Peoples' Right to Peace: Enforcement through International Law Instruments

A thesis submitted for the Degree of PhD to the National University of Ireland, Galway

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Declaration by Candidate

I, hereby, declare that this thesis is my own work and effort, and that it has not been submitted elsewhere for an award. Where other sources of information have been used, they have been acknowledged.

Signature.....Niloufar Omidi..... 

Date.....12 December 2018.....

This thesis is dedicated to all innocent victims of wars during the history of humankind, those who have never been heard. It is hoped that the achievement of this project will be to echo their voices and facilitate the implementation of the inherent right of peoples to peace.

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Abstract

This study presents a bottom-up approach to address the current impasse regarding the international peace. It notes that the existing top-down remedies for peace presented by leaders who are involved in committing crimes against peace have not been productive. Hence, this research hypothesises a solution that rests on empowering nations as right holders through a focus on an undeveloped post-Cold War right, namely the right of peoples to peace. This project adopts a combination of methods from inter-disciplinary contexts, including conceptual framework analysis, doctrinal analysis, and reflective equilibrium method. It employs a cosmopolitan methodology; however, it considers other philosophical theories, such as utilitarianism, in order to prohibit unconscious dogmatism.

At the outset, the research advances a methodology to establish such a "right". It provides a conceptual-legal framework for the "right to peace" by focusing on the normative content of entitlement, right holders and duty bearers through an international legal lens. Then, it lays a philosophical groundwork for this right to justify it. The study explores and develops a mechanism through which the right to peace can be implemented. For this purpose, political violence from above - specifically aggression - among various categories of violence is a point of focus. It discusses the prosecution of the crime of aggression as the implementation mechanism of this right, and analyses the existing deficiencies in international criminal law instruments. It analyses the "Kampala amendments" to the Rome Statute in order to explore the loopholes relating to the implementation of this right. It addresses the institutional mechanisms of the accountability of the UN Security Council, as one of the duty-bearers of the right to peace. In other words, the research endeavours to end the politicisation of the formula for peace through the judicialisation of it. This new formula may lead to engagement with other contemporary policies which result in the violation of peace, such as internal conflicts, state-executed terrorist attacks and proxy wars, with the aim of achieving Goal 16 of the 2030 Agenda for Sustainable Development concerning peace, justice and strong institutions.

List of Abbreviations

ACHPR	African Charter on Human and People's Rights
AHRC	Asian Human Rights Commission
AJIL	American Journal of International Law
RIO	Responsibility of International Organizations
ASEAN	Association of Southeast Asian Nations
ATT	Arms Trade Treaty
BBC	British Broadcasting Corporation
Cal W Int'l L J	California Western International Law Journal
CHR	Commission on Human Rights
Colum J Transnat'l L	Columbia Journal of Transnational Law
CUP	Cambridge University Press
DAESH	Al Dawlah al-Islameyah fi Iraq wal-Sham
Diss. Op.	Dissenting Opinion
ECHR	European Court of Human Rights
Ed	Editor
Edn	Edition
EJIL	European Journal of International Law
HRC	Human Rights Council
ICAN	International Campaign to Abolish Nuclear Weapons
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IEP	Institute for Economics and Peace
ILA	International Law Association
ILC	International Law Commission
IMT	International Military Tribunal
ISIL	Islamic State of Iraq and Levant
ISIS	Islamic State in Iraq and Syria

JCPOA	Joint Comprehensive Plan of Action
MENA	Middle East and North Africa
Mich J Int'l L	Michigan Journal International Law
MIT	Massachusetts Institute of Technology
NGO	Non-governmental Organization
OAU Doc	Organisation of African Unity Documents
OHCHR	Office of the High Commissioner of Human Rights
OUP	Oxford University Press
P5+1	Five UNSC permanent members plus Germany
PCNICC	Preparatory Commission for the ICC
Penn St Int'l L Rev	Pennsylvania State international Law Review
Rep	Report
Res	Resolution
Rev	Review
Sep. Op.	Separate Opinion
SIPRI	Stockholm International Peace Research Institute
SSIHRL	Spanish Society for International Human Rights Law
SWGCA	Special Working Group on the Crime of Aggression
Tr	Translator
TS	Treaty Series
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHR	UN Commission on Human Rights
UNDPI	UN Department of Public Information
UNEP	UN Environment Program
UNESCO	UN Educational, Scientific and Cultural Organization
UNHRC	UN Human Rights Council
UNICEF	UN International Children's Emergency Fund
UNSC	UN Security Council
Wash U Global Stud L	Washington University Global Studies Law Review
WSSD	World Summit on Sustainable Development
YBK	Year Book

Chapter 1: Introduction

1.1 The Rationale of the Research

This research addresses the question of whether the right to peace satisfies the criteria of a legal standard in the context of international law. It provides a critical analysis of the existing United Nations (UN) documents concerning the right to peace, and it removes ambiguities that exist with respect to prevailing perspectives on this right. It develops a methodology that can create a comprehensive conceptual-legal framework for the right to peace. The study also offers a philosophical basis which provides the justification for this right. In order to explore the implementation mechanism of the right to peace, the available international law instruments are systematically examined, and judicial remedies facilitating its enforcement are identified.

1.2 The Background to the Research

The discussion of the nature of the right to peace has occupied legal scholarship over recent decades.[1] Peace is the main objective of the United Nations, and the interrelationship between peace and human rights is

[1] UNHRC, Report of the Office of the High Commissioner (OHCHR) on the outcome of the expert workshop on the right of peoples to peace (March 17, 2010) UN Doc A/HRC/14/38 GA Res 39/11,45/14,53/243,57/216,60/163,63/189,71/189; CHR Res 2002/71; HRC Res 8/9,11/4,17/6,14/3, 20/15, 32/28; ACHPR Art 23;AHRC Dec Part 4;ASEAN HR Dec 2012 Art 38; Oslo Dec ,Luarca Dec, Bilbao Dec ,Barcelona Dec & Santiago Dec; OHCHR, 'Summary of the intersessional workshop on the right to peace' (July 31, 2018) UN Doc A/HRC/39/31

undisputed today.[2] Peace is also recognised as a prerequisite for the realisation of all human rights and fundamental freedoms.[3] However, there is no international legal regime with regard to the protection of the right to peace. A trend analysis of the UN's approaches to peace indicates a significant focus on peace in the last decade of the Cold War.[4] In 1981, the UN General Assembly assigned a particular day as the International Day of Peace, in an effort to remember and reinforce the ideals of peace both within and among nations.[5] Accordingly, the regular opening day of the annual sessions of the General Assembly, namely the third Tuesday of September, was initially selected for this purpose.[6] Subsequently, the General Assembly put forward a proposal suggesting peace as a right.[7] Additionally, at the regional level, the African Charter on Human and Peoples' Rights (1981) affirmed the right to national and international peace.[8] In 1984, the Declaration on the rights of Peoples to Peace was adopted by the UN General Assembly, stating that "the peoples of our planet have a sacred right to peace" and that "the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each state".[9]

Two points are noteworthy in relation to this trend. First, assigning the International Day of Peace to the regular opening day of the annual sessions of the General Assembly indicates the General Assembly's intention of commencing its annual work with a clear affirmation and consideration of the importance of peace as its primary priority. Second, a resolution on the right to peace does not appear to have been declared by coincidence in that context. It can be assumed that the General Assembly, which was exhausted

[2] United Nations Charter (1945), Preamble and Chapter 1 (Purposes and Principles), Article 1; Universal Declaration of Human Rights (UDHR 1948), Preamble.
[3] UNGA 'Promotion of peace as a vital requirement for the full enjoyment of all human rights by all' (16 December 2005) UN Doc A/RES/60/163
[4] Cold War:1947-1991
[5] UNGA 'International Day of Peace' (1981) UN Doc A/RES/36/67
[6] In 2011, this occasion was set to be on 21st of September of each year.
[7] UNGA 'Declaration on the Right of Peoples to Peace' (1984) UN Doc A/RES/39/11
[8] Article 23 (1), African Charter on Human and Peoples' Rights (signed June 27, 1981, entered into force October 21, 1986), OAU Doc. CAB/LEG/67/3 rev.5, 1520 UNTS 217.
[9] UN Doc A/RES/39/11, Art 1-2.

by the Cold War, deliberately considered peace as a human right to enable itself to support peace in a productive manner.

Prior to the above-mentioned emerging trend, the origin of this right among UN documents can be traced back to the resolution of the UN Human Rights Commission in 1976, which primarily proclaimed the "right to live in peace". It explicitly states that "everyone has the right to live in conditions of international peace and security",[10] encouraging the approval by the UN General Assembly in 1978 of a resolution concerning the right to live in peace: "every nation and every human being […] has the inherent right to life in peace".[11] Efforts were made to continue this trend by Federico Mayor, the Director General of UNESCO, who attempted to prepare a draft declaration on the Human Right to Peace in 1997; [12] however the idea was rejected due to a lack of consensus.[13]

Despite endeavours to promote the right to peace, it was gradually forgotten until the 2003 US invasion of Iraq, when the trend toward the legitimisation of the war on terrorism alarmed the international community sufficiently to seek a remedy. [14] Following this concern, some intergovernmental organisations and non-governmental organisations (NGOs) strived to provide a solution. They may have remembered a forgotten fundamental freedom, namely freedom from fear which was first stated as a political goal by Franklin D Roosevelt following World War II, in addition to the right to peace which was expressed in the last decade of the Cold War by the General Assembly. Thus, these organisations attempted to create space for a human right to peace as a remedy for the ongoing crisis.[15]

[10] UNCHR 'Further Promotion and Encouragement of Human Rights & Fundamental Freedoms, Including the Question of a Long-Term Programme of Work of the Commission' (27 February 1976) UN Doc Res 5 (XXXII) , para. 1.
[11] UNGA 'Declaration on the Preparation of Societies for Life in Peace' (15 December 1978) UN Doc A/RES/33/73
[12] UNESCO, Report by the Director-General Federicoon Mayor, on the Human Right to Peace (October 29, 1997) UNESCO Doc 29C/59, paras. 8-9. available online at: http://unesdoc.unesco.org/images/0011/001100/110027E.pdf
[13] Ibid
[14] Douglas J. Roche, '*The Human Right to Peace'* (Novalis 2003), p. 240.
[15] UNHRC 'Promotion of the right to peace' (17 July 2012) UN Doc A/HRC/RES/20/15

In 2011, the Human Rights Council Resolution on the "promotion of a democratic and equitable international order" nominated the realisation of the right to peace as one of the essential prerequisites for a democratic and equitable international order.[16] Consequently, the Human Rights Council decided to establish an open-ended intergovernmental working group with the mandate of progressively negotiating on a United Nations declaration of the right to peace, which was based on the draft declaration prepared by the advisory committee concerning this right.[17] Accordingly, the Human Rights Council was asked to prepare a draft declaration on the right to peace in order to attain a more comprehensive UN declaration than the existing UN declaration on this right,[18] and to provide empirical mechanisms by which to realise this right.

The trend of the activities of the aforementioned intergovernmental working group demonstrates a considerable level of resistance from the European Union and the United States to accept the legal basis of the right to peace, although they affirm the linkage between peace, human rights and development. In contrast, Latin American states, the Association of Southeast Asian Nations (ASEAN) and African states such as Egypt and Tunisia have expressed their support for the emerging right to peace. Additionally, NGOs declare their dissatisfaction with the codification process.[19] Therefore, the submitted draft declarations have not been sufficiently comprehensive to justify the human right to peace in the current state of international human rights law. Furthermore, it appears that the ambiguities in the framework regarding this right in these drafts can provide some human rights violators with a situation whereby they can abuse this right for their own policies, and thus grant legitimacy to acts of violence against their own people.[20]

[16] UNHRC 'Promotion of a democratic and equitable international order' (13 October 2011) UN Doc A/HRC/RES/18/6

[17] UNHRC, Report of the Human Rights Council Advisory Committee on the right of peoples to peace (April 16, 2012) UN Doc A/HRC/20/31 ;UN Doc A/HRC/RES/20/15

[18] UN Doc A/RES/39/11

[19] SSIHRL, Report of the Intergovernmental Working Group on the Right to Peace, 29th Session Human Rights Council (14 June – 3 July 2015)

[20] UN Watch, Report: A Syrian-Backed Declaration on the Right to Peace (July 1, 2014)

Despite opposition within the UN General Assembly concerning the existence of the right to peace, this right was selected as the theme of the International Day of Peace, in 2014. Additionally, a special consideration for this right has been observed on the International Day of Peace over the three-year period of 2014-2016. In 2016, the former UN Special Rapporteur on the promotion of a democratic and equitable international order, Alfred de Zayas, advised the Human Rights Council to continue its work toward the adoption of a declaration on the right to peace in its individual and collective dimensions in order to achieve the 2030 Agenda for Sustainable Development. He requested that the Human Rights Council pay more attention to the demands of civil society organisations regarding the right to peace. He also encouraged the Human Rights Council to support inter-state work and civil society's role in regard to the right to peace, based on the achievements of the UN workshop on this right and the advisory committee's draft declaration.[21] As a result, the Human Rights Council adopted the Resolution on the Right to Peace on 1 July 2016[22], and subsequently, the UN General Assembly adopted the resolution on this right, [23] on 19 December 2016. Additionally, the theme for the International day of peace in 2018 was "The Right to Peace-The Universal Declaration of Human Rights at 70". It meant that while the UN celebrated the 70th anniversary of the Universal Declaration of Human Rights, it emphasized the need to have the right to peace, as a reflection to the current global circumstances.

Although the United Nations Human Rights Council has been advised to support and work more strenuously to secure the right to peace, the trend of its activities illustrates that it has not been successful at justifying peace as a right, as it presents a vague status for this right in the international legal system. Taking into account these deficiencies, there is a considerable requirement to remove ambiguities and lay the conceptual, philosophical and legal groundwork for this right, thus facilitating its recognition and

[21]OHCHR, Statement on the occasion of International Day of Peace by Alfred De Zayas (UN, September 21, 2015) ; UN Doc A/HRC/14/38 ; UN Doc A/HRC/20/31
[22] UNHRC 'Declaration on the Right to Peace' (1 July 2016) UN Doc A/HRC/RES/32/28
[23] UNGA 'Declaration on the Right to Peace' (19 December 2016) UN Doc A/Res/71/189

enforcement within the international law system. To this end, it is required to explore the concrete indicators of international law that can be viewed as markers for fundamental normative questions arising in regard to the right to peace and the responsibility to ensure that peace is secured as a human right.

1.3 The Aims and Objectives of the Research

This research aims to bring attention to an undeveloped right, namely the right to peace, by exploring its structure, its philosophy and the mechanism of its implementation. The project advances a methodology by which to establish such a “right” to “peace”. At the outset, it demonstrates the nature of a “right” for the purpose of the right to peace. It explores the idea that, in order to establish a “right” to something, that thing should meet specific criteria, such as accessibility and tangibility. Second, the research offers different understandings of “peace” from multidisciplinary sources. It considers peace as the absence of violence, and seeks to identify the necessary features which facilitate a point whereby “peace” reaches the threshold of becoming a “right”. It notes that, in order to have the “right” to “peace”, inevitably, “peace” should be considered a tangible concept. It is shown that peace will never be achievable if nations remain incapable of conceiving procedures aimed at defending human beings against violence.

The study endeavours to provide a conceptual and legal framework for the “right to peace” and identifies the constituent components of its structure. It focuses on the normative content of entitlement, right holders and duty bearers through an international legal lens. It asserts that this right entitles peoples to determine their own destiny, which is rationally defined as “living in peace”. It also detects the philosophical and international legal features that are relevant to this right or which can impact on it. Additionally, it aims to formulate a justification for the right to peace by laying a philosophical basis for this right, based on the dominant models of philosophical thought, namely Kantianism and Utilitarianism. In addition, it argues against James Griffin’s approach, which is opposed to the right to peace.

Furthermore, the research aims to explore and develop the mechanism through which the right to peace can be implemented. It seeks for the key conceptual and legislative frameworks for the realisation and enforcement of this right. It studies defence tactics against violence that can make peace accessible. For this purpose, the conception of violence is discussed, and political violence from above (including repression, aggression and state institutional violence), among various categories of violence, is a point of focus. This project examines appropriate methods to overcome "aggression" among different types of political violence from above. To this purpose, the existing international jurisprudence on crimes against peace and aggression is evaluated. The study discusses the prosecution of aggression as a defence tactic against this form of violence.

The project also studies the existing deficiencies in international criminal law regarding aggression and crimes against peace, and the effects of these deficits on international peace. It analyses the "Kampala amendments" to the Rome Statute in order to explore the loopholes relating to this right. The research supports the importance of the recognition and enforcement of the right to peace in relation to avoiding wars within the international community. In addition, it reflects on how the right to peace can equip nations to avoid such catastrophes at both international and regional levels.

Ultimately, the research will demonstrate that the right to peace is not only a human right, but also that its implementation mechanism is engaged with a peremptory norm. It illustrates how the right to peace can contribute to the maintenance of international peace and also the realisation of other human rights. Conversely, it impartially underlines the potential dangers of the right to peace in relation to the lack of a determined legal scope and content. It discusses how this right can be abused in the absence of a particular legal framework and boundaries in the context of international law.

1.4 Statement of the Problem, Research Questions

Article 28 of the Universal Declaration of Human Rights (UDHR) states that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". It is also undeniable that individuals subjected to violence, oppression and war cannot completely enjoy all dimensions of human rights.[24] Therefore, peace, that is the main aim of the UN, can be perceived as the social and international order which is necessary to fulfil fundamental rights and freedoms. The question which comes to mind is to what extent the UN has been successful in achieving its ambitions for international peace. The current world crises, such as the US invasions of Afghanistan (2001) and Iraq (2003) and their ongoing consequences; the Russia-Ukraine armed conflict (2014-present), the Syrian Civil War (2011-present), the Yemeni Civil War (2015-present), the ongoing proxy wars[25] in Syria[26] and Yemen,[27] and the terrorist activities of *Da'esh* [28] demonstrate that a vast part of the global population lives in fear of war, aggression, and terrorism, and that existing deterrence measures are not sufficient to provide peoples with freedom from fear of violence.[29] A trend analysis of ongoing peace violations in the world indicates that the Middle East and North Africa (MENA), has been the most violent region in the world between 2012 and 2017.[30] Accordingly, it can be assumed that the implementation of a right to peace appears crucial for the full enjoyment of human rights. Thus, a greater

[24] UNGA, Report of the Independent Expert , Alfredon de Zayas, on the promotion of a democratic and equitable international order (August 07, 2013) 68th Session UN Doc A/68/284, para.6.

[25] IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017), p.2.

[26] Press Statement on presentation of oral report to the Human Rights Council by the Independent International Commission of Inquiry on the Syrian Arab Republic (June 26, 2018) UNHRC

[27] With 22 Million People Requiring Aid in Yemen, Special Envoy Calls for Political Consultations in Geneva, as Delegates Advocate Continued Security Council Unity, UN SC/13442 (August 02, 2018) UNHRC

[28] Da'esh is an extremist militant group. The name is an Arabic acronym derived from the phrase "al Dawlah al-Islameyah fi Iraq wal-Sham" or literally, "Islamic State in Iraq and Syria" (ISIS) or "Islamic State of Iraq and Levant" (ISIL)

[29] See David Kennedy, 'The International Human Rights Movement: Part of the Problem?' (2002) 15 Harvard Human Rights Journal, pp.109, 118.

[30] IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017), p.2.

concentration on the promotion of freedom from fear and the right to peace appears essential.

This research notes that existing international law instruments have been affected by deficiencies which render sustainable international peace unattainable and that international law requires a remedy by which to overcome this shortage. As the aim of this research is to explore and develop a practical implementation process for the peoples' right to peace, it endeavours to identify the available and functional key instruments in international law for the realisation and enforcement of this right. Accordingly, after a review of the existing literature which underlined a noticeable gap regarding the peoples' right to peace, the following central research question emerged:

- Which practical mechanisms in international law should be adopted to recognise and implement the peoples' right to peace?

The study adopts a systematic approach and breaks the subject down into various components that are examined via the following sub-questions:

1- How can a peoples' right to peace be established?
2- What is the conceptual-legal framework underlying the peoples' right to peace?
3- What is the philosophy of the peoples' right to peace?
4- How can such a right be realised and implemented, and which international law instruments are available to this end?
5- How should the role of international courts be developed with regard to the enforceability of peoples' right to peace?

By adopting these research sub-questions, the present study attempts to recommend practical mechanisms facilitating the recognition and enforcement of the peoples' right to peace. The key research challenges will involve the following:

1- the various existing interpretations of peace
2- the requirement of the peoples' right to peace to be protected both nationally and internationally

3- the issue of the justiciability of the right to peace
4- the reluctance of states to implement the right to peace due to the possible limitations it may place on them
5- locating "peace" in political agendas, such as those of the UN Security Council, instead of human rights law agendas, such as those of the UN Human Rights Council

1.5 Literature Review

The present project adopts a systematic critical literature review which is analytically conducted based on the research question and sub-questions. [31] The nature of this research necessitates interspersed citations rather than a conventional structure involving a distinct literature review chapter. [32] Therefore, the study involves a recursive literature review and the related literature is consulted throughout the entire thesis. [33] It considers primary and secondary literature in relation to international human rights law. It employs primary sources in international law, such as related treaties, customs and principles of law, and it also makes use of secondary sources such as judicial decisions which are closely correlated with the research and the teachings and writings of the most highly qualified scholars. [34] The study has recourse to soft law, written international instruments indicating a preference for particular conduct aimed at obtaining an international goal, as a subsidiary source. [35]

As the research question is examined through an interdisciplinary lens, philosophical sources are highlighted alongside international law sources. The philosophical aspect is mainly based on primary literature in this field,

[31] Diana Ridley, '*The Literature Review: A Step-by-Step Guide for Students*' (1st Published 2008, 2nd (edn), SAGE Publications 2012), p.65.
[32] Ibid.p. 203.
[33] Ibid.pp. 20-21.
[34] Hugh Thirlway, '*The Sources of International Law*' (OUP 2014), p.25; Statute for the International Court of Justice (adopted June 26, 1945, entered into force October 24, 1945) , 59, Stat, 1055, 3 Bevans 1179., Article 38(1).
[35] Dinah Shelton, '*Soft Law*' in David Armstrong (ed), '*Routledge Handbook of International Law*' (Routledge, 2009),pp.69-70; Thirlway, '*The Sources of International Law*' *(2014),p.171.*

such as the writings of Immanuel Kant (1724-1804) and John Stuart Mill (1806-1873). The study also uses secondary literature in philosophy or scholarship which comments on the original philosophical theories or arguments. Taking into account that peace is a concept which deals with a multi-disciplinary body of knowledge, such as international law, sociology and politics, the research refers to the sources of these disciplines in order to present a comprehensive conception of peace and to explore ideas related to the right to peace.

1.6 Methodology and Theoretical Basis

This project adopts a cosmopolitan theoretical approach to establish and realise a human right to peace in the framework of international human rights law.[36] It considers the seminal works of Immanuel Kant (1724-1804) as the foundation for the construction of modern legal and political thought,[37] and draws primarily on his philosophy, as it offers a considerable capacity for discussing human rights, peace and the right to peace. Although Kant was not the first cosmopolitan theorist, he was the first scholar to found the moral idea of cosmopolitan identity and suggest a legal, political and institutional mechanism to realise the cosmopolitan ideal.[38] This methodology is based on the belief that the individual human being is of moral value and that this moral value should be applied to all human beings equally and universally, regardless of any boarder or any affiliation. The study employs Kant's methodology of applying the categorical imperative and the principle of dignity.[39] Additionally, Kant's *To Perpetual Peace: A Philosophical Sketch* is used as a pattern to explore ideas underlying

[36] Tamara Hervey and others, '*Research methodologies in EU and International Law*' (Hart Publishing 2011), pp. 8-11.
[37] Reiss Hans, Introduction in Immanuel Kant, '*Kant Political Writings*' (Reiss H. (ed), Nisbet H.B. (tr), 1st Published 1970, CUP 2012),pp. 5-7.
[38] Garrett Wallace Brown and David Held (eds), *The Cosmopolitanism Reader* (Polity Press 2010), p.12.
[39] Nelson Potter, 'How to Apply the Categorical Imperative' (October 1975) 5 (4) Philosophia, p. 395; Michael Rosen, '*Dignity: Its History and Meaning*' (Harvard University Press 2012), 131; H.J. Paton, '*The Categorical Imperative: A Study in Kant's Moral Philosophy*' (University of Pennsylvania Press 1971), p.363.

entitlement to the right to peace. [40] This sketch devises a formula which constitutes the main pillars of this study. This formulation includes a duty of good faith in regard to inter-state relations, self-determination, non-interference, republicanism and a federation system based on universal hospitality or freedom from hostility. [41] The study considers two complementary conceptions of cosmopolitanism, namely, a moral one, as well as a political or institutional one. Accordingly, the moral cosmopolitanism can rationalize and justify cosmopolitan rights; however, based on political cosmopolitanism, cosmopolitan institutions should be created and promoted to make rights obligatory and enforceable. [42] Accordingly, the research deductively analyses how the right to peace based on the Kantian formula can be realised and implemented.

However, the project also considers other philosophical theories, such as rationalism, realism and utilitarianism, to open the mind to other possibilities which may enrich the research, [43] and also to prohibit unconscious dogmatism which locks the mind. [44] Accordingly, the study highlights rationalism, or the Grotian tradition, based on thoughts of Hugo Grotius (1583-1645), which relies on the recognition and enforcement of individual and collective rights and freedoms by setting limits on state sovereignty [45] in order to promote international peace. [46] Grotius founded modern international law as a legal order based on three pillars: the sovereignty, equality and mutuality of states. [47] Based on the rationalist

[40] Immanuel Kant, '*Perpetual Peace: A Philosophical Sketch*' in Hans Reiss (ed), '*Kant's Political Writings'* (Nisbet H.B. (tr) 1st Published 1970, CUP 2003), p. 93.
[41] Garrett Wallace Brown, 'Kantian Cosmopolitan Law and the Idea of a Cosmopolitan Constitution' (Winter 2006) 27 (4) History of Political Thought, pp.667-69.
[42] Alice Pinherio Walla, 'Kant on Cosmopolitan Education for Peace' (June 7, 2018) 7 Con-Textos Kantianos International Journal of Philosophy, pp. 343-342.
[43] Mary T Holden and Patrick Lynch, 'Choosing the Appropriate Methodology: Understanding Research Philosophy' (2004) 4 (4) The marketing review,p.13.
[44] John Perry and Michael Bratman, '*Introduction to Philosophy : Classical and Contemporary Readings'* (3rd (edn), OUP 1999), p.12.
[45] Joseph Raz, '*Human Rights without Foundations*' in Samantha Besson and John Tasioulas (eds), '*The Philosophy of International Law '* (OUP, 2010), p.337.
[46] James Griffin, '*Human Rights and the Autonomy of International Law*' in Samantha Besson and John Tasioulas (eds), '*The Philosophy of International Law'* (OUP, 2010), p.352.
[47] Martin Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini'* (Gabriele Wight G. & Porter B.E. (eds), OUP 2005),p.39.

vision, states are bound by morality and law.[48] Conversely, this research also makes brief reference to realism, which underlines the anarchic system involved in international relations[49] and considers war as a tool by which to regulate relationships.[50] Additionally, utilitarianism is analysed to evaluate the moral quality of the right to peace based on the utmost pleasure produced through it.[51]

1.7 Research Methods

This doctoral study adopts methods which have a dynamic connection with the research question and the existing literature. It combines a variety of methods from inter-disciplinary contexts, including conceptual framework analysis, doctrinal analysis, and reflective equilibrium method to achieve a comprehensive and objective conclusion. In fact, it seeks techniques that are compatible with the existing literature. The project takes a critical approach and selects the relevant literature to provide a knowledge foundation and rational discussion for the research, and it makes connections between different sources and the research. It does not merely review a body of literature, but also explores the existing gaps in the literature and suggests how to fill them[52] by addressing the subject from another perspective or by using a different methodology.[53]

At the outset, a scoping review was conducted; that is "a rapid gathering of literature in a given topic to accumulate as much evidence as possible and

[48]Hugo Grotius, '*On the Law of War and Peace*' (Reprint (edn), Kessinger Publishing 2004),pp.6-7.
[49] Hans Günter Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant: Foundations of Modern Thinking on Peace and Security - Contextual Change and Reconceptualisation of Security' (Third AFES-PRESS-GMOSS workshop, 5th Pan-European Conference on International Relations) The Hague, The Netherlands (September 8, 2004) http://www.afes-press.de/pdf/Hague/Brauch_Worldviews.pdf Acecessed March 17, 2018,p.8.
[50] Martin Wight, '*International Theory: The Three Traditions*' (Wight G. &, Porter B. (eds), Reprint (edn), Leicester University Press 1991), p.7.
[51] John Stuart Mill, '*Utilitarianism*' (Crisp, R (ed), OUP 1998), pp.16-18.
[52] Ridley, '*The Literature Review: A Step-by-Step Guide for Students' (2012), p.65.*
[53] Ibid, p.143.

map the results".[54] The inclusion and exclusion criteria were identified, and key primary and secondary sources were consulted. Alongside the scoping review, the research question is systematically broken down into its various components. Based on the nature of the first and second research sub-questions (Chapter 2 and 3), the study performed a conceptual framework analysis and established a conceptual framework for the right to peace. For this purpose, interrelated concepts were identified in multidisciplinary bodies of knowledge, categorised into groups and, finally, related to shape a conceptual plan. [55]

As this research deals with the justification, content and institutional implications of a human right, it incorporates both a philosophical understanding of human rights and a legal understanding of human rights. For the philosophical aspect in response to the third research sub-question (Chapter 4), it applies the method of reflective equilibrium as a philosophical research method in human rights to construct a consistent idea of the right to peace. In this mechanism, various components of a system of thought are analysed in comparison to other systems of thought in order to explore supportive indicators and any existing coherence between them, modifying and refining them if they are inconsistent. Accordingly, a moral standard is justified if it is coherent with our other beliefs about right action on due reflection and after appropriate modification through that system of beliefs. Thus, a set of judgements on the targeted issue is provided, and the logical consistency of these judgements will be explored via a procedure of deliberative mutual modification among general principles and those particular judgements.[56]

[54] Hilary Arksey and Lisa O'Malley, 'Scoping studies: towards a methodological framework' (2005) 8 (1) Intl J Soc Res Methodol, p.19.
[55] Yosef Jabareen, 'Building a Conceptual Framework: Philosophy, Definitions, and Procedure' (December 1, 2009) 8 (4) International Journal of Qualitative Methods, p.51.
[56] Andreas Follesdal, '*Methods of Philosophical Research on Human Rights*' in Fons Coomans, Menno T. Kamminga and Fred Grunfeld (eds), '*Methods of Human Rights Research'* (Intersentia, 2009), p.233;See John Rawls, '*The Law of Peoples, with 'The Idea of Public Reason Revisited''* (1st Published 1999, Harvard University Press 2002), p. 86;See John Rawls, '*A Theory of Justice'* (Harvard University Press 2009), p.48.

Moreover, in this study, considering the weight of the legal documents in the existing literature, the doctrinal analysis is performed in response to the fourth and fifth sub-questions (Chapter 5). The doctrinal analysis incorporates "a two-part process; locating the sources of the law and then interpreting the text".[57] The doctrinal analysis may refer to sources in other disciplines, since "some uncertain or ambiguous legal ruling can be interpreted when viewed in its proper historical or social context".[58]

1.8 The Originality and Significance of the Research

The present project contributes to international human rights law by developing an undeveloped right, namely the right to peace, and a forgotten fundamental freedom – freedom from fear. The objectives and scope of this research were submitted to the former United Nations Special Rapporteur on the promotion of a democratic and equitable international order, Professor Alfred de Zayas, in January 2015. He identified this research as being compatible with the aims of the United Nations in regard to the promotion of the right to peace. Our common aim is to realise the "peoples' right to peace of resolution 39/11 of the General Assembly in 1984" as a "human right to peace" involving both individual and collective dimensions. Additionally, the research outcome will be shared with the UN High-level Political Forum (HLPF) on Sustainable Development, and it is hoped that it will subsequently be reflected in its regular review in 2019. The theme of this meeting is "Empowering people and ensuring inclusiveness and equality" which will focus on five particular goals including Goal 16 on peace, justice and strong institutions. Thus, the present study will influence the current work of the United Nations aimed at achieving the 2030 Agenda

[57] Paul Chynoweth, '*Legal Research*' in Andrew Knight and Les Ruddock (eds), '*Advanced Research Methods in the Built Environment'* (Wiley-Blackwell, 2008), p. 30.
[58] Ibid

for Sustainable Development which aims to "foster peaceful, just and inclusive societies which are free from fear and violence."[59]

This study presents a comprehensive conceptual framework for the right to peace through an inter-disciplinary lens. The issues regarding this right, such as the contents of entitlement, enforceability, duty bearers and right holders, are broadly discussed through a systematic approach. Additionally, it lays a philosophical groundwork for this right based on the significant philosophical models of thought. One of the crucial points of this research is that it considers the right to peace through an interdisciplinary perspective.

This project coincides with, and reinforces UN GA Res 39/11, 45/14, 53/243, 57/216, 33/73, 60/163, 63/189, 71/189, UN CHR Res 5 (XXXII), 2002/71, and UN HRC Res 8/9, 11/4, 14/3, 20/15, 17/16, 18/6**,** 32 /L.18. Furthermore, it helps to break the existing deadlock on the issue of aggression. It critically examines the Kampala amendments to the Rome Statute regarding the jurisdiction of the International Criminal Court (ICC) over the crime of aggression. It investigates whether discussing a right to peace in the context of international criminal law adds to the existing laws and customs addressing the crime of aggression. This study can contribute to the development of the role of the ICC in prosecuting the crime of aggression. If this contribution enables the ICC to prevent a number of state leaders from waging war, peace will be maintained in many parts of the world. Therefore, this project will help to fulfil the promise of the Nuremberg Tribunal, which sought to ban impunity for the crime of aggression. [60] Although the research concentrates on the crime of aggression, it takes into account the idea that war between states is not the sole aspect of the violation of peace in the contemporary world. Thus, other aspects should be considered in the definition of crimes against peace. It considers the recent decrease in the number of inter-state wars and the significant increase

[59] UNGA 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc. A/RES/70/1, p.2, preamble.

