right of solidarity, and that the legal development of the right to peace should follow the same path as solidarity rights. Namely, this means the development of the right to peace has to be protected and created not just in a 'passive sense,' but in an active sense in the 'creation of conditions of equity, gender equality and social justice.'

[Peace and development as solidarity rights. A legal assessment.](#) (A/HRC/6/NGO/34)
[version française](#)
[versión español](#)

The Right to Peace should be seen as parallel to right to development: it is a single instrument to include all categories of rights and 'a process where all human rights and fundamental freedoms should be implemented in an equal footing'.

This document seeks recognition for the *holistic concept of peace* which comprises both the 'negative right' to peace as a lack of armed conflict and also the 'positive right' to peace as a condition for development, the elimination of [structural violence](#), and *effective* respect of all human rights, thus making the individual right to peace an *enabling human right*.

[The right to human security as a component of the human right to peace: An approach to terrorism](#)
[version française](#)
[version español](#)

The right to peace, disarmament, and development are all related to the twin concepts of the *freedom from fear* and the *freedom from want*. The traditional idea of security is state security, which has a complementary right to peace in the form of collective rights and *freedom from fear*. The *freedom from want* would be protected by the idea of human security and its corresponding individual right to peace.

[Human Right to Peace versus racism, racial discrimination, xenophobia, and other forms of](#)

intolerance

States that there is a need for a culture of peace to fight a culture of fear, otherwise tolerance of reemerging or existing racist and xenophobic cultures will create conflict: 'the culture of peace's main purpose is to foster mutual understanding, solidarity, social justice, respect for all human rights for all, and harmonious relations among nations, peoples, groups and individuals.' (as cited in [Durban Declaration and Programme of Action](#)). The statement also reminds states of the links between combating racism, constructing multiculturalism, and promoting 'dialogue among cultures' as a means to achieve the human right to peace.

The eradication of extreme poverty as a condition for the full and effective enjoyment of the human right to peace

An often ignored component to peace is 'respect of the dignity and self esteem of the poor', in addition to economic and social justice. Lack of basic security prevents people from enjoying fundamental rights and leads to chronic poverty. In turn, those marginalized by poverty may use violence and conflict as a means of expression of their desperation at being denied basic rights and recognition of dignity.

Follow up to 'Women 2000: gender equality, development and peace for the twenty-first century'
The 'Follow up' first recalls [Security Council resolution 1325 \(2000\)](#), which declares the need for respect of a gender perspective in peace negotiations. The 'Follow up' emphasizes that women are especially vulnerable during conflicts, making it even more important that they are involved in peace negotiations due to their status as victims or participants. It goes on to state that inequality between genders and traditional attitudes towards power is the most 'critical deterrent to peace,' and women need to increase their role in decision making for successful conflict prevention and resolution.

Indigenous peoples and the human right to peace

The [United Nations Declaration on Human Rights of Indigenous Peoples](#) recognizes the right of indigenous peoples to live in freedom, peace, and security. The right to peace for indigenous peoples is especially important to combat marginalization and social exclusion, especially of women, that manifests itself as racial discrimination. This had lead to marginalization in land ownership, fewer and inequal educational opportunities, disrespect for traditional religions, and in extreme cases, extrajudicial killings, enforced disappearances, torture, intimidation and harassment. The positive elements in the right to peace would also ensure more equitable access to education and land ownership, allowing indigenous peoples to live in true dignity and peace.

National/Constitutional Level

Peace Constitutions

The term peace constitution refers to constitutions, the fundamental law of States, of countries that have formally renounced war as a policy making or problem solving tool, adding further guarantees under domestic law in addition to their commitments under international law.

Japan was one of the first countries to ratify a peace constitution, in 1946 with its landmark Article 9. Costa Rica (date; [Article 12](#)) and Bolivia (date; Article 10) followed suit. The Colombian constitution (1991; [Article 22](#)) also declares peace as a right, though a gap between policy and implementation remains.