[60] Tom Hofmann, '*Benjamin Ferencz: Nuremberg Prosecutor and Peace Advocate*' (McFarland & Company, Inc. 2013),p.9.

in the number of internal conflicts, terrorist attacks and proxy wars. Accordingly, its outcomes will meet current international needs.

Moreover, this research is the first which has provided a technical formulation to discuss the link between the implementation mechanism of the right to peace and a peremptory norm. It empowers the victims of wars, to streamline the enforcement of this right. Hence, this project will offer added value to current international human rights law, as well as significant progress in the promotion of peace and human rights worldwide.

1.9 Research Framework

The present project analytically responds to the central research question via a structure involving six chapters. Considering the interdisciplinary nature of the research, each chapter involves a research method compatible with the context from which the related research sub-question stems. The structure of the study is as follows:

Chapter 1 is the introductory chapter, and provides an overview of the whole project. It highlights the rationale of the study, the aims and objectives, its originality and significance, with a brief description of the background to the research. It highlights one of the current world crises and the existing deficiency in the international law system as regards seeking to overcome it. In relation to that particular dilemma, an overall question is raised. This question is fragmented into the five sub-questions to systematically explore the issues. Furthermore, the categories of sources employed in the study are detailed, and the mechanism through which the related literature is applied is demonstrated. This chapter describes the methodology or the dominant theoretical basis which guides the research, with a brief reference to competing methodologies. Additionally, the research methods through which the project is empirically pursued are explained separately. Finally, a summary of all chapters is presented.

Chapter 2 deals with the first research sub-question and it proposes a methodology to establish a human right to peace. An overview of the

literature reveals that there are different views regarding the existence and nature of "peoples' right to peace". There is no consensus among experts as regards whether the right to peace exists as a legal standard, is an emerging right or whether it symbolises an ideal rather than a human right.[61] Therefore, although peace is undoubtedly the main concern of the ideology of human rights, there is ongoing debate in relation to recognising the right to peace as a human right. This chapter explores the process through which a human right can be established. It argues that, in order to possess a "right" to something, that thing should meet specific criteria. It seeks to identify the necessary features which facilitate a point whereby "peace" reaches the threshold of becoming a "right". For this purpose, this part is conducted in the following three stages, discussed in the three main sections of the chapter:

A- What is the nature of "right" that is linked with "peace", in the term "right to peace"?
B- What is the conception of peace in the term "right to peace"?
C- Which criteria facilitate the idea that "peace" is a right?

The first section of Chapter 2 examines the concept and nature of a right in regard to the idea of human rights, performing a "conceptual framework analysis",[62] through a multidisciplinary lens. It scrutinises the word "right" in terms of literal, philosophical and legal aspects. It discusses individual and collective dimensions of right and analyses the formula of right in the idea of human rights, exploring the necessary criteria that equip "X" to reach a threshold whereby it may be considered a "right to X". For the purpose of determining the necessary criteria that enable "peace" to become a right, it is crucial to have a transparent understanding of the term "peace".

The second section of Chapter 2 discusses the conception of "peace" from different perspectives to investigate how peace can be facilitated to the point

[61] UNHRC, Report of the Office of the High Commissioner (OHCHR) on the outcome of the expert workshop on the right of peoples to peace (April 01, 2011) UN Doc A/HRC/17/39, part D.para.12.
[62] Jabareen, 'Building a Conceptual Framework: Philosophy, Definitions, and Procedure' (December 1, 2009), p.51.

of reaching the threshold of a human right. As peace is a phenomenon linked to different bodies of knowledge, such as philosophy, law, politics and sociology, different interpretations of peace are derived from these disciplines. The project has a preliminary assumption based on the ground from which the research question stems, namely international law. Thus, it assumes peace to be a situation between states in the international environment. With this hypothesis, there is a focus on the philosophy of international relations, among various branches of philosophy. The perspectives of philosophers who have dealt with issues of peace more thoroughly, and who have influenced international human rights law, are considered. Additionally, the study endeavours to identify the contexts and traditions from which different perspectives have emerged. It considers that the perception of "peace" is partly dependent on the mind-sets that are influenced by philosophical traditions.[63] Therefore, it is crucial to note different frameworks which shape different approaches. Accordingly, peace is scrutinised through the study of three dominant classic models of thought in international relations philosophy, namely realism, rationalism and cosmopolitanism. While the study considers all of these perspectives, it employs cosmopolitanism with a particular focus on Kant's *To Perpetual Peace: A Philosophical Sketch* as the dominant methodology in this research by which to conceptualise "peace". It considers the Kantian concept of peace as the result of a system that has the capacity to realise human rights and justice. Although Kant's formulation of perpetual peace is considered as a prevailing plan, the research discusses the existing critiques of this plan and details its limitations.[64]

Moreover, this section considers the concept of peace through the eyes of contemporary scholars of peace studies in different discipline. It discusses two popular conceptions of peace, namely negative peace and positive peace. Finally, in light of comprehensive interpretations of peace, it presents its understanding of peace and defines peace as not only the absence of war, but also the elimination of structural violence which prevents the realisation

[63] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004),p.1.
[64] e.g. W. B. Gallie, '*Philosophers of Peace and War: Kant, Clausewitz, Marx, Engles and Tolstoy*' (CUP 1979),p.27-29.

of human potential. Among various kinds of violence, the project concentrates on aggression. The conception of violence and its branches are subsequently discussed in Chapter 5, which deals with tactics adopted to implement the right to peace.

The third section of Chapter 2 deals with the criteria whereby "peace" can be considered to reach the threshold of being a "right". Although peace is sacred in all moral schools of thought, it needs to be transformed from a value to a legal right. This section examines how peace is determined to be a human right. Based on the definition of peace provided in the previous section, tangibility is an essential criterion by which to facilitate the establishment of peace as a right. The research explores the idea that peace will never be tangible if nations remain incapable of conceiving procedures for defending human beings against violence. The chapter concludes by reflecting on the legal standard of a human right and determining the mechanism through which a value becomes to a claimable right. It considers the accessibility of peace as the main condition by which to promote peace to the point of being a legal right. To this end, the research seeks tactics against violence whereby peace can be secured as a legal right. This expected defence mechanism against violence is thoroughly discussed in Chapter 5.

Chapter 3 determines the legal and normative content of the right to peace in order to answer the second research sub-question. The study notes that the existing UN documents on the right to peace do not clarify the content of this right or the identity of the duty bearers and the right holders. The existing ambiguity in the framework of the "right to peace" has led to considerable disagreement regarding this right, and is one of the most important factors prohibiting its recognition and implementation as a human right thus far.[65] In order to address this problem, the first section of Chapter 3 provides a conceptual framework for the "peoples' right to peace", or a network of interrelated concepts that describe this right and make it possible

[65] Philip Alston, 'Making Space for New Human Rights: The Case of the Right to Development.' (1988) 1 Harv Hum Rts YB, p.37.

to be understood properly.[66] At the outset, the existing United Nations documents on the right to peace are thoroughly scrutinised, to detect both strengths and deficiencies. Accordingly, strong points are employed to illustrate the related framework, and deficiencies are identified, categorised and discussed. The research explores four indeterminacies with regard to the peoples' right to peace, through the existing United Nations documents: first, the standards of the entitlement; second, right holders; third, duty bearers; and, fourth, the implementation mechanism. It considers existing interpretations of the right to peace and subsequently advances a framework for this right, mainly based on the methodology detailed in Chapter 2. Although the right to peace can be interpreted in a wide variety of ways, the right to peace that is discussed by this project is defined partly based on Kant's account of the right to peace[67] and partly based on Franklin D Roosevelt's interpretation of freedom from fear.[68] Accordingly, this right shares analogous structures with freedom from fear of aggression and freedom from fear of political violence from above. Considering the conception of peace analysed in Chapter 2, this section clarifies the normative contents of entitlement in regard to the right to peace.

Moreover, it is vital to understand who is entitled to claim the right to peace, and against whom. Thus, approaches to international human rights law which vary from the more traditional one, such as "the rule of law",[69] to the most recent approaches,[70] are considered to explore comprehensive accounts of duty bearers and right holders for the framework of this right. In order to identify duty bearers, both strict and broad interpretations of duty bearers in international human rights law are discussed. At the end of the first section of Chapter 3, the study reviews the idea of human rights to

[66] Jabareen, 'Building a Conceptual Framework: Philosophy, Definitions, and Procedure' (December 1, 2009), p.51.
[67] Kant, '*Kant Political Writings' (2012), p.170*
[68] Franklin D. Roosevelt, '*State of the Union Addresses*' (Standard Publications 2009), Franklin D. Roosevelt's 'Four Freedoms Speech': Annual Message to Congress on the State of the Union. 01.06.1941. Franklin D. Roosevelt Presidential Library, http://docs.fdrlibrary.marist.edu/od4freed.html
[69] Aristóteles, '*The Politics*' (Everson S (ed), Reprint (edn), CUP 1988), 1282b, p.68.
[70] Ian Brownlie, 'The Rights of Peoples in Modern International Law' (1985) 9 (2) Bull Austl Soc Leg Phil, p.104.

explore the general criteria of human right holders (individuals, people as a whole or peoples collected as nations). This section endeavours to form a bridge between “right holders” and the nature of “right” (individual or collective) in the term “right to peace” as discussed in Chapter 2. In this way, it confronts viewpoints which oppose the right to peace due to its particular right holders. These challenges are meticulously analysed and addressed. The study endeavours to balance different perspectives in order to illustrate a framework for “right holders” which is compatible with the devised formula of the right to peace proposed in this project.

The second section of Chapter 3 explores the roots of the right to peace in the history of human rights. It aims to ascertain a space within the ideology of rights to incorporate the right to peace within it. Thus, the study examines the evolutionary trend of the idea of human rights, to investigate the precise groundwork for this targeted right. It studies the process through which human rights emerged and expanded. This trend is of importance, as it will clarify the capacity for the right to peace during this trend. In order to explore the position of the right to peace in human rights history, two questions are addressed:

A- Is there any semblance of the right to peace in the history of human rights?
B- Can we make space for the right to peace in the idea of human rights?

This section evaluates whether the foundation of the right to peace has any basis through the evolutionary trend of human rights. In this way, the research explores significant documents promoting this right in regards to the history of human rights: and discusses the impacts of these crucial points on peace promotion in those historical contexts.

Chapter 4 deals with the third research sub-question, which addresses the philosophy underlying the right to peace. This chapter aims to argue for the necessity of establishing a right to peace, with widespread acceptance and appropriate implementation at international level. It considers that peace has

been enshrined in the prevailing international law instruments, but the current global situation suggests that this approach has not been sufficient and productive. In order to equip international law with a strong mechanism for defence tactics against violence, a right to peace should be justified to legitimise the international judicial system as regards prosecuting crimes against peace. However, the recognition of this right requires strong philosophical groundwork which can rationalise it. The study considers that the codification process of the right to peace practised by the UN Human Rights Council has been unsuccessful and that the position of this right is vague within the international law system. The submitted draft declarations were unable to persuade states to recognise the human right to peace in the current state of international human rights law.[71] This chapter will lay philosophical groundwork to justify this right and remove ambiguities with respect to prevailing viewpoints. Considering the potential impact of the philosophical arguments concerning public policies, competitive perspectives regarding the right to peace are expressed. This chapter examines the philosophy of law in the ideas of major political thinkers, with the aim of seeking guidance. It refers to theories of reasoning proposed by pertinent philosophers with regard to legal political thought, namely Kant, Mill and, finally, a contemporary philosopher – Griffin. It discusses key ideas, including morality, moral and legal reasoning, and human dignity, to determine a rational answer. It also studies how different responses to the fundamental philosophical questions regarding morality can affect the response to the research sub-question on this issue. This chapter contains three main sections – Kantianism, utilitarianism and Griffin's philosophy – and each section uses a correlated methodology.

The first section of Chapter 4 draws primarily on the philosophy of Kant, as this model of thought has a considerable capability for developing the right to peace. [72] This section examines if the right to peace constitutes a categorical imperative that can be established as a universal law. To this end,

[71] SSIHRL, Report of the Intergovernmental Working Group on the Right to Peace, 29th Session Human Rights Council (14 June – 3 July 2015)

[72] Reiss Hans, Introduction in Kant, '*Kant Political Writings' (2012),pp. 5-7*; Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), p. 93.

it analyses *To Perpetual Peace: A Philosophical Sketch* and uncovers the elements which can impact this right. Additionally, it discusses human dignity as the foundation of all human rights, providing a normative basis for the progressive realisation of a right to live in peace. It examines how justifying peace as a right based on the Kantian formula can empower nations to overcome any potential policies violating peace regardless of their leaders' tendency towards war.

The second section of Chapter 4 examines the right to peace from the utilitarian perspective. The importance of this model of thought for this issue has been manifested via some effective decisions from international political bodies, such as the UN Security Council, in relation to world peace, which have adopted a utilitarian approach.[73] The utilitarian perspective is examined to explore whether there is any applicability to the right to peace in this system. Accordingly, the elements of righteousness and the prerequisite for being a right in this model are discussed. To evaluate and compare the moral quality of peace and war for utilitarian purposes, the pleasure produced by those two conditions is determined. [74] In this section, the study compares the material and immaterial costs of war and peace. It evaluates the toll of conflicts which have occurred since the two World Wars, until today. It also assesses the benefit gained from waging wars for armament exporter states. The research makes use of relevant statistics provided by the Stockholm International Peace Research Institute (SIPRI),[75] the Institute for Economics and Peace (IEP) [76] and the United Nations Environment Programme (UNEP) Frontiers (2016)[77] to ensure a meticulous assessment of the consequences of wars in relation to world pleasure. It also considers the environmental consequences of wars alongside humanitarian

[73] Francis Anthony Boyle, '*World Politics and International Law*' (Duke University Press 1985),p.125.
[74] Mill, '*Utilitarianism' (1998), pp.5-8.*
[75] SIPRI, 'Armaments, Disarmament and International Security' (2016) SIPRI Yearbook 2016, OUP ;SIPRI, 'Armaments, Disarmament and International Security' (2018) SIPRI Yearbook 2018, OUP
[76] IEP, Global Peace Index 2015: Measuring Peace, its Causes and its Economic Value (Institute for Economics and Peace, 2015) ;IEP, Global Peace Index 2018: Measuring Peace in a Complex World (Institute for Economics and Peace, 2018)
[77] UNEP, The United Nations Environment Programme Frontiers 2016 Report: Emerging Issues of Environmental Concern (UNEP, 2016)

losses. It discusses the environmental consequences of wars – such as deforestation, desertification, drought, climate change and global warming, and loss of biodiversity – as immediate and long-term impacts of armed conflicts, regardless of other lethal effects of chemical and nuclear weapons on the environment. Subsequently, the research provides a result which demonstrates whether peace or war can be considered a moral action according to utilitarianism, and concludes which one can be a ground of a human right.

The third section of Chapter 4 presents James Griffin's methodology as a contemporary approach to human rights that is opposed to the right to peace. The ideas of this philosopher are of importance, as he considers human rights from a different angle and provides reasons for the unacceptability of some human rights, such as the right to peace. The present research analyses Griffin's approaches to the right to peace and endeavours to refute his claim that the right to peace is a manifesto right. [78] The study seeks to demonstrate that the right to peace can have a philosophical groundwork even based on Griffin's methodology, although Griffin himself does not offer such a conclusion. At the end, this chapter lays comprehensive philosophical groundwork for the right to peace which can be compatible with all three completely different perspectives, namely Kantianism, utilitarianism and Griffin's thought.

Chapter 5 deals with legal recourses to create precise standards for the enforcement of the right to peace, in order to respond to the fourth and fifth research sub-questions, which explore the implementation system of this right and the role of international courts in this regard. The study identifies a considerable gap concerning implementation mechanisms in the existing resolutions and drafts regarding the right to peace. This chapter discusses the contribution of law to creating a legal remedy by which to enforce this right. It refers to the methodology used for establishing a right to peace described in Chapter 2. According to that formula, peace should be tangible and accessible if it is to reach the threshold of becoming a right. Chapter 2

[78] James Griffin, '*On Human Rights*' (OUP 2008), p.209.

concluded that peace will never be tangible if people remain incapable of defending themselves against violence. Based on these findings, Chapter 5 seeks to identify a practical tactic to defend against violence, or against the elements which violate peace, in order to make peace accessible. To this end, elements which violate peace are identified and categorised. Moreover, the available international law instruments that can be used to defend against this kind of violence are analysed, and the most practical instruments for this purpose are selected. In the end, this chapter discusses the implementation mechanism of this right and examines the position of this mechanism in international law. This chapter includes three main sections.

The first section of Chapter 5 describes the concept of violence and discusses the roots of violence in order to explore defence tactics adopted against violence. For the purpose of the research, it highlights forms of political violence,[79] and specifically focuses on aggression as a branch of direct political violence from above and examines appropriate methods by which to overcome it. It examines how the realisation and implementation of the right to peace can help to revitalise the forgotten "freedom from fear", which includes the worldwide reduction of armaments and the prohibition of the act of physical aggression.[80]

The second section of Chapter 5 deals with jurisprudence over violation of the "peoples' right to peace". It examines the components of crimes against peace and aggression. It considers the trend of creating norms to legitimise wars, along with key conceptions of *jus ad bellum* and *jus contra bellum*. This section analyses major multilateral treaties on the prohibition of war and the preservation of peace since 1899, including: The Hague Convention of 1899 and 1907; the Treaty of Versailles (1919); the Covenant of the League of Nations (1920) (Article 10) ; the Kellogg-Briand Paris Pact (1928), the London Charter of the International Military Tribunal IMT (1945) (Article 6(a)) and the Charter for the Tokyo International Military

[79] Vincenzo Ruggiero, '*Understanding Political Violence: A Criminological Analysis*' (Open University Press/ McGraw-Hill 2006), p.221.

[80] Franklin D. Roosevelt's 'Four Freedoms Speech': Annual Message to Congress on the State of the Union. 01.06.1941. Franklin D. Roosevelt Presidential Library, http://docs.fdrlibrary.marist.edu/od4freed.html

Tribunal (1945) (Article 5(a)), and the UN Charter prohibitions of the use of force (Articles 2(4), 39 and 51). Moreover, this section deals with the role of the International Criminal Court (ICC) and discusses how it can be developed to prosecute crimes against peace and aggression. This section analyses Article 5 of the Rome Statute (1999) and the new Article *8 bis*. Additionally, the study discusses the Security Council's role in this regard which was formulated in Article *15bis* and *15ter*. The research discusses the recent momentum regarding the crime of aggression in the Kampala Conference (2010), which could prove to be valuable in the effort to defend against the highest violation in the context of *jus ad bellum*. [81] It elaborates on how the ratification of amendments can contribute to the prohibition of aggressive wars by ending impunity. The study identifies this process as a step by which to make peace a legal right. This section proposes an implementation system based on the findings of the first and second sections of this chapter. It identifies obstacles and loopholes in the Kampala amendments affecting the potential realisation and implementation of peoples' right to peace.

Finally, the third section of Chapter 5 discusses the normative status of the implementation mechanism of the right to peace in the international law system considering the achievements in this research

Chapter 6 concludes the research by synthesising and commenting on the findings relating to the conceptual-legal framework for the peoples' right to peace. It summarises and analyses the research results, and demonstrates their potential effects on international law and the international community. It briefly addresses supportive indicators and obstacles to the right to peace. Various means by which to overcome the existing challenges are presented. It highlights that the right to peace is not only a human right, but also its

[81] According to Article 15 *bis* (3), the court shall exercise its jurisdiction over this crime after 1 January 2017 subject to the adoption of the amendment to the Statute by 30 State Parties, and promulgation by the ICC Assembly of States Parties. On 26 June 2016, the thirtieth State, the State of Palestine, deposited its instrument of ratification of the Kampala Amendments., Liechtenstein Institute, Handbook Ratification and Implementation of the Kampala Amendments to the Rome Statute of the ICC: Crime of Aggression, War Crimes (Liechtenstein Institute on Self-Determination, 2012), p.1.

implementation mechanism is engaged with a peremptory norm that could be accepted by the international community of states.

Finally, this chapter provides a basis for further academic research. It suggests areas for supplementary studies concerning this issue, to develop this right and elevate it to an advanced level of recognition and enforcement. Additionally, this project recommends an investigation into how the existing ambiguities regarding this right can allow its abuse and provide a secure situation for violator states.

Chapter 2: Methodology for Establishing a “Right” to “Peace”

Introduction

This chapter addresses the first research sub-question, which considers how a right to peace can be established. It involves a conceptual framework analysis and constructs a methodology by which to establish a right to peace by analysing different components affecting this issue.[1] Considering different perspectives regarding the existence and nature of the “peoples’ right to peace” in the existing literature, it is crucial to explore the quiddity of such a right. Thus, the conception of a right in relation to the idea of human rights is elaborated, and the procedure through which a human right can be established is subsequently explored. To this purpose, the study identifies the necessary criteria which cause a value to become a right. Additionally, it discusses the conception of peace from different perspectives through an interdisciplinary lens. When the nature of a right and the concept of peace are demonstrated, it is possible to evaluate whether peace can be calibrated as a human right or not, and to determine how it may be possible. This chapter is divided into the following three stages: first, it examines the nature of a “right” that is supposed to be linked with “peace” in relation to the term “right to peace”; second, it clarifies the conception of peace in the term “right to peace”; third, it argues how peace can become equipped to be a human right and examines the necessary features whereby

[1] Jabareen, 'Building a Conceptual Framework: Philosophy, Definitions, and Procedure' (December 1, 2009), p.51.

“peace” becomes a “right”. Taking into account the results achieved via these three stages, a methodology to establish a right to peace is proposed.

2.1 The Concept and Nature of a “Right” in the Term “Right to Peace”

In order to explore the nature of the supposed right to peace, it is crucial to discuss the nature of right in the idea of human rights, considering the context of this research. It should be clarified whether all human rights are claimable rights or whether they solely symbolise moral values. Additionally, it should be indicated how a moral value can be transformed into a legal right. Various approaches exist regarding the word “rights” in the term “human rights”. Some philosophers even cast doubt on the philosophical implications of a right for human rights and recognise it as having merely rhetorical worth. According to this viewpoint, a human right to X implies that X is extremely advantageous and should be attained by all human beings, but not as a claimable right.[2] Thus, for example, the right to peace is only a right in a rhetorical sense, and it remains at the level of a positive value.[3] This type of understanding of a right has been conceived of as the right to peace in the existing international documents and resolutions concerning the right to peace (1984-2016) which perceive this right as a positive worth, but not to the level of a claimable right. The current world crisis concerning the increase in violence and the incapability of the international community in terms of promoting international peace illustrate that this approach has not been productive and that a more comprehensive approach to this right is required in order to develop the situation.

If human rights are recognised as moral rights that are beyond sole affirmative values in an acknowledged moral order under some modern form of natural law, every human being will be entitled to those rights, and can claim them based upon the existing legal order. Legal rights can be

[2] Louis Henkin, 'International Human Rights as Rights ' (Fall 1979) 1 (2) Cardozo L Rev,p.433.
[3] Griffin, '*On Human Rights' (2008), p.209.*

legally claimed by everybody based upon a society's constitutional system and law, and the legal order supports such valid legal claims by efficient remedies. [4] Moral reasoning establishes a human rights structure, and institutional mechanisms, such as treaties, facilitate the implementation of the contents of that structure.[5] From this viewpoint, human rights cannot be assumed as sole ambitions or statements of good,[6] but rather, they are claimable rights, and a legal order has a duty to support right-holders in achieving it. This perspective gives legitimacy to human rights values and implies the obligation of society to provide people with institutions, procedures, and essential resources to meet their human rights.

John Skorupski suggests preventing the creation of an independent category of human rights, because the philosophy of human rights should fix human rights within a general idea of rights.[7] Considering the above discussion, human rights can not only be considered beyond moral values, but also can be considered a sub-category of rights alongside other statutory rights. With this assumption, the research examines the formula of right in relation to the idea of human rights and discusses individual and collective dimensions of rights, exploring the necessary criteria by which "X" may be considered a "right to X". It analyses the concept of rights through a multidisciplinary lens and examines it from literal, philosophical and legal perspectives.

The real obstacle to finding the precise definition of a right for research purposes is the existence of various terms used which are equivalent to rights, such as "privilege", "prerogative", "power", "immunity", and so on. These terms are loosely applied even in some key constitutional and statutory provisions, and also international instruments; while it is not completely clear what the draftsman meant exactly by them. As Hohfeld suggests, different terms are irregularly applied in regard to the meaning of

[4] Henkin, 'International Human Rights as Rights ' (Fall 1979), p.434.
[5] John Tasioulas, '*The Moral Reality of Human Rights*' in Thomas Pogge (ed), '*Freedom from Poverty as a Human Right: Who Owes what to the Very Poor?*' (OUP, 2007), p.76.
[6] Louis Henkin, '*The Age of Rights*' in Francisco Forrest Martin and others (eds), '*International Human Rights and Humanitarian Law: Treaties, Cases, and Analysis*' (CUP, 2006), p.942.
[7] John Skorupski, '*Human Rights*' in Samantha Besson and John Tasioulas (eds), '*The philosophy of International Law*' (OUP, 2010),p.358.

a “right”, and this term is also used in an unlimited and vague sense in many cases. This ambiguity in judicial observations can tend toward abusiveness, because terms can affect the ideas expressed by them, and they may be used generally in relation to one meaning,[8] whereas legal discussions should be precise, and the limits of such terms should be determined exactly. This kind of uncertainty can be problematic in international law instruments; therefore, in the documents attributed to the right to peace, it should be precisely determined what is meant by the term “right”. It seems that the existing ambiguity regarding the nature of the word “right” in the term “right to peace” is an important factor in preventing it from being recognised and implemented as a claimable human right thus far. In order to remove any uncertainty about the right to peace, the study includes a conceptual framework analysis to interpret the conception of a “right”. Thus, concepts are explored in multidisciplinary bodies of knowledge; they are classified, and, finally, linked to formulate a conceptual plan. [9]

2.1.1 The Conception of a “Right” in the Idea of Human Rights

At the beginning of this section, the general literal concept of a right, followed by its particular philosophical and legal concept in relation to the idea of human rights, are discussed. Second, it elaborates on what makes a value a claimable right in a universal legal system. In order to explore in greater depth the concept of rights, literal and philosophical interpretations of this term are presented, compared and, ultimately, balanced to gain a comprehensive interpretation.

An examination of the existing literature indicates that the word “right” is used within different contexts, and can be interpreted in various ways. *Black’s Law Dictionary* presents a variety of definitions in an abstract sense, including definitions of “justice, ethical correctness, or consonance with the

[8] Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (November 1913) 23 (1) The Yale Law Journal.pp.30-32.
[9] Jabareen, 'Building a Conceptual Framework: Philosophy, Definitions, and Procedure' (December 1, 2009), p.51

rules of law or the principle of morals”. [10] Additionally, it defines a right in a concrete sense as an indicator of “a power, privilege, faculty or demand, inherent in one person and incident upon another”. [11] Kant makes a distinction between “right”, “the right”, and “a right” in his theory of rights. Accordingly, “right” (*Recht*) is the adjectival form of “rectitude”. “The right” (*das Recht*) conveys justice or a set of principles to distinguish between correct and incorrect. Ultimately, he introduces “a right” (*ein Recht*) as an entitlement which everyone can possess.[12] The word “right” has also been distinguished by Hohfeld from other terms, such as “privilege”, “power” and “immunity”, which can be considered analogous to “right”. Accordingly, “a right is one's affirmative claim against another, and a privilege is one's freedom from the right or claim of another. Similarly, a power is one's affirmative ‘control’ over a given legal relation as against another; whereas immunity is one's freedom from the legal power or ‘control’ of another as regards some legal relation”.[13] He intimates that there is a right to anything which is supported or tolerated by authority.[14]

Overall, it can be understood that the word “right” conveys two general senses: “rectitude” and “entitlement”. Rectitude is understood as righteousness or morally proper behaviour or thinking. Entitlement reflects a state of deserving some privileges.[15] Although these two meanings may seem distant from each other, they overlap to some extent, as Donnelly finds a link between them and explains that the two concepts of rectitude and entitlement both connect “right” and “obligation”, but in analytically different forms. In view of that, “claims of rectitude (righteousness) […] focus on a standard of conduct and draw attention to the duty-bearer’s obligation under that standard. Rights claims, by contrast, focus on the right-holder and draw the duty-bearer’s attention to the right-holder’s

[10] Black's Law Dictionary (9th (edn), available at WESTLAW BLACKS, 2009), p.1044.
[11] Ibid
[12] Kant, '*Kant Political Writings' (2012),p.132*; Leslie Arthur Mulholland, '*Kant's System of Rights*' (Columbia University Press 1990),p.4; qouted in Griffin, '*On Human Rights' (2008),pp.61-63.*
[13] Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (November 1913), p.55.
[14] Ibid, p.36.
[15] Merriam-Webster's Collegiate Dictionary (Merriam-Webster, Incorporated, 2004)

special title to enjoy her right".[16] Therefore, both concepts of "right", namely rectitude and entitlement, are conceived of as interrelated and inseparable elements. It can be concluded that the righteousness and correctness of an action or a desire can be a basis for having a right to it.

Additionally, Mill states that, "whenever there is a right, the case is one of justice",[17] and he draws a connection between right and justice. From his perspective, justice refers to something which can be demanded by persons from society as their moral right. Hence, as Skorupski interprets it, justice is defined "in terms of rights; rights in terms of moral obligations; and moral obligation in terms of the appropriateness of certain sanctions".[18] Justice clarifies right and wrong, and, based on it, individuals can recognise their moral rights and claim them from their society. Additionally, the right-holder can demand the enforcement of his/her right or compensation. If right-holders are unable to make a demand, society can allocate an agent to act on behalf of them.[19] Therefore, a right-holder activates the obligations of a duty-bearer by the implementation of his/her right.[20] It can be understood from Mill's statement that everyone is entitled to every moral right which is supported by society. Hence, in order to have a right to X, it should be initially accepted by society as an aspect of justice.

Overall, regardless of any particular model of thinking, a precise legal formulation of the word "right" can be determined as follows, derived from John Skorupski:

> "X has a right to Y against Z if and only if it is morally permissible for X or X's agent to demand that Z does not take Y from X, or does not prevent X from doing Y, or delivers Y to X (as appropriate), and to demand compensation for X from Z in the event of damage

[16] Jack Donnelly, '*Universal Human Rights in Theory and Practice*' (3rd (edn), Cornell University Press 2013), p.7.
[17] John Stuart Mill, '*Collected Works: Essays on Ethics, Religion and Society*' (1st Published 1969, Reprinted (edn), University of Toronto Press 1996), p.247.
[18] Skorupski, '*Human Rights*' (2010), p.359.
[19] Ibid.pp.360-361.
[20] Donnelly, '*Universal Human Rights in Theory and Practice' (2013),p.8.*

> resulting from Z's non-compliance. [… Also,] Z has a duty of right to X in regard to Y if and only X has a right to Y against Z."[21]

This formula explicitly mentions the three elements involved in a right, including an entitlement (Y) that is morally permissible, a right-holder (X) and a duty-bearer (Z). The relations between these components are elaborated by Henkin. Accordingly, all human beings have a legitimate claim to specific rights and freedoms based on their political system. These rights are not granted by grace, donation or kindness, but rather, moral, political and legal obligations cause society to realise them.[22] Therefore, if a right to something is stated, it means that legal claims are valid against society to provide individuals with that thing. This can be considered an optimal formula for research purposes; however, there are challenges to this structure.

Kennedy identifies pre-existing rights and illustrates rights that act as mediators between two realms of pure value judgement and factual judgements. [23] He explains value judgement "as matters of preference, related to subjectivity of views and to philosophical premises; and 'factual judgements' (also referred to as factoid) that represent the domain of the scientific, the empirical, objective judgements". [24] He defines the word "mediation", for this specific purpose, as rights-reasoning. In other words, this reasoning enables an individual to "be right about his/er value judgements, rather than just stating 'preferences' ". He states an enacted rule of the legal system that is "Congress shall make no law abridging the freedom of speech", [25] and explains that "'protecting freedom of speech' is a reason for adopting a rule, or for choosing one interpretation of a rule over another".[26] Thus, rights (as reasons for rules) lie somewhere between "pure

[21] Skorupski, '*Human Rights*' (2010), p.362.
[22] Louis Henkin, '*Human Rights: Ideology and Aspiration, Reality and Prospect*' in Samantha Power and Graham Allison (eds), '*Realizing human rights: Moving from Inspiration to Impact'* (St. Martin's Press, 2000), p.5.
[23] Duncan Kennedy, '*A Critique of Adjudication [fin de siècle]'* (Harvard University Press 1998), p.306.
[24] Philip Alston and Ryan Goodman, '*International Human Rights, The Successor to International Human Rights in Context'* (OUP 2013), p.495.
[25] First Amendment, Constitution, US Law, LII
[26] Kennedy, '*A Critique of Adjudication [fin de siècle]' (1998), p.306.*

values” and “actual rules”. Accordingly, the right to peace can be assumed to be a mediator which pre-exists and can convert a value judgement, namely peace, to a factual judgement.

According to Kennedy’s formula, rights are pre-existing mediators which can actualise value judgements. In a somewhat similar way, this analysis is clarified by Donnelly, who states that “legal rights ground legal claims to protect already established legal entitlements. Human rights ground moral claims to strengthen or add to existing legal entitlements”.[27] Therefore, human rights originate from universal ethics, which construct a universal law that is responsive to an inherent and common sense of justice in every human being. Thus, the recognition of other aspects of human rights helps to enrich universal law.[28] In this regard, Domingo states that “human rights like personhood are not granted but recognised. Thus, additions of human rights should be considered victories for all humanity in the sense that humanity is exalted by becoming more conscious of the inestimable value of the human condition and of the transcendence of the dignity of each person”.[29] This viewpoint becomes more noteworthy when a new right, such as the right to peace, is to be born in the human rights family, and needs to be realised. In other words, human rights serve as the catalysts which transform pre-existing moral values into legal entitlements in the system of human rights law and activate potentials by which human dignity is maintained. Thus, if a right to peace can be recognised, it will be able to ground a moral claim for a pre-existing value to add value to existing legal entitlements.

It can be concluded that human rights is a branch of rights with a similar formula to other types of rights (A has a right to X against B). This formula can be elaborated further, as Henkin indicates, suggesting that “A” has a legal right against “B” who has a legal obligation. “A” can legally claim upon “B” in the relevant legal system. Thus, such a system is assumed to provide the right-holder, “A”, with a standard and structured legal remedy to

[27] Donnelly, '*Universal Human Rights in Theory and Practice' (2013), p.13*
[28] Rafael Domingo, '*The New Global Law*' (CUP 2010), p.144.
[29] Ibid

enforce his/her rights. In other words, the right-holder enjoys his/her right due to the duty-bearer's legal obligation, not by grace.[30]

Therefore, human rights as pre-existing values with moral reasoning must be highlighted either by philosophical theories or by historical events in order to be recognised and implemented by a legal regime. The contents of entitlements for the first and second generations of human rights (namely civil, political rights and economic, social, cultural rights) are tangible, whereas the contents of entitlement for the third generation of human rights, such as the right to peace or the right to sustainable development, may seem controversial and somewhat vague or utopian. The first question which might come to mind concerns what will be the actual duties of society where a right-holder is to claim against society to provide him/her with peace. To solve this dilemma, Amartya Sen's theory of meta-right can be of use. A meta-right to X is described as "the right to have policies, P(x), that genuinely pursue the objective of making the right to x realizable".[31] It implies that policies should be directed and planned to realise X. Therefore, a meta-right entitles the right-holder to demand that policies be directed towards achieving the right to X.[32] The third generation of human rights, such as the right to peace, can be encompassed by meta-rights, as they require special policies at the mega level of strategic planning and also international solidarity.[33] From this perspective, peace can be recognised as a value which requires solidarity to impose legal duties on individuals (rulers) and states to act in a way to build and maintain it.[34] In other words, the right to peace is considered a meta-right which imposes duties on duty-bearers to make the right to peace realisable. If the right to X cannot be

[30] Henkin, 'International Human Rights as Rights ' (Fall 1979), p.438.
[31] Amartya Sen, The right not to be hungry, in Philips Alston and Katarina Tomaševski (eds), *The Right to Food* (Martinus Nijhoff Publishers 1984), p.70.
[32] Arjun Sengupta, '*Elements of a Theory of the Right to Development*' in Kaushik Basu and Ravi Kanbur (eds), '*Arguments for a Better World: Essays in Honor of Amartya Sen: Volume I: Ethics, Welfare, and Measurement'* (OUP, 2008), pp.91-92.
[33] Cecilia M. Bailliet, '*Normative Foundation of the International Law of Peace*' in Cecilia Marcela Bailliet and Kjetil Mujezinovic Larsen (eds), '*Promoting Peace Through International Law'* (OUP, 2015), p. 55; See also Kate Cook, 'Solidarity as a Basis for Human Rights: Part One: Legal Principle or Mere Aspiration?' (2012) (5) European Human Rights Law Review, p. 504.
[34] Bailliet, '*Normative Foundation of the International Law of Peace*' (2015), p.55.

realised promptly, the meta- right to X, P(x), can be recognised as a legal right in order to lay the groundwork to make X possible in the future. Based on this viewpoint, taking measures towards the fulfilment of these rights makes them feasible, and thus, it cannot be claimed that they are manifesto rights. In order to make a right, such as the right to peace, a binding and feasible right, policies should be adopted to allow institutional development to realise them.[35]

Taken as a whole, the term “right” is used as a generic term which can embrace anything that can be legally claimed.[36] Considering that the right to peace should be fixed in the discussed formula of rights, the components of obligations, entitlements, right-holders, duty-bearers and the implementation mechanism can be precisely determined. These essential pillars regarding the right to peace are broadly discussed in Chapter 3 and Chapter 5.

2.1.2 Individual Rights and Collective Rights

Various debates have considered the idea of human rights solely dedicated to individuals, denying the existence of any collective rights such as the right to peace, the right to a healthy environment and the right to development. This assumption may have originated partly from the traditional perception of the discussion of rights, which argues that human rights emerged from the idea of individual dignity, and which seriously supports the individualistic idea of human rights instead of considering communities.[37] Additionally, it can be partly based on this rationale, which recognises the privileges and freedoms only enjoyable by individuals.[38] It assumes that duty-bearers are necessarily individuals, and it also considers the capability of being a right-holder and the capacity of being a duty-bearer as connected components in one framework, and thus, it concludes that

[35] Sengupta, '*Elements of a Theory of the Right to Development*' (2008), p. 90.
[36] The statement of Mr. Justice Sneed in Lonas v. State (1871) 3 Heisk. (Tenn.), 287, 306-307.Quoted in Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (November 1913), p.30.
[37] Jack Donnelly, 'In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development' (1985) 15 (3) Cal W Int'l LJ, p. 473.
[38] Sengupta, '*Elements of a Theory of the Right to Development*' (2008), p. 91.

right-holders are exclusively individuals. Accordingly, rights are considered equivalent to some values, including liberty and power,[39] and, taking into account that only persons are able to have duty, power or liberty, rights can be possessed only by persons, including both natural and legal ones. In this regard, Griffin explains that normal agents are solely human rights-holders, and this excludes foetuses or animals. From this perspective, as groups, concerned by group rights, cannot necessarily be considered agents, group rights cannot be considered human rights. [40] The special criterion in this class of human rights, namely the collective nature, has led to criticisms of these rights. It is claimed that they do not concentrate appropriately on individuals, while the main subject of human rights is the individual, not groups. Thus, it is claimed that collective rights such as peoples’ right to peace cannot convey a clear legal meaning,[41] and, apparently, the collective nature of right-holders prevents these rights from being legally recognised.

Conversely, contemporary issues such as lasting peace, a healthy environment, sustainable development and global productive communication, which are currently matters of legitimate concern to the international community, concern groups as right-holders and necessitate vast participation, proper solidarity and a serious commitment to certain measures in order to make them achievable.[42] As Baxi has discussed, the immense amount of human suffering in the contemporary world depicts a deep gap between the existing recognised human rights and the current international community’s demands. [43] To fill this gap, solidarity rights, which are known as the emerging third generation of human rights, have come to attention in the last quarter of a century, encompassing crucial rights attributed to a nation or nations, a race, an ethnic group, or a gender group or a cultural, linguistic or religious group.[44] It appears that the idea of

[39] Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (November 1913), pp.30-32.
[40] Griffin, '*On Human Rights' (2008), pp.257-258.*
[41] Vojin Dimitrijevic, '*Human Rights and Peace*' in Janusz Symonides (ed), '*Human Rights : New Dimensions and Challenges'* (Ashgate and Dartmouth, 1998), p.64.
[42] Stephen P Marks, 'Emerging Human Rights: A New Generation for the 1980s ' (1980) 33 (2) Rutgers L Rev, p. 506.
[43] Upendra Baxi, '*The Future of Human Rights'* (3rd (edn), OUP 2008), pp. 34-35.
[44] See Griffin, '*On Human Rights' (2008), p.256.*

human rights has been gradually modified to acknowledge the entrance of collective rights into the family of human rights, considering the present necessities.

At this juncture, one may ask whether there is any barrier to a group of individuals claiming a right which is enjoyed by individuals. It is obvious that even individual rights are exercised collectively and that the states' policies are rarely targeted at a specific individual. In other words, each individual can enjoy and claim his/her rights as a member of a society which as a whole is entitled to those rights, and, in fact, rights are intended for particular groups of individuals who are allowed to make claims upon society regarding their rights. Additionally, the possibility of claiming a right by an individual should not rationally impose any limitations on the scope of that right. [45] Therefore, if an issue such as peace can be proven to be applicable as an individual right, there should not logically be any ban on it being claimed by a group of individuals.

Furthermore, Alston believes that an extremely individualistic approach to human rights cannot be productive, and he also discusses the idea that collective rights are "reflective of the extent to which we live in communities and to which our fate as individuals is bound up with the fate of others in whose social context we find ourselves". [46] Individuals who suffer shortcomings, harassment, repression or any hardship due to being a member of a community should be equipped with defence mechanisms against the dominant group which is responsible for repression or exploitation through a system of rights with a collective nature.[47]Therefore, collective and individual human rights need not necessarily be categorised rigidly, and some issues, such as peace, an uncontaminated environment and sustainable development, cause both individuals and societies to be concerned, [48] and thus, right-holders can be both individually and

[45] Sengupta, '*Elements of a Theory of the Right to Development*' (2008), p. 80.
[46] Philip Alston, 'The Shortcomings of a Garfield the Cat Approach to the Right to Development' (1985) 15 (3) Cal W Int'l LJ, p.516.
[47] Anne Orford, '*Globalization and the Right to Development*' in Philip Alston (ed), '*Peoples' Rights'* (OUP, 2001), p. 138.
[48] Bailliet, '*Normative Foundation of the International Law of Peace*' (2015), p.53.

collectively the subject of these rights. For instance, the right to peace, as Appleby describes, not merely encompasses the right of individuals to live in peace, but also goes beyond this, to the point of the superior right of nations to benefit from universal peace.[49] In light of this interpretation, the right to peace possesses both individual and collective dimensions. It entitles persons and groups, and imposes duties and obligations on both individuals and groups, including rulers, states and the whole international community. [50] Therefore, both right-holders and duty-bearers can be individuals or groups.

It can be understood that the idea of collective rights is not opposed to any idea which considers human rights to be derived from individual dignity, as every component of a community is a dignified individual, and can claim his/her rights individually or collectively through a community which pursues the rights of its components to secure their dignity. From this perspective, all three so-called generations of human rights emanated from one root relating to a common concern, which is dignity, and the contents of their entitlements are the determining factor that can be claimed individually or collectively. Overall, contemporary human rights can be viewed as a logical part of the evolutionary process in the trend of the human rights movement in accordance with contemporary requirements. From this viewpoint, all generations of human rights, whether individual or collective human rights, aim to decrease human beings’ suffering. They have been stated and recognised based on the requirements of every era, and recent trends have considered collective rights alongside individual rights.

In contrast to the above argument, there is an assumption which affirms the existence of collective human rights, but with totally different starting points and different concerns from individual human rights. It states that the modern, individualistic idea of human rights considers progress irrespective

[49] R.Scott Appleby, '*Relgion, Violence and the Right to Peace*' in John Witte and M Christian Green (eds), '*Religion and Human rights: An Introduction'* (OUP 2012), pp. 346-347.
[50] Philip Alston, 'Peace as a Human Right' (October 1, 1980) 11 (4) Security Dialogue, p. 319.

of human suffering,[51] having been recognised by dominant Western powers following the Second World War in order to prohibit the repetition of that catastrophe which wasted states’ resources and investments [52] Accordingly, the lack of civil political rights and economic social cultural rights are recognised as the primary causes of the rise of fascism, Nazism, anti-social behaviour and, subsequently, the Second World War.[53] Thus, as the Western powers clearly perceived these factors, they took measures to counteract them. Although the great results of that movement in the history of human rights is an undeniable fact, that momentum was not fully successful at removing human suffering, as it was created by powers rather than victims. It appears that as the problem was viewed from a special angle, many effective facts were ignored. Contemporary conflicts and their subsequent crises, such as the refugee crisis and terrorism, confirm that the existing structure of human rights law is not able to guarantee the lives of people in peace based on their dignity. Hence, the new emerging generation of human rights is required to respond to the failures of the existing human rights system.

Therefore, based upon a trend analysis of human rights development, the first and second generations of human rights were brought to the fore by the great powers who decided to issue a code of conduct in order to avoid repeating the Second World War tragedy and to ensure the survival of states, whereas the new generation of human rights is demanded by suffered grassroots.[54] The recent momentum towards collective rights expresses the views of people exhausted from oppression, violence, an unhealthy environment or lack of sustainable development and peace. In this recent approach, rights are not given by great powers, but they are achieved by victims who are assumed to be right-holders. Collective rights might be denied by the classic Western outlook which considers only the individual orientation; however, Asian, African and Latin American perspectives are

[51] Terrence E Paupp, '*Redefining Human Rights in the Struggle for Peace and Development*' (CUP 2014), p.125.
[52] Ibid, p.123.
[53] Manuel Couret Branco, '*Economics versus Human Rights*' (Routledge 2008), p.33.
[54] Paupp, '*Redefining Human Rights in the Struggle for Peace and Development' (2014), p.124.*

more supportive of the collective orientation of rights.[55] This new approach asks contemporary human rights law to listen to the voices of peoples who have experienced different types of violence, and facilitate the creation of a new version of human rights, or at least add to the existing human rights law in order to remove the existing deficiencies. Accordingly, collective rights are not considered to be beyond the scope of human rights, but they also add value to the framework of human rights. As a result, the new formulation of human rights concerns people’s suffering, while its predecessor concentrated merely on abstract individual human beings regardless of their collective sufferings.[56] In other words, contemporary human rights consider the voice of nations instead of echoing the concerns of powers. This approach will empower nations to decide on their own fate and that of their following generations to be able to claim from society the right to maintain human dignity and protect human beings, allowing them to be safe from any suffering. Therefore, human suffering can be assumed to be the start point for the legitimisation of a new international order which is concerned with current demands such as sustainable development, an uncontaminated environment and durable peace.[57]

Overall, regardless of the existing debates on the starting points of individual and collective rights, collective rights can be considered a part of the evolutionary trend of human rights, and, accordingly, it appears that individual rights and collective rights are not mutually exclusive, as some rights have dual characteristics. For instance, the right to peace is partly an individual right that entitles every human being to be involved in any efforts aimed towards peace, such as the refusal to participate in aggressive military efforts; conversely, it is partly a collective right which entitles nations not to be subjected to violations of *jus ad bellum.*[58] Therefore, such a right possesses both dimensions, including an individual dimension which

[55] Bailliet, '*Normative Foundation of the International Law of Peace*' (2015), p.55; See also: H Patrick Glenn, '*Legal Traditions of the World: Sustainable Diversity in Law'* (5th (edn), OUP 2014), p.35.
[56] Baxi, '*The Future of Human Rights' (2008), p.34-35.*
[57] Paupp, '*Redefining Human Rights in the Struggle for Peace and Development' (2014), p. 38.*
[58] Bailliet, '*Normative Foundation of the International Law of Peace*' (2015), p.55.

empowers individuals to live in peace and a collective dimension which enables nations to be immune to aggression and to be equipped with peaceful institutional tactics concerning dispute settlement. Accordingly, the right to peace can encompass all related individual rights, such as the right to participate, and can impact on decision-making in relation to peace-related-policies, and also applies in the case of policies violating peace, the right to refusal to participate in the implementation of such policies.[59] In addition, all nations have the right to enjoy standards such as the Geneva Convention and Additional Protocols, as well as the implementation of disarmament policies and the prosecution of aggression under efficient international legal orders.[60] This hybrid nature of this right prevents it from being categorised as an exclusively individual right which can develop some extremely unpleasant features, such as egotism and indifference to others, which may make people irresponsible due to their emphasis on rights rather than responsibilities. [61] Thus, this category of right is not only far from the negative criteria of individualistic rights, but also, it can promote collective actions and solidarity. Hence, a right in the term “right to peace” is understood as a meta-right that empowers both individuals and nations to claim the responsibility of duty-bearers to make and protect policies to guarantee that they live in peace.

2. 2 The Conception of “Peace” in the Term “Right to Peace”

In the process of establishing a right to peace, it is crucial to identify the criteria which enable a value to be recognised as a right, and, to this purpose, peace should be defined and assessed to explore whether it has those necessary criteria or not. An examination of the existing literature on peace shows that the word “peace” is loosely employed in different contexts, without sufficient clarity regarding its scope, aims and duration, and it appears difficult to establish a comprehensive formula relating to peace.

[59] Richard Bilder, 'The Individual and the Right to Peace, The Right to Conscientious Dissent' (October 1, 1980) 11 (4) Security Dialogue, p. 387.
[60] Marks, 'Emerging Human Rights: A New Generation for the 1980s ' (1980), p.446.
[61] Cass R Sunstein, ' Rights and Their Critics' (1995) 70 Notre Dame L Rev.pp.498-499.

From the legal-political perspective, definitions of the concept of peace can vary from a ceasefire to reconciliation between conflicting social groups and, sometimes, to a regime change, and, as a result, the methodology adopted to attain each type of peace may vary.[62] This section intends to establish a comprehensive conception of peace in order to respond to the second research sub-question which asks: “what is the conceptual-legal framework underlying the peoples’ right to peace?” Considering that peace is a phenomenon linked to different bodies of knowledge, such as philosophy, law, politics and sociology, different concepts regarding peace are derived from multidisciplinary sources to explore the most inclusive interpretation.

2.2.1 Dominant Philosophical Perspectives on Peace: Realism, Rationalism, Cosmopolitanism

The present research analyses dominant philosophical perspectives in international relations to facilitate a comprehensive conception of peace, although it considers that philosophy does not provide any definite explanation for a phenomenon. Philosophical views are pinpointed, as they can contribute to the expansion of perspectives and can enable the consideration of different possibilities, deepening intellectual analysis in order to abolish unconscious dogmatism which narrows the range of one’s potential views.[63] Considering the fact that philosophy is an extremely extensive field with different branches, this research deals with it only to an extent that will help to explore the research question based on the ground from which the research question has emanated, namely international law. Taking into account the assumption that peace is a situation between states in the international environment, this study focuses on the philosophy of international relations and international law, among different branches of philosophy. Although the international law and political science disciplines are quite separate, they overlap with each other, and there are intersections

[62] M Cherif Bassiouni, 'Searching for Peace and Achieving Justice: The Need for Accountability' (Fall 1996) 59 (4) Law & Contemp Probs, p.13. Also see UN Doc. A/RES/71/189 Declaration on the Right to Peace, annex, p. 3.

[63] Perry and Bratman, '*Introduction to Philosophy : Classical and Contemporary Readings' (1999), p.12.*

that have been studied, analysed and promoted by many scholars in both international law and international relations. [64] Peace is one of the issues which are situated in the overlapping zone. In order to explore a comprehensive interpretation of peace, dominant prevailing models of thinking concerning peace, considering their actual historical contexts over the course of time, [65] are examined. To this end, the perspectives of philosophers who have dealt with this issue more thoroughly, and have influenced the global approach to peace, are considered, alongside an examination of the contexts and traditions from which those perspectives have emerged. The existing literature suggests that any perception of a phenomenon is inevitably at the mercy of surrounding traditions, and thus, it is crucial to consider the frameworks which cultivate different approaches.[66] The study considers the outlooks which have emanated from the significant philosophical approaches to the issue of war and peace, which can generally be categorised into the following three major categories: realism, rationalism and cosmopolitanism.[67] It finally presents a perception of peace based on the methodology adopted for this research.

2.2.1.1 Realism and Peace

As Donnelly’ describes, “Realism emphasizes the constraints on politics imposed by human nature and the absence of international government. Together, they make international relations largely a realm of power and interest”. [68] In this definition, two major factors, namely international anarchy and human nature, are simultaneously pinpointed. The methodology adopted by Niccolo Machiavelli (1469-1527), as the symbol of this school of thought, involves inductive reasoning to deal with phenomena, alongside the historical method to explore the laws of politics

[64] Monika Zalnieriute, 'Jeffrey L. Dunoff and Mark A. Pollack (eds). Interdisciplinary Perspectives on International Law and International Relations: The State of the Art' (August 1, 2013) 24 (3) EJIL, p.987.
[65] David S.Yost in Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p.xix.*
[66] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004), p.1.
[67] Wight, '*International Theory: The Three Traditions' (1991), p.5.*
[68] Jack Donnelly, '*Realism and International Relations*' (CUP 2000), p.9.

from historical models.[69] This philosophy gives the strongest emphasis on the negative aspect of every phenomenon to describe it. It illustrates human nature through characteristics such as insatiability, arrogance and savagery, unless human beings are forced to behave in another manner by law. It considers insecurity as the essential experience of international politics, and it defines security by different degrees of insecurity or the absence of insecurity. Similarly, peace can be defined only as proportionate to war.[70]

The origin of this model of thought can be attributed to Heraclitus (c.535BC-457BC), who formulated the doctrine that everything is a battleground of contrasting powers. Hence, there is an essential instability, and only relative stability can be possible through the temporary balancing of opposing forces.[71] Furthermore, the realist approach has roots in the philosophy of Thucydides (c. 460-395BC), who illustrated the link between human nature and crises such as wars and conflicts in his book *History of the Peloponnesian War.*[72] In that book, there is a famous section known as "the Melian dialogue" which is, as Donelly identifies, a significant realist text concerning international relations, peace and war. [73] According to an argument by Athenians "right, as the world goes, is in question only between equals in power, while the strong do what they can and the weak suffer what they must".[74] Therefore, as can be understood, power constitutes the main principle in this model of thought, and everything should tend towards the most powerful.

In the modern era, realism was influenced by Thomas Hobbes (1588-1679) whose legal, political and philosophical thoughts were affected by the Spanish Armada's invasion and the civil and revolutionary conflicts in both

[69] Adam Morton, '*Philosophy in Practice: An Introduction to the Main Questions'* (1st Published 1996,Blackwell Publishing 2004), p.126; Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p.4.*

[70] Donnelly, '*Realism and International Relations' (2000), p.25*;Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), pp. 10, 14.*

[71] Benjamin Farrington, '*Greek Science: Its Meaning for Us '* (Reprint (edn), Penguin Books 1961),Vol. I,p.35.

[72] Charles Norris Cochrane, '*Thucydides and the Science of History*' (OUP 1929),p.166.

[73] Thucydides, '*History of The Peloponnesian War*' (Smith, Charles Forster (ed & tr), Harvard University Press-Willian Heinemann 1977),Book V, pp.155-179.

[74] Ibid

England and France.[75] Hobbes believes that people use their natural freedom in a destructive, even self-destructive, manner, unless it is controlled by the government through a hierarchical system. Thus, domestic peace can be preserved by force, while anarchy and state of war are fundamental facts of international relations.[76] He elaborates on the constant war of everyone against everyone in *Leviathan*.[77] According to his viewpoint, survival is the main concern of nations. In the Hobbesian state, the key elements include unconditional sovereignty of a strong central authority and a sharp demarcation of the external world. Thus, cooperation is possible based on contracts, sovereignty and representation.[78] It can be concluded that realists underline the anarchical system in international relations where sovereign states deny any political superiority, and, eventually, war regulates relationships.[79] The anarchic international system exists in continuous antagonism, and states, as the most important actors, solely pursue their self-interest and self-survival. Therefore, there is a deep fracture between national policy and international policy. In this situation, war between nations can be normal, expected and permanent, and, as Bassiouni elaborates, “Realists and Realpolitik proponents argue that every conflict is *sui generis* and that the variables of each conflict are so diverse that cannot be categorized or characterized in a way that a common international legal regime can apply to all these heterogeneous conflicts”.[80] It can be derived from this model of thought that peace is just an exception that sometimes occurs between wars. In this approach, peace might be defined as the temporary absence of war which exists due only to fear of the other’s power. Temporary peace happens in consequence of contracts, or due to the power balance between countries.[81] Considering the inherent criteria of human beings, there is always the potential for violations of peace,

[75] Donnelly, '*Realism and International Relations' (2000), p.13.*
[76] Thomas Hobbes, '*Leviathan'* (Tuck R (ed), Revised Student (edn), CUP 1996), Chapter 13, p.88;Donnelly, '*Realism and International Relations' (2000), p.15.*
[77] Hobbes, '*Leviathan' (1996), pp.88-89.*
[78] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004), p.3.
[79] Wight, '*International Theory: The Three Traditions' (1991), p.7.*
[80] Bassiouni, 'Searching for Peace and Achieving Justice: The Need for Accountability' (Fall 1996), p.13.
[81] Hobbes, '*Leviathan' (1996), p.90*

and thus, perpetual peace will not be possible, and apparently cannot be claimed as a right.

2.2.1.2 Rationalism and Peace

The rationalist tradition is attributed to Grotius (1583-1645) who has a positive approach regarding peace, considering the social element in human nature, and seeks a remedy between two extremists’ viewpoints: those who believe nothing is lawful in war, and those for whom all things are lawful in war. [82] In fact, Grotius believes in the middle way as the most logical approach, [83] expressing his major disagreement with the doctrines of Machiavelli and Thucydides in his book *De Jure Belli ac Pacis [On the Law of War and Peace]*.[84] A link can be observed between the model of thinking initiated by Grotius and the peace of Westphalia that ended the Thirty Years’ War which occurred in Central Europe between 1618 and 1648.[85] *De Jure Belli ac Pacis* is the application of law and morality to society based on the reason,[86] and establishes a philosophy based on the rule of law and justice, as justice provides inner peace, while injustice causes suffering. [87]

In the Grotian vision, states are bound by morality and law, and modern international law is a legal order based on three pillars: sovereignty, equality and the mutuality of states. Accordingly, the states which transgress the laws of nature and the law of nations destroy the measures which safeguard their own future peace;[88] thus, states will inevitably maintain relationships

[82] A Nuri Yurdusev, 'Thomas Hobbes and International Relations: from Realism to Rationalism' (June 2006) 60 (2) Australian Journal of International Affairs, p.319.
[83] Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p.34.*
[84] Benedict Kingsbury, 'A Grotian Tradition of Theory and Practice: Grotius, Law, and Moral Skepticism in the Thought of Hedley Bull ' (1997) 17 Quinnipac Law Review (QLR), p.20; Grotius, '*On the Law of War and Peace' (2004)Book II, Chapter XVI, p.131.*
[85] Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p.xxxi.*
[86] Kingsbury, 'A Grotian Tradition of Theory and Practice: Grotius, Law, and Moral Skepticism in the Thought of Hedley Bull ' (1997), p.11.
[87] Grotius, '*On the Law of War and Peace' (2004), Book II, Chapter XVI, p.131.*
[88] Ibid. pp. 6-7, 316.

based on the desire not to offend other states based on the rule of law.[89] He blames nations for starting wars based on the most trivial excuses, while he does not believe that war in society can be totally abolished, as well as validating some types of war as tools for the enforcement of legitimate rights.[90] Thus, he concentrates on moderating the consequences of war by distinguishing the just from the unjust and establishing a structure to reduce suffering by restraining war.[91] According to him, although all states should have a right to war (*jus ad bellum*), the use of force should be legitimate (*jus in bello*).[92] Based on this methodology, peace can be established by the equal realisation of security for every individual subject, and that violence is a characteristic of non-rational human beings. Thus, violent practices are the expected result of evil, which reverses the sociability of men and women.[93] Conversely, in this view, force is able to protect legitimate rights, and is not incompatible with law. From this point of view, war can be perceived as a rational instrument to preserve society, as the last remedy.[94] Grotius suggested three methods to avoid the development of dispute into wars, and established a mechanism whereby peaceful settlement of disputes would be possible through conference, arbitration and, eventually, combat.[95] In other words, in the Grotian world, cooperation to ensure common values between international law subjects takes priority over war.[96]

Amongst thinkers affiliated with rationalism, Spinoza (1632-1677)[97] believed in "peace and security of life" (*pax vita eque securitas)* as the

[89] Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p.39.*
[90] Grotius, '*On the Law of War and Peace' (2004), Book II, Chapter I, p.51.*
[91] Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), pp.34-35.*
[92] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004), p.5.
[93] Grotius, '*On the Law of War and Peace' (2004), p.7.*
[94] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004), p.5.
[95] Grotius, '*On the Law of War and Peace' (2004), Book II, Chapter XXIII, p.214.*
[96] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004), p.11.
[97] Roger Scruton, '*Spinoza: A very short introduction'* (OUP 2002), p.117; Jonathan Bennett and Jonathan Francis Bennett, '*A Study of Spinoza's Ethics'* (Revised (edn), Hackett Publishing Company 1984), p.29.

ultimate aim of the civil state.[98] He considers humans as rational beings which are qualified to realise peace.[99] From his perspective, “there is nobody who does not desire to live in safety free from fear, as far as is possible. But this cannot come about as long as every individual is permitted to do just as (the individual) pleases”.[100] Spinoza suggests that there is a necessity for an external authority, which should take the form of a democratic state,[101] and also asserts that “men are not born for citizenship, but must be made so”.[102] He presents particular definitions of peace, such as the following: “a virtue which comes from strength of mind”, “union or harmony of minds”[103] and “not mere absence of war, but […] a virtue that springs from force of character”.[104]

Overall, it can be understood that rationalism considers peace to exist beyond the static situation of the absence of war, but also as a virtue which is dynamically desired by rational beings through benevolence, trust and justice. This concept is interconnected with justice, and can be achieved as the rational outcome of cooperation among states in light of the rule of law. Peaceful relationships and the non-violent settlement of disputes are the main priorities in this model of thought. However, in this view, the Grotian standardised war may be considered as the final recourse to bring back justice when peaceful remedies are not productive.

2.2.1.3 Cosmopolitanism and Peace

Cosmopolitanism is associated with Immanuel Kant (1724-1824), who established the moral idea of cosmopolitan characteristics and proposed a

[98] Benedictus de Spinoza, '*Political Treatise'* (Shirley S (tr), Hackett Publishing 2000), Chapter5, Section 2; See Matthew J Kisner, '*Spinoza on Human Freedom: Reason, Autonomy and the Good Life'* (CUP 2011), p. 224.
[99] Spinoza, '*Political Treatise' (2000), Chapter 5, Section 5.*
[100] Ibid. Chapter 4, Section 16.
[101] Ibid; James Page, '*Peace Education: Exploring Ethical and Philosophical Foundations*' (Information Age Publishing 2008), p.39.
[102] Spinoza, '*Political Treatise' (2000), Chapter5, Section 2.*
[103] Ibid. Chapter6. Section 4. ; Justin Steinberg, 'Spinoza's Political Philosophy' (Winter 2013 Edition , Zalta E.N. (ed.)) The Stanford Encyclopedia of Philosophy, part 4.2.
[104] Spinoza, '*Political Treatise' (2000), Chapter 5, Section 3.*

legal-political system to implement the cosmopolitan model; however, he cannot be considered the first cosmopolitan theorist, as this philosophy has a deep root in the history of human civilisation.[105] Kant has made a substantial contribution to theories of peace through his essay *Perpetual peace: A philosophical sketch* and his book *The metaphysics of morals.* [106] He initiated the idea of “perpetual peace” as the ultimate end of all national rights. This formulation encompasses all necessary measures to avoid war, and negligence in regard to each of these factors can be considered an obstacle to attaining sustainable peace. At the outset of his plan concerning perpetual peace, six preliminary articles illustrated the negative conditions of a state of peace among states, and thus, they were preconditions of the realisation of peace,[107] so there should not be any possibility for war if these are fulfilled:

1. No treaty (secret treaty) of peace shall be held valid in which there is tacitly reserved matter for a future war (Transparency in contracts)
2. No independent states, large or small, shall come under the dominion of another state by inheritance, exchange, purchase, or donation (Respect for the integrity of states)
3. Standing armies shall in time be totally abolished (Disarmament)
4. National debts shall not be contracted with a view to the external friction of states (No budget allocation for hostility)
5. No state shall by force interfere with the constitution or government of another state (No forceful interference)
6. No state shall, during war, permit such acts of hostility which would make mutual confidence in the subsequent peace impossible: such as the employment of assassins, poisoners, breach of capitulation, and incitement to treason in the opposing state (Consideration of ethical and legal principles during war).[108]

[105] Brown and Held (eds), 'The Cosmopolitanism Reader' (2010), p.12.
[106] Page, '*Peace Education: Exploring Ethical and Philosophical Foundations' (2008), p.41.*
[107] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004), p.9.
[108] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), pp.93-97.

As can be seen, Kant predicts all essential prerequisites which can prevent war and facilitate sustained peace, and he also proposes a transitional system to change from a phase of war to one of peace. In this plan, Kant endeavours to design a perfect structure, as he believes that, first, the system should be corrected, and then, in consequence, subjects will adjust themselves to that proper system. Thus, as he asserts, there is no need to have angels for an ideal state, and even devils are coerced to act in an exemplary manner within a correct system.[109] In other words, as Wight interprets it, a “good state is prior to good men”.[110] To this end, Kant presents three definitive articles which establish an appropriate system that can realise perpetual peace:

1- The civil constitution of every state should be republican.
2- The law of nations shall be based on a federation of free states.
3- Cosmopolitan right shall be limited to conditions of universal hospitality.[111]

As can be understood from this, Kantian philosophy is not solely limited to the theoretical hypothesis, but also deals with empirical issues. Kant practically applies the categorical imperative to derive inclusive rules for the governance of social and personal morality. He presents a comprehensive plan to facilitate political stability and security in his *Political Writings* on perpetual peace. He recommends that states form an international federation of independent republics, abolish standing armies, refuse to interfere in the internal affairs of each other and respect cosmopolitan right.[112] He employs his moral philosophy to create applicable rules to solve the global problem concerning peace.