Countries without armies

See: <http://www.demilitarisation.org/Countrieswithoutarmy.htm>
and

http://en.wikipedia.org/wiki/List_of_countries_without_armed_forces
http://findarticles.com/p/articles/mi_m0JQP/is_381/ai_n15763180/

Japan

Peace Constitutions can be used as a way to challenge traditional policies of conducting international relations that are based on national security and use of force. Below are some examples of how Japanese citizens and civil society are trying to implement and utilize their peace constitution.

- The [Global Article 9 Campaign](#) is a two-fold initiative by Japanese civil society. Nationally, it seeks to protect the sanctity of the Japanese peace constitution (US pressure on Japan to become an active ally, first in the Cold War and now in the “war on terror,” exacerbated repeated domestic attempts to amend the peace clause). At the same time, the campaign promotes the international outreach of the “No military, no war” principles behind Article 9 as a mechanism for peaceful conflict resolution worldwide.

- [Is the overseas deployment of Japan’s Self-Defense Force \(SDF\) illegal? Rethinking the Japanese contribution to international peace and security](#) by Noriko Hashimoto

- **Japanese court questions Iraq air mission** Ruling
of the Nagoya High Court on the Japanese Self-Defense Force (SDF) airlift of multinational combat troops into Baghdad in regards to Article 9

Court Cases

The absence of a peace constitution, however, does not automatically negate the opportunity to challenge war policies under domestic and international law.

For example:

- In 2004, the Constitutional Court of Costa Rica ruled that inclusion on the list of coalition partners to the war in Iraq violated the country's pacifist principles. The government, which had been tried by law students, had to request the Costa Rica be removed from this list.

[More information here.](#)

- In 2005, the [German Federal Administrative Court issued a decision](#) declaring the 2003 Iraq War a war of aggression and therefore illegal, based on the refusal of a major in the German Army to support the war effort because he viewed it as illegal.

Related: Case Note – [Was the war in Iraq illegal? The judgment of the German Federal Administrative Court of 21 September 2005](#)

- [In Denmark in 2005, 26 plaintiffs sued the Prime Minister on the basis that the 2003 Iraq War was illegal under international law.](#) The plaintiffs argument was based on Article 19 of the [Danish constitution](#), which requires that military force can only be used in the event of a UN mandate.

[More information here.](#)

- Watada Case: in June 2006, lieutenant [Ehren Watada](#) was the first US Army officer to refuse publicly to deploy to Iraq. Based on the Constitution of the United States and international law, Watada argued the war was illegal and that his deployment with his brigade would make him part to war crimes. A court-martial judgment failed to find him guilty.

[More information here.](#)

Unfortunately, only one of these three cases ended favorably with a judgment upholding the UN Charter principles commitment to peace and respect of international law. National commitment to renunciation of the use or threat of use of force requires not only written law codified in the national constitution, but also implementation in domestic and foreign policy. It is for these exact reasons that a growing campaign for a Ministry or Department of Peace has gathered momentum in the past few years.

Ministries for Peace

*Ministries for Peace provide an opportunity to consider national security in other ways, such as from a **human security** perspective, and also provide an opportunity to promote a culture of peace, which is the basis for the **individual right to peace**. It would enable states to integrate policies and tasks that are often divided between Foreign Affairs or Defense or Trade ministries, and help clearly earmark budgets for peace promotion campaigns. A Ministry for Peace would boost at the administrative level existing civil society efforts and campaigns for a culture of peace, as well as provide tangible solutions to implement and protect the right to peace.*

To date, three Ministries for Peace exist in the [Philippines](#), [Nepal](#), and [the Solomon Islands](#).

The [Global Alliance for Ministries and Departments for Peace](#) is a 'community of dedicated individuals, organisations and autonomous campaigns', urging their national governments to 'significantly invest in the development of skills and infrastructure dedicated to the peaceful resolution of

conflict.' [Here](#) you can find links to national campaigns for a Ministry or Department of Peace in over twenty countries.

This section was compiled by Kate Johnson, with the assistance of Christophe Barbey and Frederic Durand.

2009