The first definitive article of the republican constitution manifests the requirement for the citizens’ consent on policies such as declarations of war

[109] Ibid, p.112.
[110] Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p.55.*
[111] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), pp.99-105.
[112] Ibid, pp.93-109.

or the decision to remain in peace. It establishes a civil republican constitution based on three principles, which include the following: the freedom of the members of a society (as free human beings), the dependence of all upon a single common legislation (as subjects) and legal equality for everyone (as citizens).[113] This model confirms that the moral legitimacy of power is dependent on the result of political consent which respects the basic rights of its subjects.[114] Kant signifies the importance of free rational beings’ decisions on peace or war in policy-making that would rationally tend toward peace, because he believes that dignified rational beings never resort to violence,[115] which absolutely destroys the dignity of both the victim and the perpetrator. [116] In line with the republican constitution, the consent of citizens is required in policy-making, and citizens rationally consider all of the possible consequences of war, the material and immaterial costs of war which have to be paid from their own sources and, eventually, the destruction and enormous national debt which result from war. In contrast, the un-republican constitution never heeds the citizens’ consent, and, as peoples are not decision-makers, so the decision concerning war is made for the least important reasons by rulers who are not supposed to pay the cost of war.[117]

The second definitive article of perpetual peace is the law of nations, which should be established based on a federation of free states. [118] Kant acknowledges that it is natural that different nations may be in conflict, but he presents a remedy to solve this problem. Accordingly, all states should enter into a constitution similar to a civil constitution in the form of a league of nations; however, in such a league, there is no relation between a superior

[113] Ibid, p.112.
[114] Fernando R. Teson, '*A Philosophy of International Law*' (1998), p.2.
[115] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), p.94.
[116] Donna J Perry, Christian Guillermet Fernández and David Fernández Puyana, 'The Right to Life in Peace: An Essential Condition for Realizing the Right to Health' (June 11, 2015) 17 (1) Health and Human Rights Journal, p. 153.
[117] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), p.113.
[118] Pauline Kleingeld, '*Kant's Theory of Peace*' in Paul Guyer (ed), '*The Cambridge Companion to Kant and Modern Philosophy*' (CUP, 2006), p.483.

(legislating) state and an inferior (obeying) state.[119] Based on this formula, disputes can be settled through a league of nations, and states have an immediate duty to preserve peace.[120] This model of federation is close to the Grotian law of nations (*jus gentium*),[121] but Kant's plan advances a system which prohibits any possibility of war[122] and terminates actual and potential wars, whereas peace pacts can terminate the particular wars which are aimed at by those treaties.[123]

The third article of perpetual peace discusses the conditions of universal hospitality that mean a foreigner should be respected and not be treated as an enemy when s/he arrives in the land of another so long as s/he conducts him/herself peacefully.[124] This article has originated from the conception of dignity in Kant's philosophy, which considers all members of humanity to be dignified, as they are qualified to exercise morality. Additionally, cosmopolitan right is based on this idea that the right to Earth's surface belongs to the human race in common, and that human beings anywhere on Earth are entitled to certain fundamental rights.[125] In fact, "the right of hospitality is a feature of civilisation to prevent war, [... and] [i]ndividuals (as citizens of the world) are to be welcomed unconditionally, while relations between nation-states are not subject to the same ethical obligations of unconditional hospitality."[126]

It should be considered that Kant is not an extreme pacifist, as he morally justifies resorting to war in some exceptional cases based on the categorical imperative. In Kantian ethics, the universalizability of a maxim or policy is examined to identify the morality and legitimacy of the act resulting from that maxim. Accordingly, it takes into account that, in the case of aggression,

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[119] Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p.73*

[120] Gallie, '*Philosophers of Peace and War: Kant, Clausewitz, Marx, Engles and Tolstoy' (1979), p.23*

[121] Grotius, '*On the Law of War and Peace' (2004), Book II, Chapter XVI, p.131.*

[122] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004), p.10.

[123] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), p.113.

[124] Ibid

[125] Kleingeld, '*Kant's Theory of Peace*' (2006), p.489.

[126] Lynn Fendler, '*Philosophies of Hospitality: Toward Perpetual Peace and Freedom*' in Ramaekers S. and Hodgson N. (eds), '*Past, Present, and Future Possibilities for Philosophy and History of Education'* (Springer, 2018), p. 65.

a person reserves the right to adopt the necessary measures, including even armed force, proportional to the type of aggression involved, as the last resort for self-defence. This approach is universally reasonable for every rational agent, including individual or collective ones, and this kind of maxim or policy is permitted as a form of self-defence.[127] In other words, this type of coercion is employed to hinder a barrier to freedom, which, in this case, is freedom from fear of aggression. Brian Orend elaborates that Kant considers the likely threat to rights and freedoms of a state by another state as an actual hindrance to freedom, considering the fact that the threat aims to affect in a similar manner to actual attacks. Thus, it can be understood that he defends the right to engage in anticipatory attacks as well.[128]

Orend, having analysed Kant's view, concludes that "war is just if, and only if, during the long transition from the international state of nature to a cosmopolitan civil society, armed force reasonably seems required to vindicate universal principles of international justice".[129] Additionally, it should be borne in mind that the just war, in Kant's moral model, as the last resort, differs from traditional just-war theories, which are based on principles such as the probability of success, and Kant's theory on just war concerns justice after war, and goes beyond the traditional understanding of *jus ad bellum.*[130] Kant initially insists on measures such as correcting the political system or legal institutions for the peaceful settlement of disputes, and, eventually, he considers prior declaration before a just war as the last remedy. [131] Therefore, considering all of Kant's provisions, the moral

[127] Brian Orend, '*War and International Justice: A Kantian Perspective'* (Wilfrid Laurier University Press 2000), p.52;Jeffrie G. Murphy, '*Kant: The Philosophy of Right'* (1st Published 1970, Mercer University Press 1994), p.126.
[128] Orend, '*War and International Justice: A Kantian Perspective' (2000), p.54.*
[129] Brian Orend, 'Kant's Just War Theory' (1999) 37 (2) Journal of the History of Philosophy, p.352.
[130] Orend, '*War and International Justice: A Kantian Perspective' (2000), p.54*;Brian Orend, 'Jus Post Bellum: The Perspective of a Just-War Theorist' (2007) 20 (03) Leiden Journal of International Law, p. 571.
[131] Immanuel Kant, '*The Metaphysics of Morals*' in Hans Reiss (ed), '*Kant's Political Writings'* (Nisbet, H.B (tr), 1st Published 1970, CUP, 2003),p.167.

possibility of war is practically eliminated.[132] In fact, Kant formulates a new just-war category, namely *jus post bellum* that involves the justice of the transition from war back to peace. He concentrates on the ability of rights and duties to abolish any potential for conflict and war that can be activated after peace in order to establish sustainable peace.[133] This understanding of peace is a perpetual peace that tends toward the end of hostilities and is beyond the absence of war. Even in the absence of war, the lack of different elements mentioned in his plan can play a potential role in creating instability that can tend towards breaches of peace. Therefore, the effective aspects of his plan concerning perpetual peace should be borne in mind when defining peace.

Although Kant’s formulation of perpetual peace is a unique plan, there have been some criticisms of it, as he considers peace only between states, and he does not address civil wars and non-international conflicts. In addition, it is alleged that Kant does not provide any guarantee of the end of hostilities, and his plan can be taken merely as a recipe by which to access peace.[134] In response, it can be stated that the internal system, which Kant proposes is based on the republican constitution, a free federation and hospitality, is appropriately qualified to remove any trace of civil wars. Additionally, despite the possibility of deficiencies in Kant’s formulation, his conception of peace can be considered “a secularized version of the traditional connection of *pax and justitia*, peace and justice, which characterizes classical as well as medieval political thought. It asserts a connection between justice within the state and peacefulness between states and organizes peace as a system for the regulation of conflicts according to the standard of requirements of justice that are acknowledged on all sides”.[135] Furthermore, this kind of peace, which is based on an order of right,[136] goes

[132] Michael Walzer, '*Just and Unjust Wars: A Moral Argument with Historical Illustrations*' (5th (edn) 1st published 1977, Basic Books 2015), p. xiv.
[133] Orend, 'Kant's Just War Theory' (1999),p.351.
[134] Gallie, '*Philosophers of Peace and War: Kant, Clausewitz, Marx, Engles and Tolstoy*' *(1979),p.27-29.*
[135] Wolfgang Kersting, '*Politics, freedom, and Order: Kant's political philosophy*' in Paul Guyer (ed), '*The Cambridge Companion to Kant*' (CUP, 1992),p.363.
[136] Ibid

beyond theoretical discussions; this issue is discussed in *Kant political writings* as follows:

> "The establishing a universal and lasting peace is not just a part of the theory of right within the limits of pure reason, but its entire ultimate purpose. For the condition of peace is the only state in which the property of a large number of people living together as neighbours under a single constitution can be guaranteed by laws. The rule on which this constitution is based must not simply be derived from the experience of those who have hitherto fared best under it, and then set up as a norm for others. On the contrary, it should be derived a priori by reason from the absolute ideal of a rightful association of men under public laws."[137]

There is a significant difference between Kant's vision and the realists' approach to peace. Kant constructs a system based on rights and duties to overcome the existing natural conditions and gain peace. However, Hobbes contends that the natural condition between states can be controlled by the use of terror.[138] As David Yost states,

> "Kant was hardly alone among Enlightenment thinkers in condemning standing armies, national debts, and other instruments of the rivalries of power politics. He looks beyond the balance of power to the notion of a peaceful and expanding federation of constitutional states. [Therefore,] the maintenance of universal peace by means of the so-called Balance of Power in Europe is like Swift's house, which a master-builder constructed in such perfect accord with all the laws of equilibrium, that when a sparrow alighted upon it, it immediately collapsed- a mere figment of the imagination."[139]

Overall, it can be concluded that, in the cosmopolitan approach, peace is not a static condition; it is a dynamic conception which is based on a right-based system with all of the necessary pillars illustrated by Kant. This kind of

[137] Kant, '*Kant Political Writings' (2012), p.174.*
[138] Kersting, '*Politics, freedom, and Order: Kant's political philosophy*' (1992), p.363.
[139] Yost, David, Introduction in:Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p.xxxviii.*

peace certainly cannot be limited to the absence of war, and it is made up of other components, including justice and human rights. Kant makes peace tangible and practical, and excludes peace from the realm of virtue, making peace capable of becoming a right. He argues that true and lasting peace is possible only when states are organised internally according to republican principles, when they are organised externally into a voluntary league that supports and promotes peace, and when they respect the human rights not only of their own citizens, but also of foreigners. He regards these three main requirements as intrinsically inter-connected and potentially constructive when combined.[140] This dynamic peace is a result of a system that has the capacity to realise human rights and justice.

2.2.2 Contemporary Multi-disciplinary Perspectives on Peace Conception

This section considers the concept of peace through the eyes of some contemporary scholars of peace studies across different disciplines. It provides various descriptions of peace and endeavours to strike a balance between them to achieve a comprehensive interpretation.

Contemporary perspectives based on the logic of realism consider the constant possibility of war, along with a continuous sense of fear and insecurity.[141] Among modern realists, Morgenthau (1904-1980) is worth mentioning. He discusses the principles of political realism in his book *Politics among nations: the struggle for power and peace*, where he proposes his theory concerning the two concepts of power and peace, explaining the basis of realist thinking in the United States during the Cold War. Accordingly, universal moral principles cannot be applied to the actions of states, and states must prioritise their national survival above all other moral goods. Hence, the moral law that governs the universe is

[140] Kleingeld, '*Kant's Theory of Peace*' (2006), p.477.
[141] Pierre Allan, '*Measuring International Ethics: A moral scale of war, peace, justice, and global care*' in Pierre Allan and Alexis Keller (eds), '*What is a just peace?*' (OUP, 2010), p.128.

interpreted distinctly by any nation, with the aim of its own survival.[142] He believes that peace in the world is equal to a power balance among existing states, and can be achieved only through power balance policies periodically. It appears that permanent peace cannot be achieved.[143] In other words, according to the realist insight, ethical standards are not applicable to relations between states,[144] and states' interests are inevitably in conflict. According to this viewpoint, peace, which here refers to non-war, can be realised through three conditions:

1- Peace through hegemony: In this form, the weak party should accept peace, while its interests do not matter.
2- Classic peace through the balance of power: Here, power is equally distributed between competing states. This situation prevents parties from engaging in war.
3- Mutual deterrence or peace by fear and terror: There is no alternative for the weak party but to accept peace. This model has been developed as a result of nuclear weapons. [145]

All of these types of peace imply that the contemporary realist philosophy assumes a constant temptation to engage in war in humans' minds, but that the weakness of one side prevents it from entering a war. This type of peace can be adversarial, restricted or precarious peace, or it may be conditional. Therefore, however, the absence of war may seem to be a peaceful situation; a potential war is always hidden behind the veil of peace.[146] Such a negative form of peace could be a precondition for the next war, as Pierre Allan describes, stating that the "[s]pring of 1914 was peaceful though war was on many peoples' minds, from the Kaiser to people on the boulevards of

[142] Hans J Morgenthau, '*Politics Among Nations: The Struggle for Power and Peace'* (Thompson K.W. (ed), 6th (edn),McGraw-Hill 1985), pp.10-11.
[143] Bettina Dahl Soendergaard, 'The Political Realism of Augustine and Morgenthau: Issues of Man, God, and Just War' (2008) 7 (1) Alternatives: Turkish Journal of international relations, pp.10,13.
[144] Jack Donnelly, '*The Ethics of Realism*' in Christian Reus-Smit and Duncan Snidal (eds), '*The Oxford Handbook of International Relations '* (OUP, 2008), Abstract.
[145] Allan, '*Measuring International Ethics: A moral scale of war, peace, justice, and global care*' (2010),p.108.
[146] Ibid.pp.107-109

Paris”.[147] Thus, peace can be defined both broadly and narrowly: A broad definition considers peace to be “the interval between wars” and war as the essence of international relations. A narrow definition, meanwhile, considers peace to involve only “peace treaties and their obligations in post war situations”.[148] Therefore, peace is a condition of a “relatively lasting suspension of rivalry between political units”,[149] and occurs when war or other direct forms of organised violence are not present.[150]

Furthermore, there are situations that can be defined as frozen conflicts, or “protracted post war conflict processes” in which war ended, while sustainable peace did not happen.[151] In fact, the concluding of a peace agreement or ceasefire agreement does not abruptly terminate the conflict, and cannot be an indicator of a stable peace achievement. It is only an avenue towards social and political reconstruction considering the historical roots of conflict.[152] It requires the full implementation of the cessation of hostilities and the fulfilment of all commitments to create conditions for a durable ceasefire, and consequently lasting peace.[153] In order to consolidate a peace agreement, various issues are required to be addressed, such as demobilization and reinsertion of ex-combatants, disarmament, the implementation of transitional justice, and the protection of the forcibly displaced population.[154] Therefore, the realisation of a durable termination to all conflicts is a societal issue beyond the negotiation process.[155]

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[147] Ibid.p.107.

[148] Stanley Hoffmann, '*Peace and Justice: A Prologue*' in Pierre Allan and Alexis Keller (eds), '*What Is a Just Peace?*' (OUP 2006),p.12.

[149] Raymond Aron, '*Peace and War: A Theory of International Relations*' (1st Published 1966, Routledge 2017), p. 151.

[150] Ibid

[151] e.g. in “East Europe (Nagorno-Karabakh, Transnistria, Abkhazia, South Ossetia, and Chechnya), the Balkans (Bosnia and Herzegovina), South Asia (India and Pakistan), and East Asia (the Korean peninsula)”. M. Smetana and J. Ludvík, 'Between War and Peace: A Dynamic Reconceptualization of Frozen Conflicts' (August 1, 2018) Asia Eur J, pp. 1-2.

[152] Catherine C. LeGrand, Luis van Isschot and Pilar Riaño-Alcalá, 'Land, justice, and memory: challenges for peace in Colombia' (November 6, 2017) 42 (3) Canadian Journal of Latin American and Caribbean Studies, p. 271.

[153] UNSC 'The situation in the Middle East' S/RES/2401 (2018), p. 2/3, para.3.

[154] Jima A. Gonzalez, Paradela M. López and María A. Serrano Ávila, 'Post-conflict Policies in Colombia. An approach of the potentiality of South-South Cooperation (SSC) in the peace process' (July 12, 2018) 20 (39) Reflexión Política, p. 20.

[155] Sven M. G. Koopmans, '*Negotiating Peace: A Guide to the Practice, Politics, and Law of International Mediation*' (OUP 2018), p. 88.

Conversely, some kinds of negative peace can be stable, with the low possibility of war.[156] This stable peace is “a negative war, but not simply a war that does not happen, but a war that will not happen, at least in people’s minds, that is, at the cognitive level”, [157] and as a result, it creates a psychological sense of security. In this kind of peace, justice does not matter. Pierre Allen categorises stable negative peace into six forms, as follows:

1- Universal empire: In this model, only one actor exists. Thus, war cannot be imagined. Although internal conflicts may occur, order would be rapidly re-established by the central forces.
2- Carthaginian peace: This model is derived from the peace imposed on Carthage by Rome after the Punic Wars[158] (264BC-146BC). This peace can be realised by entirely defeating the enemy and destroying it via an act such as genocide.
3- Peace in the state of indifference: In this status, there are few interests or identity-forming elements that can involve parties. This fact can be due to geopolitical or socio-logical distance. Hence, it is difficult to imagine conflict between them.
4- Peace can exist as a result of a non-voluntary limitation of power projection. In this case, distance and a loss of strength prohibit countries from projecting power and making war.
5- Peace due to a voluntary limitation of power projection: In this situation, peace can be realised as a result of mutual satisfaction or a peace agreement between states through trust and respect.
6- Stable peace can be imposed by major powers from the outside. In this case, however, the core reason for a dispute remains; parties are forced to accept peace.[159]

To some extent, this type of stable peace may seem morally appropriate, and it provides people with a sense of security; however, its reasoning might be

[156] Kenneth Ewart Boulding, '*Stable Peace*' (University of Texas Press 1978),p.13.
[157] Allan, '*Measuring International Ethics: A moral scale of war, peace, justice, and global care*' (2010),p.111.
[158] Christopher Scarre, '*The Penguin Historical Atlas of Ancient Rome*' (Penguin Books Ltd 1995),p.24-25.
[159] Allan, '*Measuring International Ethics: A moral scale of war, peace, justice, and global care*' (2010),p.111.

unjust.[160] It seems stable, while the potential elements which lead to conflict constantly exist among states, but there is no possibility of activating them. However, war is still recognised as the only way of dealing with conflict, although conflict can be avoided due to certain interests or considerations. Such peace can imply passivity and the acceptance of injustice.[161] Additionally, peace as an extremely emotive term can be abused as a propaganda tool for political purposes.[162] In the realists’ viewpoint, there is no connection between justice and peace, especially in the negotiation process of peace, because the concept of justice between individuals or between groups in society cannot be applied to relations between states, as states have conflicting ideas of justice. Therefore, as it is impossible to achieve a consensus regarding justice, states agree on peace based on their interests, which may not be necessarily just. In contrast to realists, the liberal approach defines peace as inherently the most superior form of justice, and unjust peace is not real peace, but it can be adopted as a temporary solution.[163]

It appears that peace can be interpreted in different ways, and may be abused in some cases, as Cousins observes: “peace can be slavery or it can be freedom; subjugation or liberation”.[164] It is expected that real peace may involve a movement towards a more liberated and just world[165] that is beyond the absence of war. Michael Howard describes peace as “the maintenance of an orderly and just society”.[166] He interprets “orderly” as “being protected against the violence or extortion of aggressors”, and “just” as “being defended against exploitation and abuse by the more powerful”.[167] Accordingly, “Just peace” which is accepted by all sides willingly, with all sides satisfied, can be durable. This kind of peace regulates relations

[160] Ibid.p.115.
[161] David P Barash, '*Introduction to Peace Studies*' (Wadsworth Publishing Company 1991),p.6.
[162] Michael Howard, '*Studies in War and Peace*' (Viking Press 1971),p.225.
[163] Yaacov Bar-Siman-Tov, '*Just Peace: Linking Justice to Peace*' (Statsvetenskapliga institutionen, Lunds universitet 2009).p.10.
[164] Norman Cousins, '*Modern Man is Obsolete*' (Viking Press 1945)p.45.
[165] Ibid
[166] Howard, '*Studies in War and Peace' (1971).p.226.*
[167] Ibid

between parties in a legitimate way,[168] and it will be impossible without the end of impunity. Therefore, as Bar-Siman-Tov writes, the essential steps required to realise a just form of peace including the following: "recognition and taking responsibility for the injustice done; apology and asking for forgiveness (transitional justice and retributive justice); and compensation of the victim side (reparative or compensating justice)".[169]

The importance of justice in the definition of peace was emphasised by Gandhi, as he gave weight to non-violence and justice.[170] Schell elaborated on Ghandi's view: "[v]iolence is a method by which the ruthless few can subdue the passive many. Nonviolence is a means by which the active many can overcome the ruthless few. [… Nonviolence] is a negation of the negative force of violence, a double negative which in mathematics would yield a positive result. Yet English has no positive word for it".[171] Additionally, non-violence can go beyond a passive form, and be adopted as a collective action that is dynamically counter to coercive power which takes measures by threatening or using force.[172]

Nevertheless, it may seem that, if justice is assumed as a precondition for peace, it will be an obstacle to achieving a peace agreement in many circumstances. Therefore, it may seem an appropriate approach for emphasising peace and cooperation rather than justice to avoid the negative consequences of the lack of peace,[173] since the lack of peace is the root of human rights violations and injustice.[174] As an example, in a war situation, national resources are allocated and spent on sophisticated armament and

[168] Allan, '*Measuring International Ethics: A moral scale of war, peace, justice, and global care*' (2010),p.116.
[169] Bar-Siman-Tov, '*Just Peace: Linking Justice to Peace' (2009), p.9.*
[170] Thomas Merton (ed), *Gandhi on Non-Violence: Selected Texts from Mohandas K. Gandhi's Non-Violence in Peace and War* (1st Published 1965, New Directions Publishing 2007), p. 35.
[171] Jonathan Schell, '*The Unconquerable World: Power, Nonviolence, and the Will of the People'* (Macmillan 2003), pp.144,227,351.
[172] Ibid;David Cortright, '*Peace: A History of Movements and Ideas'* (CUP 2008), p.7.
[173] Bar-Siman-Tov, '*Just Peace: Linking Justice to Peace' (2009), p.15.*
[174] Jackie Dugard, '*Civic Action and Legal Mobilisation: The Phiri Water Meters Case*' in Jeff Handmaker and Remko Berkhout (eds), '*Mobilising Social Justice in South Africa: Perspectives from Researchers and Practitioners'* (Pretoria University Law Press, 2010), p. 71.

the preparation of a powerful army,[175] and governments engaged in war tend to focus on the current war, with little care for people’s rights. Various illnesses usually spread in a warzone, and there are not enough healthcare resources, also cultural, historical buildings are often destroyed, and education may cease due to war. In this perspective, peace, even imperfect peace, is practically just, because it at least prevents the loss of lives and possessions.[176] Although there may be tensions between justice and peace in some occasions, such as efforts to stabilise society and efforts to correct injustices and imbalances,[177] these two concepts, peace and justice, are interrelated, and should be considered complementary, pursued together,[178] rather than sacrificing one for the other. Therefore, a right-based peace which would be able to guarantee justice should be formulated.

In order to have a peaceful world based on justice, Ferencz identifies three basic components: laws to define what are permissible and impermissible, courts to settle disputes, and a system of effective enforcement. According to him, these three components are the fundamental foundation for every society, regardless of its size, and can tend towards peace.[179] However, he states that, at the international level, these three components are very weak and ambiguous. In addition to the above-mentioned components, he emphasises the process of changing the way people think about ingrained ideals, and recommends educating young minds to understand that war is not glorious, but an abominable crime, regardless of its cause.[180] Hence, in general, four pillars for peace can be considered: law, courts (international courts), effective mechanisms of the enforcement of law, and culture.[181]

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[175] Asbjorn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social and Cultural Rights: A Textbook* (2nd rev. edn, Martinus Nijhoff 2001), p. 28.
[176] Yossi Beilin, '*Just Peace: A Dangerous Objective*' in Pierre Allan and Alexis Keller (eds), '*What is a just peace?*' (OUP, 2010),p.148.
[177] Andries Odendaal and Chris Spies, 'You have opened the wound, but not healed it": The local peace committees of the Western Cape, South Africa' (1997) 3 (3) Peace and Conflict: Journal of Peace Psychology,p.266.
[178] Hendrik W. Van der Merwe, '*Pursuing Justice and Peace in South Africa'* (Routledge 1989),p.2.
[179] Benjamin B Ferencz, 'A World of Peace Under the Rule of Law: The View from America' (2007) 6 Wash U Global Stud L Rev, p. 664.
[180] Ibid
[181] Benjamin B Ferencz, '*A Common Sense Guide to World Peace'* (Oceana Publications 1985), p. xiii.

Therefore, although conflict is an unavoidable aspect of social life, undoubtedly, violence is not the sole remedy to deal with conflict. According to Fry, an assessment of cross-cultural data indicates that human beings are usually able to manage conflicts with no violent methods, and there is a remarkable ability among human beings to deal with other people peacefully. In other words, although a human being has the capacity for different kinds of violence, there is greater potential for managing life in a peaceful manner, and violence is easily avoidable via tolerance, negotiation, mediation and arbitration.[182] Accordingly, conflict without violence does not breach peace; thus, peace can be preserved even in conflict. Even if conflict is considered an inherent phenomenon pertaining to human relationships, it does not have to be managed by violence.[183] Considering this explanation, peace is beyond an ultimate static aim, and involves a dynamic process of exploring remedies to solve disputes through peaceful settlements.[184]

It should be considered that the absence of war is not necessarily a sign of the existence of peace;[185] however, positive peace is not only the absence of indicators of war, but also the presence of harmony and balance in society. Considering the presumed link between peace and violence, Gultang elaborates on the concept of "structural violence" to describe situations of negative and positive peace. Hence, negative peace is the absence of obvious or direct violence. In contrast, positive peace is the absence of oppression, structural violence and social injustice, and seeks the elimination of structural violence. Positive peace refers to a more generalised form of justice in international relations which is incompatible with exploitation and structural violence at the global level. Furthermore, positive peace does not apply to only inter-state or international relations, but it considers individuals, communities and nations. According to Gultang, violence is any condition which prevents individuals from being able to

[182] Douglas P Fry, '*Beyond War: The Human Potential for Peace'* (OUP 2007), pp.81-82.
[183] Cortright, '*Peace: A History of Movements and Ideas' (2008), pp.7-8.*
[184] Ibid, pp.7-8.
[185] UNHRC, Progress report on the right of peoples to peace (December 22, 2010) UN Doc A/HRC/AC/6/CRP.3, Appendix I.

fulfil their true potential, and there is no violence when the individual’s actual is unavoidable.[186] Structural or originating violence can be considered a cruel social condition that protects the interests of leaders and overlooks the interests of other classes in society.[187] Accordingly, the lack of any kind of human rights can be assumed to involve structural or originating violence which disables human’s potentials, and positive peace is defined as a situation that does not limit human potential and which provides a situation for self-realisation, and guarantees it.[188] Therefore, negative peace can be implemented by some methods, such as ceasefire, keeping parties apart or indifferent relations, and, in contrast, positive peace goes beyond negative peace, and necessitates the presence of harmony and balance both nationally and internationally.

The tendency to consider positive peace rather than negative peace can be observed in the practice of the United Nations Security Council. The Security Council declared, under Chapter VII of the UN Charter, that grave breaches of human rights and humanitarian law, even at national level, are threats to international peace and security.[189] Therefore, positive peace is a sustainable situation through which people can enjoy all dimensions of human rights properly. In this regard, Article 28 of the Universal Declaration of Human Rights should be considered, which declares a demand to establish an appropriate atmosphere to realise the rights and freedoms mentioned in the Universal Declaration of Human Rights,[190] and positive peace can be considered an interpretation of this article. In other words, positive peace is defined as a social and international order by which

[186] Johan Galtung, 'Violence, Peace, and Peace Research' (1969) 6 (3) Journal of Peace Research, p. 169; See Allan, '*Measuring International Ethics: A moral scale of war, peace, justice, and global care*' (2010), pp. 117-118.
[187] Leonardo Boff, '*Active Nonviolence: The Political and Moral Power of the Poor*' in Philip McManus and Gerald W. Schlabach (eds), '*Relentless Persistence: Nonviolent Action in Latin America'* (Wipf and Stock Publishers, 1991), p. vii .
[188] Cortright, '*Peace: A History of Movements and Ideas' (2008), p.7.*
[189] UN Doc A/HRC/14/38, para.12.
[190] Josh Curtis and Shane Darcy, '*The Right to a Social and International Order for the Realization of Human Rights: Article 28 of the Universal Declaration and International Cooperation*' in David Keane and Yvonne McDermott (eds), '*The Challenge of Human Rights, Past, Present and Future'* (Edward Elgar, 2012), p. 9.

the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realised.

It should be borne in mind that the struggle for peace has historically led to the struggle for fundamental human rights and freedoms, as in the case of the rights which emerged from the efforts to establishing peace in the context of the Second World War. It can be concluded that positive peace which encompasses fundamental rights and freedoms can come into bloom in the consequence of negative peace. Therefore, two concepts of negative peace and positive peace support each other in a dynamic manner and in one cycle.

Allan adds another feature in the description of peace, “global care”, which is superior to positive peace, and which exceeds it. Global care insists on treating every one humanely, with consideration, sympathy, compassion, tolerance and solidarity. It involves a sense of strong responsibility towards other human beings on shared humanity.[191] This kind of view can be integrated with the deontologists’ point of view, which involves a duty to be responsible towards other human beings.

Furthermore, it should be constantly borne in mind that the abstract definition of peace, regardless of contexts, can provide a static definition, whereas peace needs to be described dynamically.[192] The influence of context in the perception of peace is acknowledged by scholars who have experienced a variety of social and cultural contexts. For instance, Odendaal and Spies, who examined the impact of different backgrounds on insights into peace, assert that blacks and whites in South Africa have generally had different observations about the concept of peace. Whites define peace as “the absence of violence and protest actions, and cooperation in the chambers of power to find agreeable solutions to problems”.[193] This perception can be influenced by the Western observation which considers

[191] Allan, '*Measuring International Ethics: A moral scale of war, peace, justice, and global care*' (2010), p.129.
[192] Antony Adolf, '*Peace: A World History*' (Polity Press 2009), p.4.
[193] Odendaal and Spies, 'You have opened the wound, but not healed it": The local peace committees of the Western Cape, South Africa' (1997), p.265.

that the main purpose of peace is the maintenance of law and order, the pursuit of stability and a relatively safe social and political order. Accordingly, the only visible use of force in society should be by the police, the courts and the prison systems that enforce the law. For black people in South Africa, peace means dismantling the apartheid system, creating new power structures, and equalising economic imbalances.[194] Therefore, it can be observed how the context can affect the understanding of peace, and different descriptions are at the mercy of surrounding environments. This issue can be considered even in terms of gender experiences that can define peace differently, such as feminist peace, which hears women’s voices and observes from women’s perspectives. [195] Similarly, the perceptions that industrialised societies have regarding peace can be different from those of indigenous people. For instance, the social transformation of traditional decentralised societies into a homogeneous lifestyle in many parts of the world through the modernisation and globalisation process may be perceived as part of structural peace violation by some traditions.[196] Paying special attention to the natural world and having a non-exploitative approach towards nature are common in Native American tribal cultures. In fact, indigenous tribal traditions concern “ecological peace” alongside other types of peace. This notion is noteworthy, as it indicates that Earth should be considered the victim of violence. This kind of peace can be understood as peace with the planet which promotes living in harmony with nature rather than conquering it. [197] The roots of ecological peace or peace with the planet which is beyond peaceful relations among human beings can be explored in the ancient Eastern religion Zoroastrianism, which places a particular emphasis on the peaceful and respectful treatment of the

[194] Ibid
[195] Samuel Moyn, '*The Last Utopia*' (Harvard University Press 2012), p. 124. ;See also: Sandi E Cooper, 'Peace as a Human Right: The Invasion of Women into the World of High Iinternational Politics' (2002) 14 (2) Journal of Women's History, p. 9.
[196] Ho-Won Jeong, '*Peace and Conflict Studies: An Introduction*' (1st Published 2000, Routledge 2017), pp.12-14.
[197] Ibid, p.8.

environment (soil, water, air, and fire (that is now understood as energy)) alongside peaceful relationships with people.[198]

As was discussed previously, peace can be interpreted in various ways based on different cultural, philosophical and social insights and contexts. These various approaches to peace depict an evolutionary trend in relation to defining peace. The tendency to describe peace from more holistic perspectives among contemporary scholars who concentrate on inner peace, peaceful human relations and bioenvironmental peace[199] can be assumed to be a post-modern version of global spiritual and religious traditions.[200] In fact, the concepts of peace have been enriched through moral philosophical traditions which indicate that violence is neither an inevitable phenomenon nor the best and most rational solution. Through this evolutionary process, the concept of violence is projected to not only harm humans (including both physical and mental forms of harm), but also inflict harm on the planet, which produces imbalanced relations not only between humans and nature, but also between groups of people. As Jeong states, "a holistic conception of peace links the ideal of the human spirit to the harmony between different components of the earth system and even universe."[201]

The existing international documents on the "right to peace" consider "peace" as the subject of entitlement in regard to this right.[202] The resolution adopted by the General Assembly on 19 December 2016 provides a specific definition of peace and describes it as more than the absence of conflict, conceptualising it as a phenomenon which necessitates "a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured".[203] Therefore, in light of progressive interpretations

[198] Richard Foltz and Manya Saadi-nejad, 'Is Zoroastrianism an Ecological Religion?' (2007) 1 (4) Journal for the Study of Religion, Nature and Culture, p. 413.
[199] Paul Smoker, 'The Evolution of Peace Research' (December 1994) 1 (1) Peace and Conflict Studies, p. 3;Joanna Macy, '*Faith, Power and Ecology*' in Roger S. Gottlieb (ed), '*This Sacred Earth: Religion, Nature, Environment*' (Routledge, 2004)
[200] Jeong, '*Peace and Conflict Studies: An Introduction' (2017), p.29*;Macy, '*Faith, Power and Ecology*' (2004), p. 497.
[201] Jeong, '*Peace and Conflict Studies: An Introduction' (2017), p. 30.*
[202] UN Doc A/RES/39/11 ;UN Doc A/Res/71/189, annex, p. 3.
[203] UN Doc A/Res/71/189, Annex, p. 3.

of peace, this resolution stretches beyond the negative interpretation of peace that merely involves the absence of war. The application of the word “conflict” instead of “war” in this definition indicates the very careful and special consideration of the writers of the resolution to avoid the use of the word “war” because of its specific technical criteria, and, as a result, the word “conflict” can encompass a more expansive range of disputes than suggested by the word “war”.

Overall, it can be concluded that, there is an inclination to expand the scope of the concept of peace to form a conceptual framework which encompasses a broader range of concepts than the sole absence of war. The absence of direct physical war between two states cannot be a comprehensive definition, considering the recent decrease in the number of inter-state wars and the significant increase in the number of internal conflicts, terrorist attacks and structural violence. Therefore, the approach to a classic definition of peace should be modified to produce outcomes which would be competent enough to deal with the current requirements of societies which are threatened by structural, environmental and cultural violence. The conceptual framework of positive peace considers peace not only as the absence of war, but also as the elimination of structural violence which prevents the activation of human potentials. However, in a more positive approach, global care which is concerned about the responsibility of individuals, groups and nations to each other is desirable.

A common element among different concepts of peace is the absence of violence, which includes direct, structural, cultural and environmental violence. Thus, peace is described as the absence of any kind of violence which disables an individual’s or a group’s potential to flourish. It can be understood that peace will never become real if nations remain incapable of conceiving procedures for defending human beings against violence. Thus, the tactics through which violence is eliminated will make peace tangible. In light of progressive interpretations, peace is no longer merely an imaginary utopia to be realised by abstract moral principles; instead, it is a tangible objective that can be obtained by conscious efforts based on people’s

willingness, which is rationally defined as peaceful coexistence. From this perspective, peace is not a static event or goal, but it is a dynamic process or dynamic policy that never stops. This type of peace is the groundwork for the realisation of all dimensions of human rights that are demanded in Article 28 of the Universal Declaration of Human Rights.

2.3 The Criteria which Facilitate the Perception of “Peace” as a “Right”

Considering the conception of right and peace in the previous sections, the present section examines how peace can achieve the status of a human right. In order to explore the necessary criteria that enable peace to become a right, it is crucial to consider the transparent understanding of peace that has been discussed from the perspectives of different philosophies and disciplines, and also bearing in mind the clarification of the concept of right for this purpose. At this stage, the research discusses the idea that, in order to have a “right” to “something”, that “thing” should meet specific criteria. Considering the presented understanding of peace, the research seeks the necessary features which enable peace to be considered a right.

In general, two assumptions regarding the contents of human rights can be considered: one assumes that all significant values in human life cannot be deemed rights, because the value should be an accessible and tangible concept to be identified as a right. The other perspective assumes that everything that is central to a human being’s life can be a potential human right.[204] The first perspective, which has a restrictive interpretation of the contents of human rights, considers the claimability and enforceability of a right, while the second keeps human rights at the level of solely sacred values, as the enforceability in a legal regime requires special prerequisites. Hence, tangibility and enforceability are criteria which enable moral human rights to be recognised as legal rights. The expansive interpretation of the contents of human rights has received some criticism, and it is claimed that

[204] Donnelly, '*Universal Human Rights in Theory and Practice' (2013), p.11.*

some rights are indeterminate, while a right must be specified in order to have concrete meaning, and the recognition of imprecise human rights cannot only solve any problem, but also can create more arguments.[205] Therefore, as human rights are not supposed to remain as only theoretical values, not all important positive things are necessarily the object of human rights.[206]

Griffin emphasises the importance of the function of law in providing an appropriate framework for human rights. In this way, he mentions some alleged rights with an unclear framework, such as the long-established right to life which can be interpreted restrictively or expansively, while the correlative obligation of law must be codified in detail. Griffin concludes that the obligation of law to realise this right is not determined, although he confirms that law does not necessarily engage in the enforcement of all parts of human rights, and may ratify it to some non-legal institutions.[207] Thus, the implementation mechanism, either through a legal order or a moral order, should be precisely determined, and the framework through which a right can be claimed should be transparent. Therefore, as Donnelly asserts,

> "The ability to claim rights, if necessary, distinguishes having a right from simply being the (right-less) beneficiary of someone else's obligation. Paradoxically, then, 'having' a right is of most value precisely when one does not 'have' (the object of) the right – that is, when active respect or objective enjoyment is not forthcoming. I call this the 'possession paradox': 'having' (possessing) and 'not having' (not enjoying) a right at the same time, with the "having" being particularly important precisely when one does not 'have' it."[208]

He emphasises the differences between "possessing a right" and "the respect right receives". Thus, three conditions can be assumed: A) a right can be completely respected, while it is never enforced; B) rights can be neither respected nor enforced; C) the possession of a right that makes the right-

[205] Sunstein, ' Rights and Their Critics' (1995), pp. 498-499; Kennedy, 'The International Human Rights Movement: Part of the Problem?' (2002), p.116.
[206] Donnelly, '*Universal Human Rights in Theory and Practice' (2013), p.11.*
[207] Griffin, '*Human Rights and the Autonomy of International Law*' (2010), pp.353-355.
[208] Donnelly, '*Universal Human Rights in Theory and Practice' (2013), p.9.*

holder entitled to that right and makes the right enforceable regardless of a violation of the related law or despite any disrespect to that right.[209] Therefore, X, which is assumed to be a right, should have an accessible criterion, and the right to X should be possessed in order to be claimed and subsequently enforced. In the third condition, a right is a sensible concept.

Borrelli suggests that, in order to possess a right to something, such as peace, the subject of such a right should be a tangible and accessible feature.[210] Thus, the criteria necessary to make peace tangible should be explored via a deep understanding of its conception. For meta-rights, the subject of such rights contains feasible policies which can be pursued to realise a tangible subject. [211] According to Borrelli, “when we give to peace a non-utopian dimension and make it as accessible and concrete as an earthly possession based on the fundamental rights of man, the right to peace becomes a consequential right of being human.”[212] However, the dilemma concerns how a moral value, such as peace, can be concrete. Considering the conception of peace as the absence of violence, peace can become real by equipping nations with mechanisms to defend human beings against violence.[213] Thus, it is vital to identify defence methods against violence. This strategy not only makes peace accessible, but also transforms peace from a moral value to a legal right. This procedure includes the following policies: identifying violence and its causes; establishing effective mechanisms to quell violence; and taking measures to prevent violence.

Therefore, the first step in this path is to define violence and subsequently explore the related defence tactics. Taking into account the concept of violence proposed by Galtung, it is any condition which prevents individuals from fulfilling their true potential. Thus, there is no violence “when the actual is unavoidable”.[214] As a result, a defence against violence

[209] Ibid
[210] Mario Borrelli, 'Human Rights and a Methodology for Peace' (1983) 29 (3) International Review of Education,p.406.
[211] Amartya Sen, '*The Right Not to Be Hungry*' in Philip Alston and Katarina Tomaševski (eds), '*The Right to Food*' (Martinus Nijhoff Publishers, 1984), p.70.
[212] Borrelli, 'Human Rights and a Methodology for Peace' (1983),p.406.
[213] Ibid
[214] Galtung, 'Violence, Peace, and Peace Research' (1969), p.169

which makes peace accessible and tangible is a prerequisite to establish the right to peace. Considering the conception of peace that is defined as the absence of violence, it appears that policies which are able to quell violence make peace a tangible and non-utopian feature, such as the policies illustrated by Kant in his *Sketch on perpetual peace.*[215] Accordingly, the institutional defence strategy against violence is discussed in Chapter5.

Conclusion

The ideology of human rights, from the old traditional version to the modern version, has always been concerned with the idea of equality among humans and the dignity of all human beings. Peace as a prerequisite to guarantee equality and dignity is undoubtedly the main concern of this ideology, however there is reluctance and debate in regard to recognising the value of peace as a human right. It was suggested in the first section of the present chapter that human rights serve as a catalyst or mediator which transforms moral values into entitlements in the context of international human rights law. In other words, human rights activate potential values through which human dignity can be maintained. The current situation of the world involves a strong desire for the value of peace to be activated, and, as a result, peace should be initially recognised and realised as a human right.

It should be borne in mind that two issues are raised regarding human rights: first, the discussion of the existence of human rights that requires moral reasoning; second, the discussion of the implementation of human rights which needs legal-political institutional mechanisms such as treaties and courts.[216] In fact, the second issue determines that a right can have an existential effect and be enforced. As was discussed previously, the right which is the purpose of this research should be a claimable meta-right with a dual nature (individual-collective) that has the capacity to be enforced at international level. Accessible features can be implemented, and infeasible

[215] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003),pp.93-113.
[216] Tasioulas, '*The Moral Reality of Human Rights*' (2007), The moral reality of human rights, p.76.

values can never be claimed. An examination of different moral schools of thought illustrates that peace is a sacred value, but that it needs to be transformed from a value to a legal right, and, in this way, a tangible form of peace is required. To this end, there should be a practical tactic to defend against the elements which violate it.

This study explored how the context can affect the understanding of peace, and different descriptions are at the mercy of surrounding environments. It described peace not only as the absence of war, but also as the elimination of structural violence which prevents the activation of human potentials. However, in a more positive approach, global care which is concerned about the responsibility of individuals, groups and nations to each other is desirable. A common element among different perceptions of peace is the absence of violence, which includes direct, structural, cultural and environmental violence. Thus, peace is described as the absence of any kind of violence which disables an individual’s or a group’s potential to flourish.

It can be understood that peace will never become real if nations remain incapable of conceiving procedures for defending human beings against violence. Thus, the tactics through which violence is eliminated will make peace tangible. In light of progressive interpretations, peace is no longer merely an imaginary utopia to be realised by abstract moral principles; instead, it is a tangible objective that can be obtained by conscious efforts based on people’s willingness, which is rationally defined as peaceful coexistence. From this perspective, peace is not a static event or goal, but it is a dynamic process or dynamic policy that never stops. This type of peace is the groundwork for the realisation of all dimensions of human rights that are demanded in Article 28 of the Universal Declaration of Human Rights. According to the comprehensive interpretation of peace, it is the absence of violence. Thus, mechanisms and policies to defend against all kinds of violence should be developed. Following this, peace will be tangible and able to be activated as a legal right.

This study discussed that as peoples pay the material and immaterial costs of violence, they should be empowered to claim against peace violators.

Therefore the role of international human rights law should be expanded to equip nations to defend themselves against any violence. This process will provide nations with the possession of a right to realise peace as a legal right. This chapter indicated that the possession of the “right to peace” will be possible if peace gains a non-utopian dimension and if it can be accessible and concrete as an earthly possession. Accordingly, peace will become a consequential right of being human, based on the fundamental rights of humankind.

In brief, in order to have a right to peace, it is vital to have an un-imaginary peace, and this real peace is achieved by eliminating the roots of violence via mechanisms and policies such as “struggle against aggression and terrorism”, “disarmament” and “abolishing weapons of mass destruction” that underlie the “right to peace”. These subjects are subsequently discussed as defence tactics against violence in Chapter 5.

Considering the right to peace that is established through the discussed methodology, it is necessary to consider whether there is a space for this right in the human rights framework. In order to explore the position of this right in human rights, three particular questions are raised:

1- What is the legal and normative content of the right to peace?
2- Are there any traces of the right to peace in the development pathway of human rights?
3- Can we make a space for the right to peace within the human rights discourse?

These questions are discussed in Chapter 3.

Chapter 3: The Conceptual-Legal Framework of the “Peoples’ Right to Peace”

Introduction

This chapter presents details of the legal and normative content of the right to peace in order to answer the second research sub-question concerning the conceptual-legal framework underlying the peoples’ right to peace. The study notes that the existing UN documents on the right to peace do not clarify the content of entitlement, the identity of the duty-bearers and the characteristics of right-holders. This vagueness in the existing documents prevents this right from being recognised as a legal right. Thus, it is crucial to illustrate a precise structure for this right, as law requires precise and clear boundaries for its subjects. This project analyses such UN documents to explore both their strong points and deficiencies. It addresses the shortcomings to provide a comprehensive idea of the right to peace, based on what was achieved in the previous chapter regarding the conceptions of “right” and “peace”. Following this clarification, the study traces the path of this right through the history of human rights idea and its possible impact on international law. It examines whether this right has had any precursor in the history of the human rights idea, and, if this is the case, seeks to determine its impacts over the period of its existence. The research discusses how it is possible to make space for such a right within the claimable human rights framework.

3.1 The Conceptual Framework of the "Peoples' Right to Peace"

In order to have an accurate understanding of a phenomenon, it is essential to explore and define all interconnected concepts that can impact on it.[1] For this purpose, that phenomenon should be broken into smaller parts, as every concept consists of multiple components that may seem heterogeneous, yet they are not separable.[2] By creating this conceptual framework, a transparent understanding of the targeted object will be possible. As a phenomenon may exist across different disciplines, the concepts which constitute the related conceptual framework can be derived from multidisciplinary bodies of knowledge.[3] For the purpose of this research, the essential components of a legal right are pinpointed. To this end, the formula of a "right" developed in the previous chapter is considered. Additionally, the existing United Nations documents on the right to peace are systematically analysed to explore the components of the targeted framework in current international law documents.

3. 1.1 Normative Contents of the Entitlement

Considering the methodology for establishing a right to peace analysed in Chapter 2, peace should be a feasible concept in order to found a right to peace; thus, policies should be directed towards making peace practical.[4] Additionally, the right to peace, as a meta-right, entitles the right-holder to demand that duty-bearers policies be directed towards making peace realisable.[5] Thus, three essential components should be identified in a legal right to peace: the right-holder, the duty-bearer and the subject of entitlement that is the necessary policy to realise peace as a right. In order to

[1] Jabareen, 'Building a Conceptual Framework: Philosophy, Definitions, and Procedure' (December 1, 2009), p.51.
[2] Gilles Deleuze and Felix Guattari, '*What Is Philosophy?*' (Tomlinson H &Burchell G (Trans), 1st Published 1991, Columbia University Press 1994). pp.15-19.
[3] Jabareen, 'Building a Conceptual Framework: Philosophy, Definitions, and Procedure' (December 1, 2009), p.51.
[4] Borrelli, 'Human Rights and a Methodology for Peace' (1983),p.406.
[5] Amartya Sen, The right not to be hungry, in Alston and Tomaševski (eds), 'The Right to Food' (1984)p.70.

explore the nature of obligations, the related negative and positive obligations imposed by human rights are analysed. A general classification of human rights obligation identifies two levels of duties or burdens for duty-bearers: first, the duty to implement human rights, including the evasion of actions which are obstacles to its realisation and, second, taking necessary measures and adopting all supporting measures which help human rights to be placed in their proper position, such as the protection and promotion of human rights.[6] Considering these obligations in regard to the idea of human rights, the contents of entitlement to the right to peace are explored and presented.

The question which arises concerns whether peace on its own can be claimed as an entitlement in the human rights law system or whether the policies which make peace possible should be claimed, and also what obligations may be imposed by the right to peace on duty-bearers. The other challenge to the right to peace is a claim which locates peace within political agendas, and considers peace be beyond the framework of a human rights discussion. From this perspective, peace cannot be the subject of human rights; thus, it cannot be claimed as a legal human right. Accordingly, peace belongs to political bodies such as the UN Security Council or the UN General Assembly, and there is no room for peace in the human rights context, as it is beyond the duties of the UN Human Rights Council to discuss and protect it as a human right.[7]

Additionally, there is the assumption that as a considerable part of individual human rights can be implemented to secure peace, discussing peace as an entitlement in a human rights forum is methodologically erroneous and politically pointless.[8] This approach has led the international judicial bodies to concentrate on "*jus in bello*" rather than "*jus ad bellum*", peace and the right thereof thus far. It has been observed that the Rome Statute pays more attention to war crimes, crimes against humanity and

[6] Griffin, '*On Human Rights' (2008).p.105.*
[7] William A. Schabas, '*Freedom from Fear and the Human Right to Peace*' in David Keane and Yvonne McDermott (eds), '*The Challenge of Human Rights Past, Present and Future*' (Edward Elgar, 2012), p.37.
[8] Dimitrijevic, '*Human Rights and Peace*' (1998),p.64.

genocide than to crimes against peace and issues that threaten international peace.[9] From this point of view, it is said that peace has a political identity, and cannot be claimed in the international human rights law system.

Conversely, considering peace outside of international human rights law can be troublesome, as peace has constantly been one of the main concerns of this discourse, and as O'Connell elaborates on this: "law is valued for providing an alternative to the use of force in the ordering of human affairs. In this sense, all international law is law of peace".[10] Additionally, there is no significant border between different branches of international law, such as human rights and other branches. In fact, as Domingo asserts, the internationalisation of human rights has made the human being more central within international law,[11] and, therefore, international law tends to be more conscious about the human being, his/her rights and his/her suffering. It can be concluded that the issues related to peace, as one of the main concerns of international law, cannot be kept separate from the scope of human rights law; thus, peace should be claimed as an entitlement in this system.

Furthermore, peace is a required context for a dignified human being to enjoy human rights, and it is an essential quality and a vital prerequisite for other dimensions of human rights. Thus, it cannot be considered an abstract concept which belongs to political agendas. Contemporary international law, with a human-based approach, encompasses issues related to peace, and the responsibility of human rights bodies and judicial bodies in this process cannot be denied, although the role of political bodies such as the Security Council in maintaining peace is significant.[12] From this viewpoint, the UN Human Rights Council and international judicial bodies enable international law to achieve its main aim, namely the maintenance of international peace. Hence, the UN Human Rights Council should have the authority to discuss peace as a matter of human rights, and such discussion can lead to the realisation of peace as a legal right. Cooperation among international

[9] Schabas, '*Freedom from Fear and the Human Right to Peace*' (2012), p.37.
[10] Mary Ellen O'Connell, 'Peace and War', in Simone Peter and others (eds), *The Oxford Handbook of the History of International Law* (OUP 2012), p. 272.
[11] Domingo, '*The New Global Law' (2010),p.59.*
[12] Charter of the United Nations(1945), Chapter VII, Article 39.

judicial bodies prosecuting crimes against peace, can also help make peace an accessible value, and, as a result, peace can be claimed as an entitlement in the human rights law system. To claim an entitlement, it is necessary to clarify its components and its borders. In order to explore the details of the entitlements of the right to peace, the earliest description of the right to peace, provided by Kant, is noteworthy. Derived from Kant's *Sketch on Perpetual Peace*, it determines obligations for states which may serve as the groundwork for claiming peace as a right. Kant's formula of the right to peace can play a key role in exploring the elements of the entitlement to this right, as Reiss articulates; Kant's rational idea of a peaceful international community is not solely a philanthropic principle of ethics, but also a principle of right which includes the idea of the right to peace.[13] Accordingly:

> "The rights of peace are as follows: firstly, the right to remain at peace when nearby states are at war (i.e. the right of neutrality); secondly, the right to secure the continued maintenance of peace once it has been concluded (i.e. the right of guarantee); and thirdly, the right to form alliances or confederate leagues of several states for the purpose of communal defence against any possible attacks from internal or external sources – although these must never become leagues for promoting aggression and internal expansion."[14]

As can be observed above, Kant articulates three obligations for states that create the right to peace for people: first, states are obliged not to be involved in disputes which are between other states; second, states are obliged to remain in peace and to avoid any measure which could harm a peaceful situation. This obligation can be understood as the prohibition of aggression which violates peace between two nations. Third, states are obliged to adopt all necessary measures to defend their nations against aggression, including forming alliances to ensure that they are equipped for self-defence.

[13] Kant, '*The Metaphysics of Morals*' (2003), p.172.
[14] Kant, '*Kant Political Writings' (2012),p.170.*

For further clarification, Kant's classification of duties into perfect duty and imperfect duty regarding an individual's duties can be projected onto the duties of states.[15] Accordingly, states have perfect duties to refrain from committing any peace-violating act and imperfect duties to adopt any necessary measures to promote and support peace. In other words, it is legally enforceable by international law to use peaceful mechanism of dispute settlement and to avoid using force for aggression and peace violation, but, as the range of measures to promote peace are various and endless, there is no coercion in international law to compel states to commence a specific action which aids the promotion of peace. Kant's thought laid the groundwork for modern international law, and part of his formula regarding obligations for the right to peace subsequently influenced the UN Charter, and formed the core element of Chapter VII, which seeks to determine necessary actions in times of threats to peace, breaches of the peace and acts of aggression. Additionally, the UN Charter indicates necessary measures to prevent conflict by peaceful mechanisms to settle disputes, as affirmed in Chapter VI.

In other words, the right to peace is analogous with freedom from fear, [16] which was interpreted by Franklin Roosevelt in the Four Freedoms speech, as "a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour anywhere in the world". [17] Two fundamental components are outstanding in Roosevelt's interpretation: the worldwide reduction of armaments levels and the prohibition of the act of physical aggression. These two measures can be considered part of entitlements in the conceptual framework for the right to peace.

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[15] Immanuel Kant, '*Groundwork of the Metaphysics of Morals*' (Gregor M (ed & tr), Reprint (edn), 1st Published 1998, CUP 2003), p.xx;Tuba Turan, '*Positive Peace in Theory and Practice: Strengthening the United Nations's Pre-Conflict Prevention Role*' (Brill 2015), p.33.

[16] Schabas, '*Freedom from Fear and the Human Right to Peace*' (2012)p.36;UN Doc A/HRC/14/38, p.12.

[17] Franklin D. Roosevelt's 'Four Freedoms Speech': Annual Message to Congress on the State of the Union. January 06, 1941. Franklin D. Roosevelt Presidential Library, http://docs.fdrlibrary.marist.edu/od4freed.html

Furthermore, the contents of entitlements relating to the right to peace can include more expanded aspects with individual dimensions, such as how Bilder developed it in light of contemporary interpretations of peace. Accordingly, the right to peace encompasses individual rights related to the right to participate in decision-making concerning the use of force and the right to enquiry into such policies; the right to change such policies through free speech, free petition or free assembly; and, finally, the right to refuse to participate in the implementation of policies where there is evidence of the immorality of such policies. Simultaneously, this right imposes duties on states to fulfil these conditions. As a result, states ought not to compel their citizens to become involved in aggressive or immoral wars.[18] Stephen Marks provides a structure for the right to peace concerning individual dimensions of this right, describing it as follows:

> "the right of every individual to contribute to efforts for peace, including refusal to participate in the military effort, and the collective right of every state to benefit from the full respect by other states of the principle of non-use of force, of nonaggression, of peaceful settlement of disputes, of the Geneva Conventions and Additional Protocols and similar standards, as well as from the implementation of policies aimed at general and complete disarmament under effective international control."[19]

The individual dimensions of entitlements within this right can be traced back to Kant's perpetual peace plan, which entitles people to participate in decision-making on waging war, as they pay the material and immaterial costs of war.[20] Accordingly, this right entitles individuals and groups to claim against states for violating peace; in other words, it imposes the duty on states to fulfil the relevant attributed peace condition and refuse any measures tending towards violence.

[18] Bilder, 'The Individual and the Right to Peace, The Right to Conscientious Dissent' (October 1, 1980), p. 387.
[19] Marks, 'Emerging Human Rights: A New Generation for the 1980s ' (1980), p.446.
[20] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003),p.113.

Furthermore, it creates the right to the truth for people (individually and collectively), in order to be aware of states' decisions and measures on peace and war, without any censorship; thus, people find the right to be informed of what is occurring beyond the public level of governance. Additionally, it entitles individuals to conscientious objection[21] when there is evidence proving that the conflict involved is not a kind of self-defence. It can be observed that the right to peace has an individual nature within the scope of civil and political rights, interrelated with freedom of speech, freedom of association, the right to participation and the right of conscientious objection.[22] This approach can enhance the claim which considers the right to peace with both individual and collective dimensions. Hence, the right to peace as a meta-right imposes legal duties on states to adopt policies in order to facilitate the full realisation of peace. These obligations cannot be limited to the prevention of war, but they can be applied to the elimination of poverty and injustice, and promoting a culture of peace in policies to fulfil the right to peace.[23] Therefore, as Philip Alston contends, the right to peace implies both negative and positive obligations. In other words, states are obliged not to impede progress towards peace, and they should take measures to promote the achievement and maintenance of peace at the national and international levels.[24]

At this juncture, it is crucial to examine the existing UN documents on the right to peace and to explore the extent to which they have considered and discussed the content of entitlement to this right. To this purpose, the most recent declaration on this right is analysed.[25] Although this UN declaration is not legally binding, it is expected that at least states which voted in its favour consider its instructions in their policies.[26] It can be effective to

[21] Bilder, 'The Individual and the Right to Peace, The Right to Conscientious Dissent' (October 1, 1980),p.388;UN Doc A/HRC/39/31, para 70.
[22] Bilder, 'The Individual and the Right to Peace, The Right to Conscientious Dissent' (October 1, 1980).p.389.
[23] Alfred De Zayas, '*Peace as a Human Right: The Jus Cogens Prohibition of Aggression*' in Asbjorn Eide, Jakob Th Moller and Ineta Ziemele (eds), '*Making Peoples Heard: Essays on Human Rights in Honour of Gudmundur Alfredsson'* (Martinus Njhoff Publishers, 2011), p. 27.
[24] Alston, 'Peace as a Human Right' (October 1, 1980), p. 319.
[25] UN Doc A/Res/71/189
[26] Leo Gross, '*Essays on International Law and Organization'* (Springer 2014), p.154.

entitle peoples to demand that states adopt policies aimed towards realising peace. In addition, these instructions can gradually become a type of binding source of legal obligations over time, and even may eventually constitute a peremptory norm.[27]

According to the Declaration on the Right to Peace (2016), the enjoyment of peace is an overall entitlement in the same way that other human rights are promoted and protected.[28] Detailed entitlements and obligations for the right to peace derived from this declaration highlight the UN Charter obligations on maintenance of international peace, and can be categorised into positive and negative obligations for states as duty-bearers.[29] In regard to positive obligations, it affirms the obligations of states based on the Bill of Human Rights concerning human dignity, rule of law, equality and non-discrimination, justice, and fundamental freedoms, especially freedom from fear and want as means to build peace within and between societies.[30] It underlines the importance of equal sustainable development for all countries in prohibiting conflicts,[31] in addition to the responsibility of states to establish efforts to fulfil, protect and promote fundamental human rights and freedoms based on the Universal Declaration of Human Rights.[32] Additionally, it requires the promotion of international and national educational institutions for peace to strengthen the spirit of tolerance, dialogue, cooperation, solidarity and peaceful coexistence, based on the intrinsic dignity of all human beings.[33] It asserts that the promotion of duty to respect all humankind regardless of any national, racial, ethnic, religious, gender-based or linguistic affiliation can prohibit violence and conflicts at both national and international levels. The duty to respect the dignity of human beings, and their rights and freedoms, is comparable with Kant's

[27] Caroline Fournet, '*The Crime of Destruction and the Law of Genocide: Their Impact on Collective Memory*' (Routledge 2016), p.100;M Cherif Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (Fall 1996) 59 Law & Contemp Probs, p.63.
[28] UN Doc A/Res/71/189, Annex.Article 1.
[29] Ibid. Annex. Article 2.
[30] Ibid
[31] Ibid. Annex. pp3/6 & 4/6.
[32] See UNGA 'Universal Declaration of Human Rights' (10 December 1948) UN Doc GA RES 217/A , Article 28.
[33] UN Doc A/Res/71/189. Annex. Article 4.

philosophy, which entitles all human being to be respected, as they are all capable of morality; thus, they possess dignity regardless of any affiliation.[34]

The declaration underlines the UN Charter principles arising from the core principle of Grotianism[35] in regard to the following: friendly collaboration among states; the peaceful settlement and reconciliation of international disputes; and the fulfilment of agreements and obligations in good faith.[36] It urges states to respect the self-determination of nations alongside respecting each state's sovereignty.[37] This new law, as Christine Bell discusses, is one of the main pillars of the *lex pacificatoria*.[38] The principle of self-determination is a meta-goal of international order in promoting *jus post bellum* in new societies emerging from the process of decolonisation and independence.[39]. As Rehman analyses, "peoples" and "the right to self-determination" which indicate a collective demand, shape a crucial component in the constitutional work of decolonised African states.[40]

Although self-determination law is recognised as rules dealing with constitutional and territorial state formation, it can also be perceived as a form of law which raises a right to be heard. [41] The right to peace entitles rights-holders (peoples) to decide between living in peace and living in war, considering the fact that people who pay the material and immaterial costs of wars should decide on waging war or preserving peace.[42] The right to peace as a post-Cold War right, echoes the voice of the grassroots, and is

[34] Kant, '*Groundwork of the Metaphysics of Morals' (2003),p. 46. 4:434-435.*
[35] Grotius, '*On the Law of War and Peace' (2004),BookII,Chapter XXIII,p.214.*
[36] UN Doc A/Res/71/189, Annex, p. 2; UNGA 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations' (24 October 1970) UN Doc A/RES/2625 (XXV), Annex.
[37] UN Doc A/Res/71/189.Annex. p 2.
[38] Christine Bell identifies three crucial pillars for the *lex pacificatoria,* including "the new laws of self-determination, transitional justice, and third party enforcement [that] are in a sense laws constructed as 'all things to all people' ". Christine Bell, '*On the Law of Peace: Peace Agreement and the Lex Pacificatoria'* (OUP 2008), p. 290.
[39] Ursula Werther-Pietsch, 'The Impact of SDGs on International Law –A Nucleus of a Right to Peace?' (March 31, 2018) 47 (1) OZP - Austrian Journal of Political Science, p. 17.
[40] Javaid Rehman, '*International Human Rights Law*' (2nd (edn), Pearson Education 2010), p. 325.
[41] Bell, '*On the Law of Peace: Peace Agreement and the Lex Pacificatoria' (2008), pp. 218-219.*
[42] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003),p.113.

more concerned with nations' interests and their security than states' or great powers' interests and security.[43]

Therefore, the right to peace should be recognised as an instrument which entitles peoples to demand that states embrace a collective commitment to forbidding aggression, armed conflict and other policies which result in the violation of peace.[44] The current international circumstances echo the tendency of big powers to solve the world problem from above,[45] and it was not a successful remedy for solving the existing problem in many cases.[46] Within this mechanism, negotiations towards peace agreements are conducted between those who waged conflict, committed war crimes and benefited from war.[47] However, the right to peace involves a bottom-up approach to remedy a dilemma, and it causes peoples to become engaged in policy-making. When people claim their right to live in peace, their states must choose policies which would keep them safe from war, and should adopt any measure which guarantees peaceful lives for their citizens. Otherwise, violence is the easiest way for states to maintain control in any circumstances. Accordingly, the potential victims of wars should determine how to challenge and eliminate violence, rather those who impose such suffering on nations determining this. Therefore, the right to peace is encoded based on the demands of nations which now realise their right to live in peace. Rationally, nations which are engaged in the long-lasting side effects of violence will not allow policy-makers to repeat previous grave mistakes.

Therefore, this emerging category of human rights, namely the right to peace, empowers nations to take control of their destiny and that of the next generation, and thus, it is interrelated with the right to self-determination.[48]

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[43] Paupp, '*Redefining Human Rights in the Struggle for Peace and Development' (2014), p.56.*

[44] De Zayas, '*Peace as a Human Right: The Jus Cogens Prohibition of Aggression*' (2011),p.42

[45] Paupp, '*Redefining Human Rights in the Struggle for Peace and Development' (2014).pp.39-40.*

[46] IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017) p.2.

[47] Bell, '*On the Law of Peace: Peace Agreement and the Lex Pacificatoria' (2008), p.6.*

[48] UN Doc A/Res/71/189.Annex. p 2.

This right enables nations to determine their destiny, between a life of peace and a life of war. The right to self-determination, as one of the main pillars of the *lex pacificatoria*,[49] and also as the other component in the conceptual framework of the right to peace, has been recognised as a right with an *erga omnes* character. [50] The *erga omnes* character of the right to self-determination has been confirmed by the International Court of Justice (ICJ), in the East Timor case (1995). Accordingly, "[the] assertion that the right of peoples to self-determination [...] has an *erga omnes* character, is irreproachable."[51] Subsequently, this Court reaffirmed the *erga omnes* status of the right of peoples to self-determination in its Advisory Opinion on the Wall (2004).[52] Therefore, in view of the common key factors of these two rights, namely the right to peace and the right to self-determination, it can be concluded that the right to peace is technically interconnected with the right to self-determination which has an *erga omnes* character. This component, namely the right to self-determination, within the conceptual-legal framework of the right to peace determines the importance of the right to peace, and consequently the importance of its implementation mechanism.

In light of the conceptual framework of the right to peace and the normative contents of the entitlement presented in this research, self-determination can be interpreted as people's participation in political policy-making in relation to waging war or remaining in peace, which was referred to by Kant in *Perpetual Peace Sketch*. [53] This issue was elaborated by Bell as she analyses

[49] Bell, '*On the Law of Peace: Peace Agreement and the Lex Pacificatoria' (2008), p.290.*
[50] Hector Gros Espiell, '*Self-Determination and Jus Cogens*' in Antonio Cassese (ed), '*Un Law, Fundamental Rights: Two Topics in International Law'* (Sijthoff & Noordhoff International Publishers, 1979), pp. 167, 171;Erika De Wet, '*Jus Cogens and Obligations Erga Omnes*' in Dionah Shelton (ed), '*The Oxford Handbook of International Human Rights Law'* (OUP, 2013), pp. 554-5.
[51] East Timor (Portugal v. Australia) (Judgement) [1995] I.C.J. Rep. 90, p 102, para 29.
[52] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] I.C.J. Rep. 136, p.199, paras. 155-156; Matthew Saul, 'The Normative Status of Self-determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?' (2011) 11 (4) Human Rights Law Review, p.615.
[53] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003),p.113.

internal self-determination[54] that can be considered not only as a right to vote, but also as a right to effective participation in government. [55]

Furthermore, the Declaration on the Right to Peace (2016) affords significant attention to counter-terrorism policies, considering the current circumstances in the world. It recognises the duty of states to implement counter-terrorism policies, conforming to the states' commitments under international human rights law, refugee law and international humanitarian law, regardless of the motivation, time or spaces of terror, or of the particular perpetrator of terrorism involved.[56] The other entitlement asserted by this declaration is associated with the duties of states in post-conflict situations to access sustainable peace. It suggests that the duty of duty-bearers is never ended by peace agreements or other mechanisms which end conflicts. Accordingly, it places an emphasis on "rehabilitation, reintegration and reconciliation processes involving all those engaged"[57] and the significance of United Nations actions on peace-making, peace-keeping and peace-building, with special consideration for the role of women in efforts to build, promote and protect peace. [58]

In view of negative obligations, the declaration aims to encompass both international and internal conflicts.[59] It prohibits states from threatening or using force against the territorial integrity or political independence of any state, based on Chapter VII of the UN Charter. It bans states from intervening in issues within the internal jurisdiction of any other state, and also prohibits any effort that may harm the national and territorial integrity of a country or its political independence. [60] As Gray elaborates,

[54] "Internal self-determination focuses on the relationship between a people and its own state or government. External self-determination underwrites change in the status of states, for example, from colonial to independent or from one state to two or more."
[55] Christine Bell, '*Peace Agreements and Human Rights*' (OUP 2005), pp. 164-165, 167.
[56] UN Doc A/Res/71/189, annex. p. 3 ; Resolution 49/60, annex.
[57] Ibid, annex. p. 4.
[58] Ibid
[59] IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017), pp.65, 67.
[60] UN Doc A/Res/71/189, annex. p.2.

> "the principle of non-intervention includes a 'duty of vigilance' not to acquiesce in, or to tolerate, subversive activities directed towards the violent overthrow of the regime of another state. It has also been used in a more far-reaching argument by those who seek to widen the right of self-defence to allow the use of force against non-state actors operating from the territory of another state."[61]

According to the ICJ, the arming and training of armed opposition forces, and also the supply of funds could amount to unlawful intervention.[62] The duty of duty-bearers encompasses "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States".[63]

In addition to refraining from aggression, states are requested to avoid engaging in any acts of terrorism,[64] whether involving state-terrorism or only supporting terrorist groups. Although the obligations considered by GA Resolution 71/189 are very much analogous to the perquisites of Kant's perpetual peace plan, the declaration ignores disarmament and related policies which can play a crucial role in realising peace. Disarmament has been asserted by both Kant [65] and Roosevelt, in his definition of freedom from fear, as a concept comparable with the right to peace. [66] The General Assembly Resolution on the Right to Peace (2016) ignores disarmament when it articulates the range of entitlements for the right to peace, whereas the Human Rights Council Advisory Committee on the right of peoples to

[61] Christine Gray, '*The ICJ and the Use of Force*' in Christian J. Tams and James Sloan (eds), '*The Development of International Law by the International Court of Justice'* (OUP, 2013), pp. 238; See Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Judgment) [2005] I.C.J. Rep. 168, para 277.
[62] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] I.C.J. Rep. 14, para 228. ;Gray, '*The ICJ and the Use of Force*' (2013), p. 249.
[63] Corfu Channel Case Judgement of April 9th, 1949: I.C.J. Reports (1949), 4., p. 22.
[64] Resolution 49/60, annex
[65] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), pp.93-97.
[66] Franklin D. Roosevelt, '*The Public Papers and Addresses of Franklin D. Roosevelt'* (Rosenman, Samuel I (ed), Random House 1941), p.672.

peace [67] proposed a draft declaration in its report, in 2012, which significantly considered disarmament among its main aims.[68]

Furthermore, that draft had highlighted the right to conscientious objection to military service, and also the right to resist and oppose oppressive colonial occupation or dictatorial domination (domestic oppression)[69] as individual rights in light of the right to peace. It had also argued against private contracts with private military and security companies, in addition to the use of mercenaries by states.[70]

All of these dimensions of the right to peace which are capable of making peace feasible and applicable have been ignored in the declaration adopted by the General Assembly in 2016. The declaration[71] can encompass both individual and collective aspects of the right to peace; however the individual aspect is expressed very vaguely.

Moreover, the draft created in 2012 pinpointed the right to clean and peaceful environment in Article 10, while this issue has not been articulated in the recently adopted resolution. Additionally, the individual dimension of the right to peace has been considerably declined in the recently adopted resolution.

It appears that ignorance of these crucial factors, either intentionally or unintentionally, has rendered the declaration as a document failing to illustrate a comprehensive framework including the details of entitlements in this right. However, these individual and collective entitlements constitute the main pillars of the conceptual framework for the right to peace, which is assumed to be implementable. It can thus be concluded that the General Assembly has not presented a people-centred human right. This issue could paralyse the function of the right to peace, along with its implementation.

[67] UN Doc A/HRC/20/31 para 6.
[68] Ibid. Article 3.
[69] Ibid. Article 5.
[70] Ibid. Article 7.
[71] UN Doc A/Res/71/189.Annex. p 2.

3.1.2 Duty-bearers

In order to explore the other components of a conceptual framework of a claimable right, it is vital to understand who is entitled to claim that right, and against whom. Right-holders and duty-bearers in the framework of the statutory rights are unambiguously explained, but these components in the human rights structure may seem ambiguous. Duty-bearers are interpreted differently in international human rights law. In the strictest interpretation, human rights impose limits on a regime's internal autonomy.[72] Accordingly, globally recognised human rights impose obligations on states, and can be claimed against a state's sovereignty.[73] John Rawls identifies "regimes" as duty-bearers in the formulation of human rights and suggests that specific restrictions are imposed on sovereignties by international human rights law system.[74] However, in the broadest interpretation, as Joseph Raz considers, human rights as a sub-division of rights impose limitations on a state's sovereignty, on international organisations and agents, on domestic institutions and on individuals.[75] Accordingly, modern international human rights law assigns duties to the United Nations and its organs, in addition to some non-governmental organisations and individuals. The targeted organisations have a duty to monitor, report and, in some cases, prosecute violators of human rights.[76]

The Declaration on the Right to Peace (2016) specifically identifies all member states as the main duty-bearers of this right;[77] however, it considers the role of civil society at every step to make peace a feasible value and to ultimately implement it as a claimable right.[78] The examination of this resolution indicates that it demands the cooperation of governments, agencies and organisations in the United Nations system, including inter-

[72] Rawls, '*The Law of Peoples, with 'The Idea of Public Reason Revisited'' (2002),p.79.*
[73] Donnelly, '*Universal Human Rights in Theory and Practice' (2013),p.34.*
[74] Rawls, '*The Law of Peoples, with 'The Idea of Public Reason Revisited'' (2002),p.79.*
[75] Raz, '*Human Rights without Foundations*' (2010),p.328.
[76] Griffin, '*On Human Rights' (2008).p.105.*
[77] UN Doc A/Res/71/189, annex, Article 2.
[78] Ibid, annex. Article 3.

governmental and non-governmental organisations, to promote, respect and fulfil this right. It highlights the importance of the role of civil organisations in building and preserving peace, and in reinforcing a culture of peace.[79] Therefore, the right to peace is a kind of right which needs to be guaranteed and holistically implemented by states, individuals and groups within civil society.[80]

The declaration requests states, the United Nations system and other relevant international organisations to allocate resources to the development of a culture of peace by all means possible. [81] It does not mention the role of non-state actors, such as liberation movements or separatist groups, and their responsibility not to violate peace, whereas considerable peace violations, at international and national levels, are committed by non-state actors.[82]

For the purpose of this project, which focuses on political violence from above that is committed by states, states are identified as the main duty-bearers, and, considering the fact that crimes against peace are recognised as leadership crimes, [83] international organisations and civil society organisations seem to play the role of monitoring, advising, guiding and reporting on this purpose. The UN Charter "imposes certain *erga omnes* obligations on states, [...including ...] a responsibility to protect humanity from the scourge of war".[84] It asserts the responsibility of states "to save succeeding generations from the scourge of war".[85] On the other hand, according to the UN Charter, Chapter VII, Article 39, the Security Council has the responsibility to maintain international peace and security. The

[79] Ibid
[80] Bailliet, '*Normative Foundation of the International Law of Peace*' (2015),p.53.
[81] UN Doc A/Res/71/189, annex.p. 4, and Article 3.
[82] IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017) p.49.
[83] M. Cherif Bassiouni and Benjamin B. Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' in M. Cherif Bassiouni (ed), '*International Criminal Law: Sources, Subjects and Contents*', vol 1 (3 edn, Martinus Nijhoff Publishers, 2008),p.327;Robert Cryer and others, '*An Introduction to International Criminal Law and Procedure*' (3rd (edn), CUP 2014), p.307.
[84] De Zayas, '*Peace as a Human Right: The Jus Cogens Prohibition of Aggression*' (2011), p. 36.
[85] Preamble, The Un Charter; Mary Ellen O'Connell, 'Responsibility to Peace: A Critique of R2P' (2010) 4 (1) Journal of Intervention and Statebuilding, p. 48.

question which comes to mind is whether this political body can be a duty-bearer for the right to peace. Additionally, if this political body fails in its duties, who should decide on its duties?

Article 39 refers to any threat to the peace, breach of the peace and act of aggression alongside each other, and the existence of these three conditions has been left to the Security Council to determine. The creators of the UN Charter did not define aggression, because, at that time, it was felt that no definition could entail every possible form of aggression. Thus, it is the Security Council's task to distinguish it and adopt appropriate measures proportional to the situation; however, the Great Power veto can paralyse this process.[86] Although the adoption of amendments to the Rome Statute at the Kampala Review Conference in 2010 endeavoured to clarify the definition of aggression, the problem about determining the act of aggression by the Security Council remains. [87] Based on Article 39 of the UN Charter, the Security Council was intended to be the peace enforcement branch, with the ability to apply sanctions to end conflicts. Conversely, the General Assembly was not granted any authority to bring an end to international conflicts. When aggression is committed by one of the permanent members of the Security Council or its allies, the right to veto can prevent the functioning of the Security Council. Therefore, a potential defect could lead to the repetition of the unproductive experiment that was the League of Nations.[88] However, as Akande discusses "[i]t is almost inconceivable for there to be no legal limits to the power of the Security Council—even in the area of maintaining international peace and security".[89]

The contradiction lies here: while the Security Council has the responsibility of maintaining international peace and security, it has not been included as a

[86] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008),p.322.
[87] Cryer and others, '*An Introduction to International Criminal Law and Procedure*' *(2014).p.310.*
[88] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008).pp.322-323.
[89] Dapo Akande, 'The International Court of Justice and the Security: Is there Room for Judicial Control of Decisions of the Political Organs of the United Nations?' (1997) 46 (2) ICLQ, p.314.

duty-bearer in the related Declaration on the Right to Peace. The legal personality of this body to possess legal rights and obligations enforceable by law can be concluded from the advisory opinion offered in *Reparations for Injuries Suffered in the Service of the United Nations* (1949), where the International Court of Justice (ICJ) was requested to express its opinion regarding the capacity of the UN to make an international claim.[90] According to the Court, a subject of international law is an entity with the capability of possessing international rights and duties, and which has the capacity to secure its rights by making international claims.[91] Accordingly, "[t]he subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights and their nature depends upon the needs of the community".[92] This Advisory Opinion can be applied to entities such as the Security Council.

Furthermore, the International Law Commission (ILC) asserts that "[e]very internationally wrongful act of an international organization entails the international responsibility of that organization."[93] Similarly, the International Law Association (ILA) in its report on the Accountability of International Organizations recognised international organisations as bearers of human rights obligations, especially concerning the fundamental human rights which are regarded as part of peremptory rules of international law.[94] Thus, the Security Council is an entity with the legal personality that should be accountable for the failure of its policies,[95] and when it fails to fulfil its responsibility which is securing international peace and security.

As Henderson discusses, the advisory function of the International Court of Justice can serve as a mechanism to control the practice of the Security

[90] Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] I.C.J. Rep. 174
[91] Ibid, p.179.
[92] Ibid, p.178.
[93] ILC, 'Draft Articles on the Responsibility of International Organizations' (2011) Yearbook of the International Law Commission, vol II, Part Two ("ARIO") ; UNGA, 'Responsibility of International Organizations' (9 December 2011) UN Doc A/RES/66/100 , Art. 3.
[94] ILA, Report on the Accountability of International Organizations, Berlin Conference (International Law Association, 2004)
[95] Martine Durocher, 'United Nations Mission to Kosovo: in Violation of the Right to Life?' (December 2016) 27 (4) Criminal Law Forum p. 394

Council. This mechanism can be activated by the UN General Assembly's request. Although any Advisory Opinion is not binding, it can have a significant impact on what decisions will be taken by the UN Security Council.[96] Moreover, although there is no hierarchy among the main UN organs, the UN Security Council should be accountable to the UN General Assembly, relating to the maintenance of international peace and security, as the UN members are creators of this treaty-based body.[97] This mechanism can be operated through the discursive function of the UN General Assembly and the submission of reports by the UN Security Council to the UN General Assembly.[98] Another avenue through which the General Assembly could control the functions of the UN Security Council concerns the resolution on "Uniting for Peace". Accordingly, if the Security Council cannot act based on its function to maintain international peace and security "in the case of a breach of the peace or act of aggression" due to the use of a veto, the General Assembly should consider the issue directly, produce recommendations[99] to retain international peace and security, and take emergency measures.[100] Currently, the UN Security Council has the authority to determine what constitutes a threat to international peace, but without any legal accountability, however, it can at least be "answerable internally within the UN".[101] Thus, the role of the Security Council, as a

[96] Christian Henderson, 'Authority without Accountability? The UN Security Council's Authorization Method and Institutional Mechanisms of Accountability' (December 1, 2014) 19 (3) Journal of Conflict and Security Law, pp. 495-497.

[97] Art 24(1) & Art 11(2), UN Charter (1945)

[98] This approach can be seen in the practice of the UNGA, e.g. see General Assembly Urges Steps to Address Shortcomings of Security Council's Reporting System, Increase Its Transparency: Delegates Call for More Effective Evaluation of 15-Member Organ's Actions, UN Doc GA/11458 (November 21, 2013) UN ; Henderson, 'Authority without Accountability? The UN Security Council's Authorization Method and Institutional Mechanisms of Accountability' (December 1, 2014), p. 503.

[99] Art 10, UN Charter (1945) ; Cóman Kenny, 'Responsibility to recommend: the role of the UN General Assembly in the maintenance of international peace and security' (Jun 14, 2016) 3 (1) Journal on the Use of Force and International Law, p. 3.

[100] UN Doc A/RES/377(V) 3 November 1950 ; Henderson, 'Authority without Accountability? The UN Security Council's Authorization Method and Institutional Mechanisms of Accountability' (December 1, 2014), pp. 503-504.; Andrew Heywood, '*Global Politics*' (2nd (edn), Palgrave Macmillan 2014), p.450

[101] Henderson, 'Authority without Accountability? The UN Security Council's Authorization Method and Institutional Mechanisms of Accountability' (December 1, 2014), p. 492;ILA Committee on the Use of Force, Final Report on Aggression and the Use of Force, Sydney, (August 19-24, 2018), p. 30.

duty-bearer, in the implementation of this right cannot be ignored, whereas there is no mention in the related declaration.

3.1.3 Right-holders

The other principal component in the conceptual framework of the right to peace is the identity of right-holders**.** One of the controversial points in the various documents which raised the issue of the right to peace, such as the General Assembly Resolution on the Rights of Peoples to Peace (1984) and the African Charter on Human and Peoples' Rights (1981), is the existing ambiguity regarding the term "peoples", whereas law requires precise terms. The General Assembly Resolution on the Right to Peace (2016) declares that "everyone has the right to enjoy peace".[102] This study examines whether the right to peace encompasses individuals, or people as a whole, or peoples collected as nations or specific groups. In a broad sense, the doctrine of human rights includes all members of the species *Homo sapiens* regardless of race, colour, religion, sex or any affiliation.[103] However, there is a different understanding of human rights which involves the idea of "personhood or agency" to identify right-holders[104] and defines a human right as "a claim of all human agents against all other human agents".[105] According to this mode of thinking, in order to be a human right-holder, one is required to meet the criterion of being a normal agent.

To analyse the two above-mentioned approaches, it should be noted that the doctrine of human rights basically emanated from the idea that each human being is universally concerned irrespective of any characteristic or affiliation. Based on this perspective, everybody not only has human rights, but also is responsible for respecting and protecting others' human rights beyond territorial, social and political borders.[106] Donnelly identifies three common characteristics in all human rights: equality, inalienability and

[102] UN Doc A/Res/71/189, Annex, Article 1.
[103] Charles R Beitz, '*The Idea of Human Rights*' (Reprint (edn), OUP 2011),p.1.
[104] Griffin, '*On Human Rights' (2008).pp.33-34.*
[105] Ibid.p. 177.
[106] Beitz, '*The Idea of Human Rights' (2011),p.1.*

universality. In other words, all human beings should equally enjoy human rights regardless of how negatively they behave or how barbarically they are treated. Thus, everyone who can be assumed to be a member of the species *Homo sapiens* is a human rights-holder.[107] In applying personhood as a specified criterion for being a right-holder, Kant considers "persons" in contrast with "things". Accordingly, persons have dignity with a unique value which cannot be replaced, because there is nothing equal to dignity.[108] Therefore, every individual is entitled to human rights, as he/she is identified as a person with unique value and potential dignity.

Conversely, Griffin proposes a specific description of human rights based on two principles: personhood and practicalities. He does not consider equality as the basis for his substantive account of human rights; [109] however, it is expected that the idea of human rights should support equal opportunity. Griffin considers normative agency to be equivalent to personhood (or a typical human condition) and describes human rights as protections of normative agency[110] and essential requirements for human status. He articulates three criteria to distinguish normative agency: first, the capacity to freely choose one's path through life (autonomy); second, the capacity to have access to a minimum level of provision to make desires real (minimum provision); third, the capacity to have liberty to pursue individual aims,[111] although, in his viewpoint, liberty does not mean doing whatever an individual wishes.[112] He explains that agency means not only having certain capacities for autonomous thought and decision-making, but also exercising them, and that human beings need all of these capacities in order to have human rights.[113] Therefore, the three criteria of normative agency – namely autonomy, minimum provision, and liberty – are necessary elements to be primary grounds of rights. The second ground of human rights, in Griffin's perspective – practicalities – provides a reasonable frame within which

[107] Donnelly, '*Universal Human Rights in Theory and Practice' (2013),p.10.*
[108] Kant, '*Groundwork of the Metaphysics of Morals' (2003)*, pp. 95-6
[109] Griffin, '*On Human Rights' (2008).pp.32-42.*
[110] Ibid.pp.133,149.
[111] Ibid.pp.45,33-34.
[112] Ibid. pp.61-63.
[113] Ibid.pp.45-47.

human rights can be limited to normal human agents rather than agents in a broader sense. Thus, human rights encompass more restricted subjects and those who enjoy such rights, in Griffin's view.[114] For instance, he argues that embryos do not have human rights, because they are not normative agents, and, as a result, there may be moral considerations other than human rights that serve to prohibit abortions.[115] Thus, if there is no normative agency, there would be no dignity, and consequently no respect, and no human rights.[116] It seems that both Kant's natural right and Griffin's personhood account of human rights are based on the idea of respect for the dignity of persons, but Griffin considers a more restricted definition of human status or normative agents as human right-holders.[117]

In light of progressive contemporary interpretations of the concept of peace and its dimensions, which can even encompass peace with the planet and with nature, the right to peace cannot be limited solely to normal agency. Additionally, UN human rights law documents protect peace in its broadest sense. Hence, this right includes all members of the species *Homo sapiens*, although some may not possess the capacity for normal agency, and, as a result, authorised agents exercise their rights on their behalf.[118]

Now, the question is whether this right can be claimed individually or collectively. As was discussed in Chapter 2, the right to peace has a dual nature, including both individual and collective nature. It relates to people, including the whole of humanity beyond any boundary or affiliation, in addition to a nation, a group of people with some common affiliation, a special culture, ethnicity, religion, gender orientation, and so on, as well as one individual.[119] Claiming the right to peace collectively or claiming it individually, depending on the circumstances, cannot be in contradiction with each other; however, this issue should be clarified by the judicial body with the responsibility for implementing this right.

[114] Ibid.pp.32-42.
[115] Ibid.pp.86-91, 220.
[116] Roger Crisp (ed), *Griffin on Human Rights* (OUP 2014), p.149.
[117] Griffin, '*On Human Rights' (2008),pp.61-63.*
[118] Claudia Tavani, '*Collective Rights and the Cultural Identity of the Roma: A Case Study of Italy*' (Martinus Nijhoff Publishers 2012), p.166.
[119] Griffin, '*On Human Rights' (2008).p.322.*

On the other hand, the issue of identifying right-holders can become more controversial considering the right to peace in the international law system, as one perspective identifies international law as emerging from inter-state agreements that create rights and obligations between states. Based on this viewpoint, individuals, groups or nations have no international legal rights and remedies, because they are solely the subsidiary beneficiaries of rights and duties between states parties. Therefore, human rights cannot be assumed to provide international legal rights in the international legal system. Accordingly, human rights agreements express only moral values, and they encourage states to transmit those moral standards to their national legal orders.[120] The other perspective suggests that international agreements not only create rights and duties for states parties, but also provide individuals with rights against their societies under international law, in addition to their domestic legal rights.[121] According to this perspective, human rights are understood as essentially universal moral rights whose active enforcement and promotion is permissible for everyone against any duty-bearer in the international law system. These two different perspectives should be analysed and balanced in order to illustrate a framework for "right-holders" which is compatible with the formula of the right to peace proposed in this study. The following trend analysis of the recognition of the right to peace indicates that there is a development towards considering nations alongside individuals as right-holders.

It is noteworthy that the right of peoples to peace was recognised in the African Charter on Human and Peoples' Rights in 1981.[122] The Charter employs the term "peoples" as right holders in the post-colonial context. It adopts different approaches to the concept of "peoples" dependent on the nature of the debated subjects, and, for some rights, state and peoples can be

[120] Henkin, 'International Human Rights as Rights ' (Fall 1979).pp.439-440.
[121] Ibid;UNGA 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' (8 March 1999) UN Doc A/RES/53/144
[122] "All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States." Article 23 (1), African Charter on Human and Peoples' Rights, 1981

interchangeable.[123] Regarding the right to peace, As Rehman discusses, "[w]hilst it appears certain that peoples are the natural beneficiaries of the right to peace and security, the assumption appears to be that States themselves are to act as the representative of all the peoples within their respective jurisdictions in order to ensure the enjoyment of this right."[124]

The original UN document on the right to peace, General Assembly Resolution 39/11 adopted in 1984, articulates "the right of peoples to peace". However, the Human Rights Council Advisory Committee on the Right of Peoples to Peace proposed the term "right to peace" in its report in April 2012, with the view that this new term includes both the individual and collective dimensions.[125] The adopted resolution on the right to peace by the General Assembly in December 2016 [126] contains a reference to "all members of the human family" and "everyone"[127] which identifies both individuals and nations as right-holders. Based on the approaches of the UN international human rights documents that entitle "everyone" to human rights, the second approach which entitles individuals and nations appears plausible.

It should be borne in mind that even individual rights are exercised collectively and individuals can enjoy and claim their rights as members of a society. In fact, the states' policies are rarely targeted at a specific individual. Thus, the possibility of claiming a right either by an individual or by a group should not rationally impose any limitations on the scope of that right. [128] Therefore, nations, groups and individuals constitute the framework of right-holders in relation to the right to peace.

[123] Rehman, '*International Human Rights Law*' *(2010), p. 327.*
[124] Ibid
[125] UN Doc A/HRC/20/31, para 6;See UN Doc A/HRC/RES/20/15
[126] UN Doc A/Res/71/189,annex, p.3.
[127] Ibid,annex, Page 4, Article 1
[128] Sengupta, '*Elements of a Theory of the Right to Development*' (2008), p. 80.

3.2 Seeking Traces of the "Peoples' Right to Peace" through the Evolutionary Process of the Idea of Human Rights

Taking into account the elements constituting the conceptual-legal framework of the right to peace and the structure of this right, this section evaluates whether this foundation has any basis in the evolutionary trend of the idea of human rights. The research also aims to explore whether there is scope in the ideology of rights to incorporate the right to peace within it. For this purpose, the evolutionary trend of the idea of human rights is examined to explore its capacity for this right. The study observes the spirit of the ideology of human rights and the process through which human rights emerged and developed, to discover the development of this right on this path, and also to examine the possibility of incorporating the right to peace in the idea of human rights.

The origins of human rights challenges can be traced back to the very beginning of recorded human civilisation, and basic human needs have been considered as the basis of human rights; however, the contents of these needs have been controversial.[129] The first "Charter of the Rights of Nations" was issued by Cyrus the Great (590-529 BC) who founded his empire based on tolerance, peace, multiculturalism and the accommodation of religious diversity. Cyrus the Great founded Achaemenid Persia as one of the notable ancient civilisations in 546 B.C.E., and ruled a vast territory, including various subordinate nations extending from the Indian Ocean to the Aegean Sea with decades of peace, prosperity and innovation.[130]

The Achaemenid Empire's architectural and artistic heritage demonstrates the awareness of human rights in that era.[131] Evidence from the Fortification Tablets provides us with a comprehensive image of Cyrus's view of multiculturalism, as well as his religious and racial tolerance towards those

[129] Reginald H Green, 'Basic Human Rights/Needs: Some Problems of Categorical Translation and Unification' (1981) 27 The Review of the International Commission of Jurists, p. 53.
[130] Flavius Josephus, '*The works of Flavius Josephus*' (Whiston W. (tr), Reprint (edn), BiblioLife 2015),Book XI -- From the First Year of Cyrus to the Death of Alexander the Great; Chapter 1
[131] Richard Nelson Frye, '*The Heritage of Persia*' (Mentor Books 1966),pp.123-124.

he conquered. Freedom of religion, the abolition of slavery, workers' rights, gender equality and social welfare are just some examples of human rights considerations derived from the existing artistic sources of this period.[132] Cyrus's own verdict on his victory survives on a clay cylinder known as the first "Charter of the Rights of Nations".[133] The following parts of this charter are samples which echo his concerns regarding human rights and peace:

> "I did not allow any to terrorize the land of Sumer and Akkad. I kept in view the needs of Babylon and all its sanctuaries to promote their well-being. The citizens of Babylon [...] I lifted their unbecoming yoke. Their dilapidated dwellings I restored. I put an end to their misfortunes. [...] I strove for peace in Babylon and in all his [other] sacred cities. As to the inhabitants of Babylon [...] I abolished forced labor [...] From Nineveh, Assur and Susa, Akkad, Eshnunna, Zamban, Me-Turnu and Der"[134]

As can be understood along these lines, Cyrus, recognised living in peace as the main concern and obliged himself as a ruler to guarantee peace for his nation. He stated his duty to guarantee freedom from fear ("I did not allow any to terrorize the land") and freedom from want ("I kept in view the needs of Babylon and all its sanctuaries to promote their well-being"). Frye notes Cyrus's innovative policy of reconciliation to establish a pax Achaemenica via the fusion of peoples and cultures.[135] In fact, Cyrus's struggles to ensure a life of peace for his people show that he considered peace to be something more than an abstract value. He recognised peace as an inherent right not only for his nation, but also for other nations. Additionally, he was aware of his duty to provide peoples with lives of peace.

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[132] Behzad Hassani, 'Human Rights and Rise of the Achaemenid Empire: Forgotten Lessons from a Forgotten Era' (June 2007) The Circle of Ancient Iranian Studies (CAIS), p. 1.
[133] Josef Wiesehöfer, '*Ancient Persia: From 550 BC to 650 AD*' (Azodi A (tr), Reprinted (edn), 1st published 1996, I. B. Tauris Publishers 2006), pp.44-45.
[134] Irving Finkel (ed), *The Cyrus Cylinder: The Great Persian Edict from Babylon* (I.B.Tauris 2013), p. 4.
[135] Frye, '*The Heritage of Persia' (1966),pp.123-124.*

The impact of peace on the flourishing of human rights is undeniable, as it is impossible to put into operation all functions inherent in the human being nature in the absence of peace, especially for people directly involved in war, as violence prevents individuals from fulfilling their true potential.[136] Therefore, the nature of the human being as the primary inspiration for the recognition of human rights affirms the necessity of peace in order to realise fundamental freedoms and rights.

The trend analysis of the human rights project determines that in spite of undeniable consideration for human rights in the ancient moral and religious traditions,[137] the theological approach of this idea was gradually declined during the 17th and 18th centuries, and was replaced by the idea of human rights based on reason and individualism instead of theological thoughts.[138] This movement was based on the fact that the articulation of human rights through religions might be able to oblige and encourage religious people and ideological regimes to respect human rights, but a rational vision of human rights could convince all rational orders regardless of their beliefs. Therefore, a rational order can encompass a broader range of society and construct a stable society whereby its members are obliged to obey a reasonable law and live with integrity.[139] Griffin believes that the Enlightenment neglected the theological aspect of human rights without replacing it with anything else. In fact, the theological content of human rights was abandoned while its ethical content was maintained.[140] He claims that contemporary international law instruments such as the Universal Declaration of Human Rights have been based on the same idea of human rights that emerged at the end of Enlightenment,[141] and that the evolutionary trend of the idea of rights stopped at the end of the Enlightenment, with no more significant theoretical development being observed after that point.[142]

[136] Galtung, 'Violence, Peace, and Peace Research' (1969), p.169.
[137] M Christian Green and John Witte, '*Religion*' in Dinah Shelton (ed), '*The Oxford Handbook of International Human Rights Law*' (OUP, 2013),p.9.
[138] Griffin, '*On Human Rights' (2008), pp.1,2,10.*
[139] UNDPI, '*These Rights and Freedoms'* (United Nations Publications 1950), p. 1.
[140] Griffin, '*On Human Rights' (2008),pp.1-2.*
[141] Ibid.p.13.
[142] Ibid

The modern international human rights movement which was formed during the Second World War was based on the idea that we should be concerned with the manner in which other human beings are treated anywhere in the world, and each party should not be indifferent to mistreatment or suffering in other parts of the world, and should react through international mechanisms.[143] In fact, the catastrophe of the Second World War served as an alert for the international community to be aware of the roots of violations against peace in societies that can affect the whole international community. This alert provides the first grounds for the international human rights movement which was further facilitated by the Four Freedoms message to Congress by the United States President Franklin Delano Roosevelt (FDR) on January 6, 1941.[144] Roosevelt's Four Freedoms transferred human rights from the domestic domain to an international context for the first time. This issue was articulated through the aims of the Allies in the Second World War, and in their plans for the post-war world in the Atlantic Charter (1941).[145] In 1944, the Allied Powers planned to establish a new international organisation to promote and protect human rights, and for the first time the term "human rights" was applied in a principle international document.[146] Their common aim was "a peace which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want".[147] Therefore, the term "human rights" has emerged since World War II, and through the establishment of the United Nations in 1945 and the adoption of the Universal Declaration of Human Rights in 1948.[148] In fact, the Four Freedoms broke the deadlock that neutralised the power of natural rights. In other words, it provided a

[143] Henkin, 'International Human Rights as Rights ' (Fall 1979),p.425.
[144] 87 Congressional Record 44, 46-47(1941)
[145] Atlantic Charter, Aug. 14, 1941, United Kingdom-United States, 55 Stat. 1603, E.A.S. No. 236.
[146] Louis Henkin, '*Human Rights from Dumbarton Oaks*' in Ernest R May and Angeliki E Laiou (eds), '*The Dumbarton Oaks Conversations and the United Nations, 1944-1994*' (Dumbarton Oaks Research Library and Collection, Distributed by Harward University Press, 1998), p. 98.
[147] The Atlantic Charter (14August 1941); United States Department of State Executive Agreement Series No. 236, Cooperative War Effort (Washington, DC: U.S. Government Printing Office, 1942)
[148] Alston and Goodman, '*International Human Rights, The Successor to International Human Rights in Context' (2013),p.490.*

thorough methodology by which to make the idea of rights empirical. The Four Freedoms expanded the traditional domestic human rights into the pattern which involves international community with how a state behaves towards its own citizens.[149] President Roosevelt, in his Four Freedoms speech, interpreted freedom from fear as "a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour anywhere in the world".[150] The elements expressed by Roosevelt in explaining freedom from fear are elements of the conceptual framework of the right to peace.[151]

Nowadays, it is accepted that the provisions of the Universal Declaration have become universally binding.[152] Therefore, the rights that are globally recognised as human rights impose obligations on states, and can be claimed against states' sovereignty.[153] The explicit assertion of freedom from fear in the preamble of Universal Declaration of Human Rights, while considering the analogous structure of this freedom comparison with the right to peace, depicts a clear tread of this right in the most important document of international human rights law. This perspective not only affirms the importance of peace in the idea of human rights; it also shows a potential scope for the right to peace, as it identifies peace as the main aim. In fact, human rights restrict the reasons justifying war and limit the internal autonomy of a regime.[154]

The trend of human rights development from the ancient era to modern times illustrates remarkable sensitivity to the issue of peace. The catastrophic consequences of the absence of peace have caused people to strive towards gaining their inherent human rights. While international

[149] Henkin, '*Human Rights: Ideology and Aspiration, Reality and Prospect*' (2000).p.9.

[150] Franklin D. Roosevelt's 'Four Freedoms Speech': Annual Message to Congress on the State of the Union. 01.06.1941. Franklin D. Roosevelt Presidential Library, http://docs.fdrlibrary.marist.edu/od4freed.html

[151] UN Doc A/HRC/14/38 p.12; Schabas, '*Freedom from Fear and the Human Right to Peace*' (2012) p.36

[152] Henkin, 'International Human Rights as Rights ' (Fall 1979),p.435.; U.N. CHARTER arts. 55-56.

[153] Donnelly, '*Universal Human Rights in Theory and Practice' (2013),p.34.*

[154] Rawls, '*The Law of Peoples, with 'The Idea of Public Reason Revisited'' (2002),p.79.*

peace and peaceful coexistence are ranked among the central concerns of the ideology of human rights, there is remarkably little literature concerning the recognition of peace as an inherent right that can be claimed through a legislative process. Following the tragedy of the Second World War, the UN Charter (1945) proclaimed the importance of the international peace and security in Articles 1, 2, 33-39 and 55, although there is no mention to the "right to peace" in this document.[155] However, through the evolutionary trend of human rights, the right to peace reaches its highest point in the Universal Declaration of Human rights in the form of freedom from fear.

Although this right was forgotten for years, it was highlighted in 1976 that the resolution of the UN Human Rights Commission primarily proclaimed the "right to live in peace", and it was declared that "everyone has the right to live in conditions of international peace and security".[156] It encouraged the UN General Assembly to approve a resolution concerning the right to live in peace. As a result, the General Assembly adopted the Declaration on the Preparation of Societies for Life in Peace in 1978, which asserted that "every nation and every human being […] has the inherent right to life in peace".[157] Again, the right to peace underwent a partial eclipse, but some efforts by the United Nations brought it back into focus. There was considerable attention granted to the right to peace by the UN in the last decade of the Cold War,[158] and the UN General Assembly submitted a proposal suggesting peace as a right. During the same period of time, this right was affirmed in the African Charter on Human and Peoples' Rights, in 1981.[159] In 1984, the Declaration on the Rights of Peoples to Peace was adopted by the General Assembly, declaring that "the peoples of our planet have a sacred right to peace" and that "the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each state".[160] This measure by the General Assembly could have been a reaction to the Cold War and its consequences,

[155] UN Doc A/HRC/14/38.para.5.
[156] UN Doc CHR Res 5 (XXXII)
[157] UN Doc A/RES/33/73
[158] Cold War:1947-1991
[159] African Charter on Human and Peoples' Rights, 1981, Article 23 (1).
[160] UN Doc A/RES/39/11, annex, paras 1-2.

aiming to counter that circumstance in a productive manner. The struggle to allow scope for a human right to peace was continued by Federico Mayor, the director general of UNESCO, who planned a draft Declaration of the Human Right to Peace in 1997, but the idea was rejected due to a lack of consensus.[161]

In spite of all the attempts to promote the right to peace, it was gradually disappeared from the UN agendas until the US invasion of Iraq in 2003, when the US took measures toward the legitimisation of the war on terrorism, and caused the international community to become concerned for international peace and security.[162] Following this, some intergovernmental organisations and non-governmental organisations (NGOs) endeavoured to allow greater scope for a human right to peace as a remedy for the ongoing crisis.[163] Consequently, the Human Rights Council decided to establish an open-ended intergovernmental working group with the mandate of progressively negotiating on a United Nations declaration of the right to peace, which was based on the draft declaration prepared by the advisory committee concerning this right.[164] Additionally, the Human Rights Council Resolution on the Promotion of a Democratic and Equitable International Order (2011) recommended the realisation of the right to peace as one of the vital requirements for a democratic and equitable international order.[165] Despite opposition among the UN members concerning the recognition of a right to peace, this right was selected as the theme of the International Day of Peace in 2014. Additionally, a special consideration for this right has been observed on the International Day of Peace over the three-year period 2014-2016. In 2016, the former UN Special Rapporteur on the promotion of a democratic and equitable international order, Alfred de Zayas, advised the Human Rights Council to continue its work toward the adoption of a

[161] UNESCO Doc 29C/59, paras. 8-9. available online at: http://unesdoc.unesco.org/images/0011/001100/110027E.pdf

[162] Roberta Lynn Wodenscheck, '*The Human Right to Peace: Why Such a Right Should be Recognized*' (American University 2004), pp. 36-37; Roche, '*The Human Right to Peace' (2003), p.240.*

[163] UN Doc A/HRC/RES/20/15 ;UNHRC 'Promotion of the right to peace' (1 October 2015) UN Doc A/HRC/RES/30/12

[164] UN Doc A/HRC/RES/20/15

[165] UN Doc A/HRC/RES/18/6

declaration of the right to peace in its individual and collective dimensions, in order to meet the requirements of the 2030 Agenda for Sustainable Development.[166] The last element of progress in regard to this right is observed in the Declaration on the Right to Peace issued by the General Assembly in December 2016. Although this declaration is suffering from ambiguities regarding its implementation mechanisms, it can be considered one of the significant points in the development of the right to peace.

Peace has undoubtedly been the main concern of human rights law, although there has been reluctance to explicitly recognise the right to peace as a human right.[167] However, it is undeniable that there is sufficient scope for developing the right to peace within the idea of human rights. Douzinas describes the human rights movement as a struggle to fill the gap between the abstract person of the various declarations and the empirical human. He perceives rights as instruments through which people build their identities in an ongoing effort to gain recognition from other people and social institutions.[168] The dilemma relates to whether the contents of human rights are restricted by the Bill of Human Rights or whether it can be more expansive. Alston suggests that there is no rational basis to prohibit the recognition of human rights and allow greater scope for new individual or collective human rights. He asserts that this approach not only is not banned, but also that it contributes to overcome the existing deficits in the current contents of international human rights.[169] The contents of values which can be perceived as the subject of human rights are open to exploration. These values arise in special historical and social contexts. In fact, such fundamental values are constant in all eras, but the quality and range of these may vary depending on circumstances. Peace is one of these values that has the capacity to be recognised as a right, and the idea of human rights supports it in the effort to achieve this status.

[166] OHCHR, Statement on the occasion of International Day of Peace by Alfred De Zayas (UN, September 21, 2015) ;UN Doc. A/RES/70/1 ;UN Doc A/HRC/20/31

[167] UN Doc A/HRC/14/38.para.32

[168] Costas Douzinas, 'Who Counts as Human? ' *The Guardian* (April 1, 2009)

[169] Alston, 'Making Space for New Human Rights: The Case of the Right to Development.' (1988), p. 39.

3.3 The Impacts of the Significant Traces of the "Right to Peace" on "Peace" in the Related Historical Context

In trend analyses concerning the development of the idea of human rights and tracing the footsteps of the right to peace, two significant documents promoting this right are considerable: first, the Cyrus Cylinder, which is considered the first declaration of human rights (559-530 B.C.E), and, second, the Four Freedoms Speech, by Franklin D Roosevelt (1941). The impacts of these crucial texts on the promotion of peace in these historical contexts are noteworthy. The first text, namely the first "Charter of the Rights of Nations" issued by Cyrus the Great, is identified as a crucial juncture in ancient history, where a ruler declared that he was obliged to provide people with peace.[170] It survives on a silent clay cylinder that is a hubbub of words that reveals the secret underlying the stability and impressive achievements of Achaemenid Persia. It implies that Cyrus's attention to human rights and his struggle to maintain peace made his empire an outstanding model. Cyrus the Great's influence on the path toward human rights development did not terminate at that juncture, and was projected to the modern idea of human rights. During the Enlightenment, a biography of Cyrus, the *Cyropaedia*, written by Xenophon (430-354 B.C.E.) —a student of Socrates — became popular among political thinkers. Thomas Jefferson (1743-1826), the chief author of the Declaration of Independence (1776), was influenced and inspired by the *Cyropaedia* and its model of ruling. In fact, the principle underlying the prosperity of Achaemenid Persia was incorporated in the Declaration of Independence, and laid a sound foundation for it.[171]

The second juncture which involved significant attention for the right to peace is the Four Freedom Speech by Franklin Roosevelt in the context of the Second World War. It provided a remedy to avoid an impasse by

[170] Josephus, '*The works of Flavius Josephus' (2015),Book XI -- From the First Year of Cyrus to the Death of Alexander the Great; Chapter 1*

[171] Barbara G B Ferguson, 'The Cyrus Cylinder-Often Referred to as The "First Bill of Human Rights"' (May 2013) 32 (4) The Washington Report on Middle East Affairs, pp.38-39.

developing four fundamental freedoms. This speech, which forms the core element of contemporary international human rights law, explicitly recognised living in peace with freedom from fear as a vital freedom which everyone should enjoy. The interpretation provided by Roosevelt regarding freedom from fear illustrates a world in the absence of aggression. This overview, which identifies the absence of violence as a fundamental and inherent right for everyone, equal to other dimensions of human rights, such as economic social rights and civil rights, was able to create the significant international human rights movement and to form the core element of major international human rights documents, namely the Bill of Human Rights. The assertion of Roosevelt on disarmament and prevention of aggression in his explanation of freedom from fear suggests that he identified these measures as mechanisms to make peace tangible and practical, as Einstein also believed it is not possible to "simultaneously prevent and prepare for war".[172] As a result of such a practical peace, the right to peace can be established and implemented.

Conclusion

Considering the conceptual framework illustrated for the right to peace, it is clear that this right imposes obligations on states, as the major duty-bearers, to realise this right. It can be concluded that the right to peace entitles right-holders to claim upon duty-bearers to adopt all possible policies to guarantee their lives in peace. Additionally it grants right-holders a right to participate in policy-makings regarding war and peace individually and collectively. In this way, duty-bearers are obliged to refuse any policies which may tend toward violence both nationally and internationally. Thus, at the international level, the peaceful settlement of disputes and reconciliation should take priority in states' policies to reduce tensions,[173] and, at national levels, policies should be directed towards identifying any

[172] Albert Einstein, '*Einstein on Peace*' (Otto N and Norden H (eds), Arcole Publishing 2017), p. 397.
[173] UN Charter, Article 2(3)

cause of violence in society, and strategically engaging people in policy-making. This right entitles individuals to organise petitions, to assemble, and also allows unions to support and promote peace.

Accordingly, states are obliged to maintain peace, take necessary measures to remain in peace, resort to peaceful mechanisms for dispute settlements and promote a culture of peaceful coexistence and a culture of tolerance based on respect for the dignity of all human beings. States are prohibited from engaging in aggression, interference in the internal affairs of other states, involvement in disputes among other states, the allocation of national resources to armaments, especially lethal arms, and participation in any act associated with terrorist activities. States have the duty of vigilance in the light of the principle of non-intervention.

Furthermore, states are obliged to promote social justice and other aspects of human rights, because a lack of human rights and fundamental freedoms can lead to violence and conflict. Additionally, international organisations and both non-governmental and inter-governmental organisations have the responsibility of monitoring, controlling and reporting on the status of peace within and between states. They have a duty to promote a culture of peace in societies, as peace begins in people's minds. The Security Council, as the main body responsible for maintaining international peace and security, according to Chapter VII of the United Nations Charter, should play a productive and effective role in the implementation of the right to peace. However, the responsibility of the Security Council has been ignored by the existing resolutions relating to the right to peace.

Right-holders including nations, groups and individuals, have the right to be aware of policies regarding war and peace (the right to the truth), and also to influence these policies, as they pay the material and immaterial costs of war. Additionally, the right to peace entitles rights-holders to choose between living in peace and living in war. Thus, this right entitles peoples to decide on their destiny, and has a connection with the right to self-determination, which has been recognised as a relatively new emerging right with an *erga omnes* character. Accordingly, people have the right to avoid

participating in wars that are not pursued for defensive purposes. The right to peace as a meta-right empowers nations to demand that their rulers direct state policies towards peace and freedom from fear, as living in peace is an inherent right of the human being. Considering the hybrid nature of this right, it can be claimed both individually and collectively.

The right to peace as described via the above-mentioned characteristics has had a significant place in the development of the ideology of human rights. The trend of the development of human rights is based on the issue that the capability to reason is the guiding principle of human beings. The rational being that is capable of morality chooses non-violence to solve problems. The dignity of the human being does not let him/her become involved in violence, as violence destroys the dignity of both perpetrator and victim. This logic was applied to the contemporary international human rights law following the Enlightenment, which produced the major existing human rights documents that explicitly support freedom from fear and living in peace. Therefore, the right to peace not only has origins in the idea of human rights, but this ideology also has the capacity to expand the scope of this right to become a legal and claimable right in the international law system. Additionally, analysing the trend of the development of the idea of human rights and tracing the footsteps of the right to peace demonstrated that whenever the right to peace was concerned, there was a considerable impact on the status of peace in that era. Accordingly, the Cyrus Cylinder, which is considered the first declaration of human rights (559-530 B.C.E), and, second, the Four Freedoms Speech, by Franklin D Roosevelt (1941) are recognised as two historical noteworthy documents with considerable impacts on the development of human rights which have implicitly articulated the right to peace and its necessitates.

Chapter 4: The Philosophical Groundwork for the Right to Peace

Introduction

The present chapter addresses the third research sub-question, which considers the philosophy underlying the right to peace. It examines the necessity of establishing a right to peace with universal acceptance and widespread implementation. The study observes that, although peace has been enshrined in the prevailing international law instruments, the current international circumstances imply that the existing approach has not been sufficiently effective to ensure peace and eliminate violence. [1] The research hypothesises the right to peace as a possible remedy in order to equip international law with a strong mechanism for defence tactics against violence. According to this view, such a right enables the international judicial system to prosecute crimes against peace to establish sustainable peace and achieve freedom from fear of violence. However, the recognition and implementation of this right requires adequate legal-political justification which can rationalise and legitimise it.

According to the mechanism establishing a right to peace that was presented in Chapter 2, in order to have a right to peace, peace should be a tangible concept, and peace will never be reachable if nations are incapable of defending against violence. [2] It appears that such a mechanism to make peace accessible, at the international level, should be operated by

[1] IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017) p.2.
[2] Borrelli, 'Human Rights and a Methodology for Peace' (1983) p.406.

international law judicial bodies, such as the ICJ, the ICC, and so on. However, in order to make judicial bodies become involved in implementing a right, that right should possess strong legal-political foundations, and should be reasonably justified and legitimised. The present study notes that the existing drafts and resolutions on the right to peace adopted by the UN Human Rights Council or the UN General Assembly on the right to peace [3] do not provide sufficient and safe justification to persuade opponents of the right to peace who consider the recognition of such a right unreasonable, without any legal foundation, and without any implementation mechanism.[4] The UN General Assembly Declaration on the Right to Peace, adopted in December 2016,[5] suffers from a certain lack of clarity in terms of philosophical-legal reasoning. In fact, the existing resolutions on the right to peace provoke a right to peace that is vague in terms of philosophical foundation, legal content and implementation mechanisms, and as a result, they have met considerable opposition from states[6] and some philosophical-legal scholars.[7] This right is easily criticised and regretted, and cannot absorb sufficient support to be universally recognised and legally implemented. [8] However, the right to peace must be justified in order to equip international law with a strong mechanism for defence tactics against violence, and it can legitimise the international judicial system's prosecution of crimes against peace.

Therefore, considering that the recognition of this right requires a strong political-legal groundwork to justify it, and the codification process of the right to peace has not provided an unambiguous position of this right within the international law system, the current chapter will endeavour to lay philosophical groundwork to justify this right and remove ambiguities with

[3] UNHRC 'Mandate of the Independent Expert on the promotion of a democratic and equitable international order' (03 October 2014) UN Doc A/HRC/RES/27/9 ;UNHRC 'Declaration on the Right to Peace' (24 June 2016) UN Doc A/HRC/32/L.18 ;UN Doc A/RES/39/11 ;UN Doc A/Res/71/189

[4] Griffin, '*On Human Rights' (2008), p.209.*

[5] UN Doc A/Res/71/189

[6] SSIHRL, Report of the Intergovernmental Working Group on the Right to Peace, 29th Session Human Rights Council (14 June – 3 July 2015)

[7] Griffin, '*On Human Rights' (2008), p.209.*

[8] SSIHRL, Report of the Intergovernmental Working Group on the Right to Peace, 29th Session Human Rights Council (14 June – 3 July 2015)

respect to prevailing viewpoints. This research examines whether the right to peace has the capacity to be a universal law. To this end, it studies the philosophical, legal and political theories of reasoning proposed by pertinent philosophers, namely Kant, Mill and, finally, a contemporary philosopher – Griffin – with the aim of seeking guidance. It studies the fundamental philosophical discussions regarding morality and legal reasoning to respond to the third research sub-question via three sections – addressing Kantianism, utilitarianism and Griffin's philosophy – by using correlated methodologies. Although the research is based on Kant's methodology, it considers other philosophical theories, such as utilitarianism, to open the mind to other possibilities which may enrich the research, [9] and also to prohibit unconscious dogmatism.[10] It examines the right to peace from the utilitarian perspective, because of the influence of this model of thought on some effective decisions from international political bodies, such as the UN Security Council, in relation to world peace.[11] Additionally, the study refers to James Griffin's methodology as a contemporary approach to human rights that is opposed to the right to peace.[12] The research examines if the right to peace can have a philosophical groundwork even based on Griffin's methodology, although Griffin himself does not offer such a conclusion. To this end, the reflective equilibrium method is applied to arrive at a consistent idea of the "right to peace", and a set of judgements on the issue are articulated. Various judgements regarding the philosophy of the "right to peace" are considered and balanced to present a meticulous and rational philosophy for this right. Following this, the logical consistency of the considered judgements concerning this right will be explored via the procedure of deliberative mutual modification involving general principles and those particular judgements. [13] Accordingly, the study answers the question which asks whether peace can be proven and justified as a moral

[9] Holden and Lynch, 'Choosing the Appropriate Methodology: Understanding Research Philosophy' (2004),p.13.
[10] Perry and Bratman, '*Introduction to Philosophy : Classical and Contemporary Readings' (1999), p. 12.*
[11] Boyle, '*World Politics and International Law' (1985), p.125.*
[12] Griffin, '*On Human Rights' (2008), p.209.*
[13] Follesdal, '*Methods of Philosophical Research on Human Rights*' (2009), p.233

right, and subsequently as a legal right, based on these dominant models of thought.

The study explored a technical interconnection between two literal concepts of right, namely "rectitude" and "entitlement" in Chapter 2.[14] Accordingly, the righteousness of an action or a desire can be a basis for having a right to it. Every philosophy recognises "rights" to "subjects" which have been originally accepted as moral values based on that philosophy; otherwise, there will be resistance to the acceptance and realisation of the right to that particular issue. It appears that values that are not encompassed within the scope of the interpretation of righteousness in a society and are not compatible with the dominant beliefs in that society cannot reach the threshold of an entitlement, and may, at most, remain as abstract values, without legal effectiveness in that society. For instance, a society, on the basis of utilitarian reasoning, cannot realise a right with deontological logic, because, when something is not basically considered an absolute moral standard, it will not be supported as a right. Similarly, a society based on beliefs such as gender discrimination show resistance to gender equality law, and cannot realise or support the rights thereof. Hence, human rights values that are assumed to be universal should be accepted and confirmed as an unconditional moral norm by the world's dominant philosophical systems. This issue signifies the importance of balancing different prevailing viewpoints to achieve a common viewpoint regarding a value which is expected to be a universal right. Thus, in order to make a value a universal law, it should be initially compatible with the concept of righteousness among various overriding moral world philosophies, such as Kantianism, which has had an influence upon the formulation of the modern idea of human rights,[15] and utilitarianism, which is recognised as a prevailing thought in current decision-making by some international political bodies, such as the Security Council.[16]

[14] Donnelly, '*Universal Human Rights in Theory and Practice' (2013), p.7.*
[15] Reiss Hans, Introduction in Kant, '*Kant Political Writings' (2012), pp. 5-7.* ;Rachel Bayefsky, 'Dignity, Honour, and Human Rights: Kant's Perspective ' (December 1, 2013) 41 (6) Political Theory, p. 809.
[16] Boyle, '*World Politics and International Law' (1985), p.125.*

Therefore, if peace can be morally reasoned by dominant philosophies and can be framed within their formula of righteousness, there will be primary duties of states to protect peace within the related moral order, and, additionally, authority will be obliged not to take any measure which may tend toward the infringement of peace. From this viewpoint, there will be a right to peace, and authority is inevitably involved in the implementation of such a right.

4.1 Kantianism & the Right to Peace

The present section addresses the necessity of establishing a right to peace, with widespread acceptance and appropriate implementation at international level, based on the philosophy of Immanuel Kant (1724-1804), considering the seminal influence of this philosophy on modern legal–political thought,[17] and its significant capability for developing perpetual peace.[18] In order to explore the philosophical groundwork underlying the right to peace based on Kantianism, the study refers to the philosophical, legal and political theories of reasoning proposed by Kant with the aim of seeking guidance.

The research deductively analyses how a right based on the Kantian formula can be realised, and examines whether the right to peace constitutes a categorical imperative, in accordance with the Universal Principle of Right. It considers Kant's thoughts in *To Perpetual Peace: A Philosophical Sketch* to explore parts of this plan which can impact on the right to peace. It discusses human dignity as the foundation of all human rights in Kant's approach, and examines whether dignity can serve as a normative basis for the progressive realisation of a right to live in peace to enable nations to curb their leaders' tendency towards war.

The present study seeks a strong foundation which would be able to produce sustainable peace. It examines whether the right to peace is a safe guide or a

[17] Reiss Hans, Introduction in Kant, '*Kant Political Writings' (2012) pp, 5-7.*
[18] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), p. 93.

safe maxim underlying the act of peace which could lead to perpetual peace. In order to have a systematic approach, different foundations of the act of peace are meticulously analysed and compared to explore the best foundation that has the capacity to become a universal law based on Kant's philosophy which suggests that any action which undermines human dignity is inherently immoral, and actions are judged based on the motivation and will behind them.[19] To this purpose, the research examines whether the right to peace constitutes a categorical imperative to be established as a universal law, and whether this right sufficiently conforms to the Universal Principle of Right, to be regarded as a human right.

4.1.1 Analysis of Different Foundations of Peace to Explore the Safe Guide Underlying a Perpetual Peace

At the outset, in order to explore a formula for perpetual peace, this study hypothesizes three general foundations for the act of peace: First, peace is sought due to some further ends, such as strengthening the state's authority, economic reasons, and so on. Second, peace is supported because of the feeling of empathy with the victims of war, or due to the fear of the possibility of losing the war. Third, peace is supported, as any violation of peace is in contrast with human beings' dignity, and every human being has an intrinsic right to live in peace. These three assumptions are analysed to explore the one that is supported by Kantianism.

The first assumption considers peace as laying the groundwork for another purpose, such as economic reasons, reputation or other policies. These reasons which use peace as a means to achieve other objectives are out of the scope of Kantian morality, because from this perspective, the maxim behind a moral act should be unconditional and autonomous.[20]. This kind of peace, although it may seem favourable, does not originate from a moral maxim in Kantianism. Thus, it is not a plausible peace in this moral system. Additionally, such peace can easily be broken, because a maxim which

[19] Kant, '*Groundwork of the Metaphysics of Morals' (2003), pp.xxvii, xxix.*
[20] Kant, '*Kant Political Writings' (2012), p.18.*

supports peace for reasons such as economic reasons can easily be replaced by another maxim which supports war, due to its possible economic benefits. However, this kind of peace is moral from the utilitarianism perspective, as it aims to produce pleasure, and economic achievements may seem to serve as a means of increasing pleasure. The utilitarianism perspective will be subsequently discussed in the next section. For the purpose of this section, however, the result may seem satisfactory; the action is not considered a Kantian moral action, and consequently not a safe guide for ensuring perpetual peace, as it may be fragile.[21]

In the second assumption, peace is sought to reduce the tragic toll of war as a result of natural desires, such as the desire to avoid the catastrophes of war, in sympathy with the victims of war. The maxim behind this peace emanates from a desire to help people to live in peace in order to promote happiness. This peace is morally accepted by utilitarianism, because it tries to minimise grief, but it is not a Kantian moral action, as the will behind it is not autonomous, and is governed by natural desires. Likewise, peace can be sought because of fear of being defeated in war, and as a result of deterrence, which is defined as "a state of mind brought about by the existence of a credible threat of unacceptable counteraction".[22] From this point of view, the violation of peace is prevented or inhibited because of fear of the consequences of war. The maxim behind this kind of peace is based on fear, which is a type of emotion, and not an absolute concept. The act of peace in this category cannot be moral from the Kantian perspective, because the maxim underlying it does not have a basis in this philosophy. From this viewpoint, the maxim behind a moral act should be a rational rule and absolute concept, while an emotional motive emanates from a relative concept, such as fear. In fact, Kant attempts to establish a morality based on a stable foundation that is independent of emotions.[23] Emotional motivations cannot produce sustainable peace, because they are based on

[21] Kant, '*Groundwork of the Metaphysics of Morals' (2003), pp.xiii, xv.*
[22] Dictionary of Modern Strategy and Tactics (Naval Institute Press, 2005)
[23] Immanuel Kant, '*Kant: The Metaphysics of Morals'* (Gregor M (ed & tr), CUP 1996) A:456, p.204; Lourdes Borges, 'Kant on emotions and Williams' criticism' (2013) 58 (1) Veritas, p.150.

relative concepts, such as happiness and fear which are not stable and absolute foundations.

The realist viewpoint defines peace as the consequence of fear, and considers deterrence a good strategy to secure peace.[24] However, the experience of the Cold War has proven that peace based on deterrence cannot be sustainable,[25] and equipping states with sophisticated armaments has not contributed to avoiding conflicts and violence.[26] For instance, once a state achieves access to sophisticated armaments, such as nuclear weapons, it can easily destroy its peaceful relations with others, because the only maxim behind its peaceful approach was its fear. As can be observed, peace may be based on different motivations, such as further ends; emotional motivations, including the sense of sympathy, the feeling of fear, etc.; however these types of peace are outside of the scope of Kantian morality, and their maxims cannot be accepted as the foundation of universal rules in this philosophy.

The third assumption considers act of peace based on the grounding maxim that states the following: "peace is supported because peace is an inherent right of peoples", or "peoples have an inherent right to live in peace". Accordingly, if it can be proven that peace is a right, it can be stated that peoples' right to peace obligates every dutiful person to not only support peace and settle conflicts peacefully, but also to avoid any action which may result in violence. It suggests that any action which undermines human dignity is inherently immoral, and that no form of violence can be accepted in this system. Therefore, as acts of violence are necessities of war, with these two being interrelated and indivisible, war diminishes the dignity of both the victim and the perpetrator.[27] This approach considers that, although, in light of international humanitarian law (*jus in bello*), there have been

[24] Allan, '*Measuring International Ethics: A moral scale of war, peace, justice, and global care*' (2010), p.108.
[25] Anim Langer and Graham K. Brown (eds), *Building Sustainable Peace: Timing and Sequencing of Post-Conflict Reconstruction and Peacebuilding* (OUP 2016), p.53.
[26] Frederick W. Haberman (ed), *Nobel Lectures in Peace 1951-1970* (World Scientific Publishing 1999), p. 84.
[27] Perry, Fernández and Puyana, 'The Right to Life in Peace: An Essential Condition for Realizing the Right to Health' (June 11, 2015),p. 153.

efforts to reduce the devastating consequences of war, violence is an undeniable aspect of any war in all eras. In other words, the absence of violence is the essential criterion by which to maintain dignity. Thus, any type of violation of peace or crime against peace destroys dignity. Given this assumption, the act of securing peace arises from a moral maxim, and is morally acceptable in the Kantian moral system. However, the accuracy of this claim should be rationally affirmed to make this maxim a universal law.[28]

Therefore, what is understood from the above analysis is that a motivation which is based on a maxim determines the morality of an act. Similarly, what gives functional value to material in a building is the plan or the arrangement of material which enables it to serve its characteristic function. Thus, what gives moral worth to the actions is the maxim behind the desire. [29] Therefore, if the maxim behind peace involves economic considerations, deterrence (due to fear), or achieving further ends, the form cannot fulfil the appropriate function, which, in this case, involves producing stable peace. This is because these maxims are not stable enough and strong enough to produce a firm structure, and they can be easily surpassed by an opposite maxim, whereas peace based on a strong maxim can achieve its principal purpose. This maxim can be assumed as a rule which identifies the right to peace as an undeniable and inherent right based on dignity that can realise perpetual peace.

4.1.2 The Impact of "Will" and the Motivation behind a Maxim on the Morality of an Action

At this juncture, the question which comes to mind is: how can "will" and "the motivation behind a maxim" play an effective role in defining the morality of an action? Kant considers "good will" as a purely good force in

[28] Kant, '*Groundwork of the Metaphysics of Morals' (2003),4:399-402, pp. xvi,xvii.*
[29] Stephen Engstrom and Jennifer Whiting (eds), *Aristotle, Kant, and the Stoics: Rethinking Happiness and Duty* (CUP 1998),p.218.

the world, because of the virtue which underlies it.[30] The innovative energy of "will" appears in the morality of an action.[31] In other words, the moral value of an action is not determined by its visible effects, but by inner energy, which is not directly touched,[32] but its effects flow in the phenomenal realm, and can be felt. According to Kant, actions are subject to the law of nature, and wills are subject to moral law.[33] Moral motivations are autonomous,[34] aimed at fulfilling the duty emanating from moral law. Good will produces moral action, which positively affects the world, and bad will produces immoral action, with disturbing impacts on the world. Therefore, the energy of the will is not eliminated, but only transforms from one form to another form.[35] In other words, will is the mediator between the virtual world and the physical world. It originates from the world of understanding, and is manifested in the world of sense, in the form of energy, and flows in the world. The only constant element in "will" is its original goodness or badness.

A "will", such as "inciting and fuelling wars in parts of the world", which emanates from the maxim which states that "exporting weaponry is a profitable trade", can produce the action of engaging in war, which destroys cities and results in displaced people full of hatred and a desire for revenge. The energy of this "will" flows in the world, in the form of terrorist activities pursued by those war-shattered people, and can return to states

[30] Kersting, '*Politics, freedom, and Order: Kant's political philosophy*' (1992),p.16.
[31] Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p. 70.*
[32] Kant categorises the human being's experiences within two realms: one is the phenomenal realm, involving appearances or nature, and is open to exploration. The other is the noumenal world, or the world of things-in-themselves and the reality as it is, apart from experience. Kersting, '*Politics, freedom, and Order: Kant's political philosophy*' (1992),p.16; Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005),p.70*;Kant, '*Groundwork of the Metaphysics of Morals*' *(2003),p.85.*
[33] Kant, '*Groundwork of the Metaphysics of Morals' (2003), pp.xxvii, xxix.*
[34] Ibid
[35] The principle of the conservation of energy in physics: the total energy of an isolated system remains constant—it is said to be conserved over time. Energy can neither be created nor destroyed; rather, it transforms from one form to another. Leon N. Cooper, '*Physics: Structure and Meaning'* (2nd (edn), University Press of New England 1992), p.110.

which engage in it, such as states which export armaments. [36] Conversely, a good will involves "adopting all measures to keep peace", and the maxim behind it, relating to "the fulfilment of the duty based on the law which necessitates providing a situation for peoples to live in peace as their inherent right", can help people to flourish in an atmosphere of peace. With the fulfilment of peaceful relations, human civilisation could be saved, and significant developments may take place,[37] so all of the world can benefit.[38] Therefore, wills produce the free-flowing energies that merely transform into different forms and are manifested in various shapes, but they do not vanish, and their original characters (good or bad) remain constant. Kant clarifies that a moral "will" is in conformity with a universal law.

At this juncture, a degree of ambiguity arises regarding the criteria which determine the goodness or badness of a "will". The questions which come to mind relates to "what makes a judgement acceptable in universal law", and "how an assumed judgement such as 'peace is a human right' can be analytically examined in terms of the standards of a universal law". To this end, it is crucial to know how the correctness and the legitimacy of a maxim can be assessed.

4.1.3 "The Right to Peace" within the Framework of the "Universal Principle of Right"

According to Kant, if a maxim that is behind an autonomous motivation can pass the categorical imperative test, it can be a universal law. However, if the maxim fails, not only the maxim and the produced action should be rejected, but also, in some cases, the opposite of that particular action should

[36] The negative energy of bad will is comparable to the energy of the destructive flames of a forest fire that burns everything in its path, and, for instance terrorists can be assumed as bearers of this kind of energy.

[37] Patrícia Vieira, 'Trading Our Way out of War: Perpetual Peace without Politics' (September 1, 2018) 116 Revista Crítica de Ciências Sociais, p. 6.

[38] The positive energy of that good will flows in the world and progresses anything related to it, just as the sun's energy nourishes plants.

be performed.[39] It can be understood that, not only there is not a right to do that action, but also there is a duty to adopt the opposite measure. Hence, the act of securing peace as a result of heteronymous motivation, such as coercion, feeling sympathy or deterrence, cannot be a moral action, from Kant's perspective. The question is whether the "right to peace" can be described as a categorical imperative. To this end, Kant's methodology of distinguishing the correctness of a judgement is applied to the phrase "living in peace is a human right".

In order to analyse the judgement "living in peace is a human right", it is broken into two parts: "Living in peace" and "Peace is a human right". At the outset, the first part of the judgement is analysed. To this end, two concepts of "living in peace" and "living in war" are analysed. Literally, what is understood from the word "live" is "to be alive; have life"; and the word "life" refers to "the quality that distinguishes a vital and functional being from a dead body",[40] and, essential requirements are required for being alive; otherwise, life is constantly threatened. Meanwhile, war is defined as "a state or period of fighting between countries or groups", and to fight means "to use weapons or physical force to try to hurt someone, to defeat an enemy, etc. to struggle in battle or physical combat".[41] It is understood by this definition that war is against the expected function of living, because war is accompanied by fear, insecurity, and the possibility of death, which is the opposite of life.[42] Thus, it can be concluded that living in a state of war cannot be a categorical imperative and cannot be acceptable as a universal law in a teleological structure of natural law.[43] Thus, the opposite action, which is living in peace, should be rationally affirmed.

The next step is to consider the second part of the judgement, which is "peace is a human right". The idea of human rights is not derived lexically

[39] Kant, '*Groundwork of the Metaphysics of Morals' (2003). p.xix*;Paton, '*The Categorical Imperative: A Study in Kant's Moral Philosophy' (1971), p.163.*
[40] Merriam-Webster's Collegiate Dictionary (Merriam-Webster, Incorporated, 2004)
[41] Ibid
[42] See William A Schabas, '*War Crimes and Human Rights: Essays on the Death Penalty, Justice, and Accountability*' (Cameron May Ltd 2008), p. 9.
[43] See the example of false promise in Kant, '*Groundwork of the Metaphysics of Morals' (2003),p.xix.*

from the meaning of peace. Therefore, the truth of this claim is not analytically provable, and it should be a synthetic distinction. How the truth of this judgement is to be distinguished should be identified, whether by reasoning or by experience. In response, obviously, it cannot be based on experience, because, thus far, peace has not been employed as a right in social and legal systems. Thus, this feature articulates something new about its subject (a synthetic judgment), not based on experience, but based on reasoning (a priori). In fact, it articulates the way peace ought to be.

In order to assess a claim regarding whether the right to peace has the capacity to reach the threshold of being a universal law, it should be scrutinised through the categorical imperative lens. Based on the formula of universal law, "I ought never to act except in such a way that I can also will my maxim should become a universal law" .[44] Provided that it is recognised as a categorical imperative, such a universal law can form the basis which recognises peace as a right for the human being. Hence, if the claim "peace is a right" can be a categorical imperative, any decision to wage war would fall outside the scope of morality, and any war for any purpose cannot be justified, without any excuse. This is because Kant distinguishes the categorical imperative as an unconditional moral duty which is obligatory under all circumstances, and is independent of an individual's tendency or intention. [45] Therefore, the right to peace is analysed in relation to two aspects:

1- Is it "the practical necessity of a possible action as means to something else that is willed"? [46] or
2- is it an imperative based on reason alone that is "objectively necessary by itself without reference to another end"? [47]

In response, the right to peace is assessed in terms of un-conditionality, and the reasons underlying the right to peace are analysed. First, this right is

[44] Thomas E Hill, 'A Kantian Perspective on Moral Rules' (1992) 6 Philosophical Perspectives, p.290.See ;Kant, '*Groundwork of the Metaphysics of Morals' (2003), p.70.*
[45] Kant, '*Groundwork of the Metaphysics of Morals' (2003).p.xvii.*
[46] Immanuel Kant, '*Fundamental Principles of the Metaphysics of Morals'* (Kingsmill Abbott T (tr), Dover Publications, Inc. 2012),p.31.
[47] Ibid

considered under a religious law that might state, "God gives people the right to peace" or "Recognise the right to peace in order to obey God". This maxim originates from a conditional obligation and a hypothetical imperative. In this case, a person who does not aim to obey God, or does not believe in God, can refute the right to peace. Thus, such a maxim cannot be accepted by all and cannot be rationally considered a universal law, because un-conditionality is the criterion which gives a maxim the characteristic of being a universal law. Second, peace is considered based on the maxim "Every human being has the inherent right to live in peace, and this right must not be violated under any circumstances". This maxim is examined in terms of un-conditionality, being a categorical imperative, and having the capacity to be a universal law. To make a judgement become a categorical imperative, there should be an independent reason that is objectively necessary in itself apart from its relation to a further end. At this stage, the reason behind the assumed judgement should be explored from the Kantian perspective. It is understood from Kant's thoughts that he resorts to a reason to justify peace as an objective necessity. According to him, "there shall be no war, either between individual human beings in the state of nature, or between separate states, which, although internally law-governed, still live in a lawless condition in their external relationships with one another. For, war is not the way in which anyone should pursue his rights".[48] As can be observed, peace, in the Kantian approach, has a self-sufficient reason, and therefore, it can be described as a categorical imperative, and, it should be a right to peace.

On the other hand, as Davies discusses, "[a] legal right cannot be grounded in the Categorical Imperative because it cannot be employed to evaluate the appropriate behaviour. Similarly, it is very difficult to see how enforcement could be justified by the Categorical Imperative. This is because enforcement must be justified by appeal to external behaviour, but the Categorical Imperative makes no such appeal."[49] To solve this dilemma, Kant's formulation of the Universal Principle of Right can be of use.

[48] Kant, '*Kant Political Writings' (2012), p.174.*

[49] Luke J. Davies, '*A Kantian Defense to the Right to Health Care*' in Andreas Follesdal and Reidar Maliks (eds), '*Kantian Theory and Human Rights'* (Routledge, 2014), p.82.

Accordingly, "every action which by itself or by its maxim enables the freedom of each individual's will to co-exist with the freedom of everyone else in accordance with a universal law is right". [50] Thus, three main elements can be identified in Kant's explanation of "righteousness": first, the freedom of every individual's will; second, the co-existence of freedoms; third, conformity with a universal law. The absence of each pillar increases the likelihood that an action is morally incorrect. In this system, Kant identifies only one innate right which is independent of any law to be established and which belongs to everyone by virtue of his/her humanity, namely "freedom". [51] From this point of view, a fundamental freedom (e.g. freedom from fear) is an innate right. Thus, if peace is considered to be non-violence and the "right to peace" to be "freedom from fear of violence", or "freedom from fear of aggression" in a restricted interpretation, [52] it can be an innate right which belongs to everyone by virtue of his/her humanity. [53] The content of human rights, from Kant's perspective, is in conformity with the Universal Principle of Right.[54] Therefore, if the right to peace can be in accordance with the Universal Principle of Right, it can be located within the contents of human rights.

Kant's explanation of "The Universal Principle of Right" can be analysed from two angles: from the perspectives of duty-bearers and right holders. First, the duty-bearer's outlook determines that individuals are obliged to act according to a framework which considers and respects others' freedoms (e.g. freedom from fear). In addition, the action should be in accordance with a universal law. Second, from right holder's view, it articulates that individuals are entitled to engage in actions that can be classified as "The Universal Principle of Right". Therefore, there should be a right (an entitlement) to any action that is right (correct) in Kant's perspective, and there should be a freedom to do any right action in Kant's framework,

[50] Kant, '*Kant Political Writings' (2012), p.133.*
[51] Kant, '*Kant: The Metaphysics of Morals' (1996), p. 30.*
[52] Franklin D. Roosevelt's 'Four Freedoms Speech': Annual Message to Congress on the State of the Union (January 06, 1941) Franklin D. Roosevelt Presidential Library, http://docs.fdrlibrary.marist.edu/od4freed.html
[53] Kant, '*Kant Political Writings' (2012), p.132*; Mulholland, '*Kant's System of Rights' (1990),p.4. qouted in Griffin, 'On Human Rights' (2008), pp. 61-63.*
[54] Griffin, '*On Human Rights' (2008), p.3.*

providing the coexistence of others' freedoms and accordance with a universal law.[55] Accordingly, "individual freedoms" which are coexistent with others' freedoms and are in conformity with a universal law are inherent rights due to the virtue of humanity, because he recognises freedom as the one inherent right that is self-regulating and belongs to everyone by virtue of having humanity.[56]

Thus, inherent rights arise from the virtue of being human; then, as the consequence, there would be an obligation to respect those rights. To this end, duties are defined and imposed upon society to protect those inherent rights, because rights and duties are rationally in a reciprocal relationship.[57] As a result, everyone should enjoy individual moral freedoms as inherent rights, and society cannot ban him/her achieving his/her moral freedoms. Hence, if an action can be proven to satisfy the three pillars in Kant's description of the Universal Principle of Right, it is not only a moral act; but also, there is a right to do it. As a result, an individual needs to convince society that his/her desirable situation which emerges from free will is in conformity with others' freedoms, and is also acceptable as a universal law. Hence, s/he can expect that society is obliged to protect him/her in order to attain that desired status. Accordingly, the act of peace is analysed based on the formula for the Universal Principle of Right as follows:

1- The rational being logically chooses peace. Thus, peace is not because of fear, sympathy, or as a means to further end, but it is willed autonomously based on a reason that says rights cannot be pursued by war.
2- Peace cannot be in conflict with others' freedoms, because rationally peaceful life should not disturb others' freedoms. Additionally, peace-violation or violence undoubtedly cannot coexist with rational people's freedoms.
3- Peace is not only in conformity with a universal law, but it also constitutes the aim of universal law. As a result, the violation of

[55] Kant, '*Kant Political Writings' (2012), p.132.*
[56] Ibid. p.133.
[57] Paul Guyer, '*Kant*' (2nd (edn), Routledge 2014), p.307.

> peace not only should be avoided, but also, the opposite action, that is the maintenance of peace, must be adopted.

Thus, peace meets the three prerequisites for the Universal Principle of Right, and consequently, it can be the basis of a right, and there can be a right to it, which is the right to peace. The right to peace which is a self-sufficient right is in accordance with the Universal Principle of Right, so it has the capacity to be the basis of a human right. As it can be understood, the formula of Universal Law and the Universal Principle of Right are both involved with universality on the subject of freedom. However, it should be borne in mind that, the Universal Principle of Right determines a system of external freedom and legal right.[58] Considering the above discussion, it appears that the right to peace has the capacity to be considered a legal right.

4.1.4 The Normative Basis of the Right to Peace in Kant's Philosophy

This section studies the benchmark that determines the borders of entitlements and the domain of duties that would be imposed upon society by the right to peace in the Kantian philosophy. To this purpose, the determining system in regard to the phrases "ought to do" and "ought to be" in this philosophy is clarified. Dignity, as the outcome of being capable of morality, makes the human being capable of imposing rules on him/herself and of subsequently imposing rules on the world. In fact, dignity is not only a reason for having respect in terms of avoiding any kind of insulting treatment, degradation or hatred,[59] but is also the groundwork for rights and duties which are normally correlated. [60] Rosen states that "dignity is central to modern human rights discourse, the closest that we have to an internationally accepted framework for the normative regulation of political life, and it is embedded in numerous constitutions, international conventions,

[58] Davies, '*A Kantian Defense to the Right to Health Care*' (2014), p.82.
[59] Rosen, '*Dignity: Its History and Meaning' (2012).p.129.*
[60] Ibid.pp.147, 148,152.

and declarations".[61] Therefore, in the evaluation of "the right to peace", regarding its framework and its normative bases, the conception of dignity and its relation to "peace" should be considered.

Kant defines a kingdom of ends that allows human beings to formulate universal laws through their maxims, as legislative citizens. The kingdom of ends can be conceived as a type of democratic republic (a systematic union of rational beings through common laws) which is created of autonomous citizens.[62] Dignity is the governing regime affecting the relationship between components in the kingdom of ends. In a state of rights, human beings consciously and willingly abandon their unmanaged freedom to achieve entire freedom. Everybody's freedom should coexist with others' freedoms, and should also be in accordance with universal law. This rule governs both national and international systems of rights due to the existing interconnection between internal political rights and international political rights, and thus, any deficiency in each structure, especially regarding external freedom, can tend to damage the whole system, and ultimately lead to its collapse.[63] Considering all the criteria of this structure, it is worth examining whether there is a space for the right to peace in this system. To this end, the foundation of rights and duties in Kant's philosophy is briefly reviewed, and peace (and the right to peace), are located in this formulation as follows:

As it was discussed, rational beings constitute the components of the kingdom of ends. These rational beings deduce that violence is not the proper way to achieve rights. Therefore, if there is a natural tendency towards violence, this inclination can be restrained. Accordingly, a rational free choice is based on a maxim which articulates that "war cannot fulfil rights".[64] In such a systematic union, these legislative citizens enact universal rules based on dignity, and impose them on the world. Hence, in this step, the maxim which states that "war cannot resolve problems" or

[61] Ibid,p.2.
[62] Kant, '*Groundwork of the Metaphysics of Morals' (2003).p.xxv.*
[63] Kant, '*The Metaphysics of Morals*' (2003). pp.137-140.
[64] Kant, '*Kant Political Writings' (2012),p.174.*

"war cannot fulfil rights" will be considered to be a universal law. As a result, freedom from fear of war or the right to peace that is coexistent with others' freedoms and is in conformity with a universal law can be encompassed by the formula of the Universal Principle of Right.

Furthermore, every component in the kingdom of ends is considered as an end both in national and international dimensions, and the relationships between different components of the kingdom of ends are regulated by dignity. Dignity does not let these components engage in hostile relations, as this kind of relationship is far from their rationality and dignity, and violence diminishes the dignity of both perpetrator and victim. As in the kingdom of ends, relationships are regulated based on dignity, one of the outcomes of this rule is the right for all to live in peace. From this point of view, peace is not assessed in terms of its benefit for humanity (like the utilitarian view), but it is evaluated in terms of the duty which a rational being has with regard to humanity (e.g. acting peacefully or contributing to the maintenance of peace). In other words, the inner dignity of rational beings prohibits their society from becoming involved in violence. These dignified human beings seek peaceful mechanisms to deal with problems. Therefore, the maxim "act based on peaceful manners as people must live in peace" can be imposed by these legislative citizens on the world. Such maxims impose duty on all the components of the kingdom of ends, and this consequently creates rights for them to live in peace.

As can be understood, dignity, personhood, duty and rights are correlated ideas. Accordingly, when we think of a human being, we should consider him/her as the possessor of dignity who should be able to claim his or her rights. A person who is denied his or her rights and cannot claim them is far from self-respect and human dignity.[65] From this point of view, the recognition of the dignity of the human being necessitates the recognition of rights which guarantee his/her dignity, such as the recognition of the right to peace. Moreover, as dignity cannot be maintained in violence, it necessitates the development of a situation which includes obligatory measures to

[65] Joel Feinberg and Jan Narveson, 'The Nature and Value of Rights' (1970) 4 (4) J Value Inquiry, p. 244.

maintain peace and also the "prosecution of peace-violators or aggressors", which is still a problematic issue in international criminal law. Hence, the right to peace can be defined alongside dignity in the system of rights as a condition which governs the relationships between components, both at national and international levels.

4.1.5 Enforceability of the Right to Peace

In order to implement the right to peace, it should move from the realm of ethics and enter into the realm of law, which is determined by external demands. This transition needs institutional affirmation through national and international law instruments. To this end, the right to peace must be constitutionally recognised as involving "public rights". Kant defines public rights as "the sum total of those laws which require to be made universally public in order to produce a state of right. It is therefore a system of laws for a people, i.e. an aggregate of human beings [political right], or for an aggregate of peoples [international law]."[66]

The modern human rights system has activated many potential entitlements which have roots in the dignity of humanity. Moral rights have been gradually recognised and protected by the law through institutional procedures. The potential innate rights that are still in the realm of ethics, such as the right to peace, should satisfy the criteria of claimable rights. The protection of human dignity necessitates the protection of fundamental freedoms and human rights. This logic is the governing principle underlying modern human rights documents.[67] Moral reasoning establishes a human rights structure, and institutional mechanisms, such as treaties, facilitate the implementation of the contents of that structure.[68] Therefore, an institutional mechanism such as a treaty is required to recognise and implement the right to peace.

[66] Kant, '*The Metaphysics of Morals*' (2003),p.136.
[67] Universal Declaration of Human Rights (UDHR 1948), Preamble; Charter of the United Nations (1945), Preamble
[68] Tasioulas, '*The Moral Reality of Human Rights*' (2007), p.76.

A problematic point concerns the mechanism through which such a right can be enforced. Kant identifies coercion by authority as an essential means to guarantee the enforcement of individuals' rights. Coercion limits freedoms to the framework of coexistence with others' freedoms rather than conflict.[69] An ideal authority does not allow anybody to fulfil his or her freedom if it disturbs others' freedoms. Additionally, freedoms which are not in accordance with the Universal Principle of Right are prohibited by that authority. Kant concludes the necessary coercion to enforce rights based on the law of contradiction. Accordingly, although compulsion seems to be in conflict with freedom, the authority can force anybody to respect rights, because, based on the law of contradiction, that law applies as a hindrance to a hindrance to freedom.[70] In the case of the right to peace, it can be observed that anything which may hinder (e.g. freedom from fear of aggression) should be hindered (a hindrance to a hindrance to freedom), and this method can be used to make peace practical. Therefore, it should be a mechanism which prohibits any measure which can tend toward the violation of peace. From this point of view, states should act based on a universal formulation which keeps them in a peaceful relationship to ensure the right of all nations to peace. Thus, policies should be adjusted to ensure the right to peace and fundamental freedom from fear; as Kant asserts, "rights ought never to be adapted to politics, but politics always to be adapted to rights".[71] These policies contain Kant's six preliminary articles illustrated the negative conditions of a state of peace among states, as preconditions of the realisation of perpetual peace,[72] including transparency in contracts, respect for the integrity of states, disarmament, no budget allocation for hostility, no forceful interference, Consideration of ethical and legal principles during self-defence war.[73] Additionally, Kant facilitates peace to become a legal right, by elaborating three definitive articles which establish an appropriate system that can realise perpetual peace.[74]

[69] Kant, '*Kant Political Writings' (2012).p.134.*
[70] Ibid
[71] Ibid,p.21.
[72] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004),p.9.
[73] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003),pp.93-97..
[74] Ibid,pp.99-105.

Accordingly, states should be organised internally according to republican principles, they should be organised externally into a free federation that supports and promotes peace, and they must respect the human rights not only of their own citizens, but also of foreigners according to universal hospitality.[75] This formula does not merely present a theoretical framework of the right to peace, but also it provides empirical mechanisms to realise a right to perpetual peace. [76] To this end, international law instruments, such as treaties and treaty bodies are required to facilitate the recognition and implementation of this legal right.[77]

4.2 The Utilitarian Perspective upon the Right to Peace

This section explores the basis of the right to peace in the utilitarian philosophy, considering the influence of this model of thought on some international political bodies, such as the UN Security Council, which play a crucial role in the global maintenance of peace.[78] At the outset, in order to ensure a systematic approach, the conception of righteousness in this system and the prerequisites for being a right are discussed. Utilitarianism assesses the moral quality of an action by measuring its direct or indirect consequences on pleasure and pain, and accordingly, there is a moral duty to maximise happiness.[79] In measuring the value of any pleasurable experience, three key criteria are considered: the duration of the experience and the intensity of the pleasure, and the nature of pleasure in a moral action which should be compatible with the principle of utility.[80] Utilitarianism presents a test to evaluate pleasures, and, accordingly, "one pleasure is of higher quality than another if and only if most people who have experienced both pleasures always prefer the first to the second regardless of their respective

[75] Kleingeld, '*Kant's Theory of Peace*' (2006),p.477.
[76] The Metaphysics of Moral In: Kant, '*Kant Political Writings' (2012), p. 172.*
[77] Tasioulas, '*The Moral Reality of Human Rights*' (2007), p.76.
[78] Boyle, '*World Politics and International Law' (1985), p.125.*
[79] Mill, '*Utilitarianism' (1998), pp.5-8.*
[80] Ibid. pp.13-14.

quantities".[81] Additionally, when a society morally accepts a value, and defends people's possession of it, either by the force of law or by public opinion, there will be a right to that value.[82] Hence, a utilitarian society supports anything as a right which is compatible with utilitarianism's values. At this juncture, considering the conceptions of righteousness and rights in this model of thought, it is necessary to examine whether the right to peace can have any basis in this philosophy or not.

It can be questioned whether the right which is applied in the term "right to peace" can be framed in the utilitarian framework and whether peace is truly of the highest value from this viewpoint. In a utilitarian test to assess righteousness, it can be evaluated whether the lack of peace in a few parts of the world can increase the happiness of the rest of the world. The result of such assessment can determine whether a utilitarian society can support a claim to live in peace as an aspect of justice or not. It may seem that, in particular circumstances which the expected utility of war is superior to the expected utility of remaining at peace, peace may not be supported by such a society as an intrinsic value. In contrast, if peace can be justified as a righteous approach, it can attain the necessary support from society. To reach a rational conclusion, it should be evaluated whether some parts of the world can truly be happier as a result of the lack of peace in other parts. If it can be proven that nobody in the world can be excluded from the devastating consequences of war, utilitarianism will accept "peace" as an intrinsic value that should allow a right to it.

4.2.1 The Right to Peace within the Utilitarian Formula

In order to explore the position of the right to peace within utilitarianism, it should be clarified whether peace is a moral value in this philosophy to serve as a ground for a right. Utilitarianism evaluates the morality of an action at the mercy of its predictable consequences, its capacity to produce

[81] Troy L Booher, 'JS Mill's Test for Higher Pleasure' (December, 2007) Studies in the History of Ethics (SHE), p.1.
[82] Mill, '*Collected Works: Essays on Ethics, Religion and Society' (1996), p.250.*

maximum pleasure and its utility.[83] From this perspective, war can be categorised as a wrong action, because it naturally brings suffering, pain and ruin. On the contrary, utilitarianism, seeks a large ratio of pleasure to pain, as in the example provided by Mill regarding a medical operation.[84] From this viewpoint, it can be observed that, although war brings ruin, pain and grief, some of its consequences can be positive and consistent with the principle of utility. Accordingly, as war can produce money for weaponry manufacturers and ultimately aid the economy of states which produce and export armaments, it may be morally justified. In addition, in some cases, wars might even bring justice, security, stability, creativity and unity.[85] Thus, considering the consequences of war that may generally bring more pleasure than pain, waging a war can be categorised as right and a moral action.[86]

Furthermore, utilitarianism considers the act of maximising utility for all agents (agent-neutral theory).[87] From this perspective, it can be understood that, if a war benefits a vast proportion of the world's population, it will be a moral action. For instance, a war on terror which can facilitate security for a large part of the world is a moral action, as this war is waged on a limited part of the world, to enable a desirable achievement for a vaster population. In other words, the pleasure of the maximum number of peoples is weighed against the suffering of a few nations engaging in a war. Based on this view, many violations of peace can be justified, because the pleasure which is supposed to be gained overweighs the pain produced by wars. However, a crucial question that remains unanswered concerns how different types of benefits of an action for different people should be weighed against one another. It is also worth considering what scale to measure the amount of achieved pleasure and suffering should be used and whether these analyses should be quantitative or qualitative.

[83] Mill, '*Utilitarianism' (1998). pp.13-14.*
[84] Ibid
[85] See: Walzer, '*Just and Unjust Wars: A Moral Argument with Historical Illustrations' (2015), p.21.*
[86] Rosen, '*Dignity: Its History and Meaning' (2012), p.131*; Mill, '*Utilitarianism' (1998), pp.16-18.*
[87] Mill, '*Utilitarianism' (1998), pp.14, 28, 120.*

Mill considers both quality and quantity[88] to evaluate pleasures, and he compares two pleasures based on "how most people who have experienced both pleasures always prefer the first to the second regardless of their respective quantities".[89] Therefore, a value such as peace can be assessed by determining the preference of most people who have experienced peace and war, while the quantity of people is a variable factor. In fact, pleasure, which constitutes the main pillar of Mill's philosophy, is a relative concept, and also is based on variables: the quantity or the number of people who prefer a quality.

On the other hand, it has been observed over history that, under certain circumstances, some people who have experienced both living in war and living in peace have preferred living in war, finding it more enjoyable due to some particular viewpoints or brainwashing.[90] The question which comes to mind is whether war really produces a higher level of pleasure. For instance, during eight-year war between Iran and Iraq (1980-1988), state propaganda encouraged people to go to war. Young people were taught that they would find spiritual pleasure in war, even they might be killed.[91] Similar propaganda to encourage people to join the military also occurred during World War II,[92] and it is currently being employed by the terrorist non-state group *Da'esh*.[93] UN studies have shown that a considerable number of people have joined *Da'esh*, as they have found the battlefield to be a place of pleasure, because of its excitement, regardless of its destructive consequences.[94] Additionally, money laundering and corruption as a result of chaos during wars can be profitable for some people, and they find the

[88] Huei-chun Su, '*Economic Justice and Liberty: The Social Philosophy in John Stuart Mill's Utilitarianism*' (Routledge 2013), p.68.
[89] Booher, 'JS Mill's Test for Higher Pleasure' (December, 2007),p.1.
[90] Afshin Molavi, '*The Soul of Iran: A Nation's Struggle for Freedom*' (W. W. Norton & Company Ltd 2005), p.265; Olivier Roy, 'Who Are the New Jihadis?' *The Guardian* (April 13, 2017)
[91] Shahram Khosravi, '*Precarious Lives: Waiting and Hope in Iran*' (University of Pennsylvania Press 2017), p. 31.
[92] Anthony Rhodes, '*Propaganda: The Art of Persuasion, World War II*' (Margolin V (ed), Wellfleet Press 1987), p.22.
[93] Bruce Lawrence (ed), *Messages to the World: The Statements of Osama Bin Laden* (Howarth J (tr), Verso 2005), pp. 95-99.
[94] Oliver Roy, '*Jihad and Death: The Global Appeal of Islamic State*' (Schoch, C (tr), OUP 2017), p. 67.

consequences of wars to be pleasurable.[95] The question which must be asked is, if most people who have experienced both situations would hypothetically prefer war to peace, whether living in war is reasonably a higher pleasure. For example, some ideologies which spread hatred and violence, such as the *Da'esh* ideology, teach their followers that killing and being killed are spiritual pleasures.[96] The question is whether killing can be really a higher pleasure.

4.2.2 Evaluation of the Moral Quality of Peace in Comparison to War

To evaluate the moral quality of peace and war for utilitarian purposes, the pleasure and grief produced by these two conditions are briefly examined. The study analyses the material and non-material impacts imposed by conflicts on the international community, addressing the benefit gained from waging war for armament exporter states and the benefit of some wars, such as the War on Terror, for international security. In this way, the environmental consequences of wars, alongside humanitarian losses, are examined to compare the pleasure and grief produced by war and peace from a wide-ranging perspective. To this purpose, the research employs a combination of existing quantitative and qualitative evaluations of the consequences of wars and conflicts in relation to the pleasure of the world's population. This study refers to relevant statistics provided by the *Stockholm International Peace Research Institute (SIPRI),* [97] the *Institute for Economics and Peace (IEP)* [98] and the U*nited Nations Environment*

[95] Dina Siegel, Henk Bunt and Damian Zaitch (eds), *Global Organized Crime: Trends and Developments* (Springer Science & Business Media 2003), p.47.
[96] According to Osama bin Laden, "happy are those who are martyred".Lawrence (ed), 'Messages to the World' (2005), p.129.
[97] 'SIPRI Yearbook' (2016);SIPRI, 'Armaments, Disarmament and International Security' (2018) SIPRI Yearbook 2018, OUP
[98] IEP, Global Peace Index 2015: Measuring Peace, its Causes and its Economic Value (Institute for Economics and Peace, 2015) ;IEP, Global Peace Index 2016: Ten Years of Measuring Peace (Institute for Economics and Peace, 2016) ;IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017) ;IEP, Global Peace Index 2018: Measuring Peace in a Complex World (Institute for Economics and Peace, 2018)

Programme (UNEP) Frontiers Report,[99] aiming to produce a glimpse into the existing data on the weight of pleasure produced by peace against the pleasure produced by war. In order to evaluate the total economic impact of war (as a sub-category of violence), three categories of elements are considered: First, "direct costs" of violence or direct expenditures of violence to the victim, the perpetrator, and the government such as the cost of policing. Second, "indirect costs" incur after violence including economic losses, physical, and mental trauma to the victim. Third, "the multiplier effect" or the flow-on consequences of direct expenditures, such as additional economic benefits that would come from investment in educational or social development in preference to engaging with violence.[100]

It is undeniable that the First and Second World Wars of the modern era caused widespread bloodshed and catastrophe beyond the loss of life in the battlefield.[101] It is not possible to assess the grief experienced by civilians who were emotionally and mentally affected, and those who were abandoned with severe psychological trauma following the effects of war, namely the loss of beloved members of their families, in addition to the loss of shelter, and so on. The question which comes to mind is whether World War I, or the so-called "war to end all wars",[102] and its subsequent catastrophic consequences were truly worth the cost of the war. To what extent is it logically possible to terminate "all wars" by fuelling "war" (WWI)? The grief associated with two World Wars (WWI and WWII) is not limited to the people who were killed during these wars, but also involves casualties who suffered for many years following the wars.[103] A study involving Holocaust survivors has proven that the catastrophic effects of the Holocaust have persisted even to this day, and that the trauma has been

[99] UNEP, The United Nations Environment Programme Frontiers 2016 Report: Emerging Issues of Environmental Concern (UNEP, 2016)
[100] IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017), p.57.
[101] See William D. Rubinstein, '*Twentieth-Century Britain: A Political History*' (Palgrave Macmillan 2003), pp. 71, 81.
[102] Russell Freedman, '*The War to End All Wars: World War I*' (Clarion Books 2010), p.9.
[103] *World War II, A Political and Diplomatic History of the Modern World Series (Encyclopaedia Britannica, 2016)*, Introduction.

passed on through the generations.[104] Despite the formation of the UN Foundation (in 1945) to maintain international peace and security following the Second World War, wars and conflicts continued all over the world, with irreparable damage.[105]

Following the 11 September 2001 terrorist attack on New York, the US invaded Afghanistan (2001), hoping to find and prosecute the perpetrators of that terrorist attack, and subsequently, in 2003, Iraq was invaded, hoping to eliminate the imminent threat of Saddam Hussein's weapons of mass destruction and defeat terrorism. The outcome of these invasions is two ruined countries that are still suffering from a lack of peace and in need of billions dollars to develop. Therefore, the product of conflicts is a post-conflict generation which is displaced, abandoned, uneducated, [106] living in poverty and engaging in criminality, with easy access to light weapons, overwhelmed by extremist thoughts and full of a sense of hatred and a desire for revenge.[107] The question is whether the rest of the world can be immune to the consequences of such desperation and hate. Similar tragedies have occurred in Libya following the US and Britain invasions as counter-terrorism measures. The international community asks whether the US and the UK counter-terrorism strategies and the Security Council's reaction have truly been productive even from a utilitarian perspective. In order to respond, the report by the Foreign Affairs Committee (The UK House of Commons) on Libya: Examination of Intervention and Collapse and the UK's Future Policy Options can be used which revealed the failure of Britain's strategy in Libya and determined that, not only did Britain's policy fail to control the civil war, but also provided the groundwork for *Da'esh*'s presence.[108]

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[104] Rachel Yehuda and others, 'Holocaust Exposure Induced Intergenerational Effects on FKBP5 Methylation' (September 1, 2016) 80 (5) Biological Psychiatry, p. 372.

[105] Benjamin E. Goldsmith and Jurgen Brauer (eds), *Economics of War and Peace: Economic, Legal and Political Perspectives* (Emerald Group Publishing 2010),p.71.

[106] See UN 'Goal 16: Promote just, peaceful and inclusive societies' (<http://www.un.org/sustainabledevelopment/peace-justice/> Accessed February 05, 2018, Accessed on 24August2017

[107] Roche, '*The Human Right to Peace' (2003), pp.35-36.*

[108] The Foreign Affairs Committee, Libya: Examination of intervention and collapse and the UK's future policy options, Third Report of Session 2016–17 (House of Commons, Foreign Affairs Committee, September 14, 2016) ;Security Council Press Statement on Libya (September 07, 2018) United Nations Support Mission in Libya (UNSMIL)

It is obvious that the problem is not restricted to military personnel, who are killed in wars, but also civilians who become involved in wars and conflicts, especially children and women, who are particularly more vulnerable. It is not clear how we can access reliable statistics in relation to children who are killed, orphaned, maimed, disabled, or are forcibly displaced, [109] or die due to lack of access to uncontaminated water and medicine, as a result of wars.[110] Furthermore, it is not possible to measure the grief of women who are abducted, trafficked and raped during wars, being left with severe psychological trauma which may persist many years later. In this regard, it can be mentioned to Yazidi women who have been rescued from *Da'esh* are continuing to struggle with the unbearable trauma caused by enduring and witnessing extreme violence and sexual abuse.[111]

According to the *Global Peace Index (GPI) Report*, "[t]he economic impact of violence on the global economy was $14.3 trillion in 2016, in constant purchasing power parity [PPP] terms. This is equivalent to 12.6 per cent of world gross domestic product (i.e. global GDP) or $1,953 per person."[112] The question is to what extent these wars produce pleasure, and for whom. In order to answer this question, the statistics and analysis provided by the *Stockholm International Peace Research Institute (SIPRI)* are noteworthy. Accordingly: "World military expenditure was estimated at $1776 billion in 2014, representing 2.3 per cent of global gross domestic product or $245 per person." [113] War has been unquestionably profitable for the arms industry,[114] but how can this profit be weighed against the cost of the losses incurred by those armaments? From a utilitarian viewpoint, it might seem

[109] UNICEF 'More than 28 million children 'uprooted' by conflict and face further dangers ' (September 06, 2016) <http://www.un.org/apps/news/story.asp?NewsID=54865#.V8_78zWaO9Z> Accessed February 10, 2018Accessed on 23 August 2017

[110] See ICRC 'Yemen: War in the Time of Cholera' (August 16, 2017) <https://www.icrc.org/en/document/yemen-war-time-cholera> Accessed November 14, 2017

[111] David Rising, 'Raped and tortured by IS, Yazidi women recover in Germany ' *Associated Press (AP)* (Germany August 24, 2016)Accessed on 23 August 2017

[112] IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017), p.58.

[113] SIPRI, 'Armaments, Disarmament and International Security' (2015) SIPRI Yearbook 2015, OUP,p.337.

[114] Michael Edward Brown (ed), *The International Dimensions of Internal Conflict* (The MIT Press 1996), p.245.

that expanding wars in some parts of the world would aid the economy in other parts, or may control the growing population of the world or bring security in the case of a war on terror. According to SIPRI, 58 countries have been major exporters of armaments between 2011 and 2015. "The 5 largest suppliers of arms during that period – the USA, Russia, China, France and Germany – were responsible for 74 per cent of all arms exports."[115] It is worth mentioning that four out of the five biggest exporters of armaments in this report are permanent members of the Security Council: China, France, Russia and the United States. These countries, which possess veto powers and have economies which partly rely on the armaments industry, should make decisions regarding the maintenance of international peace and security under Chapter 7 of the UN Charter. In fact, as Paupp explains, great powers have directly or indirectly engaged in wars and conflicts as the most efficient way of enabling economic growth, because economics, the military and technology are considered pillars of development. As a result, some values, such as peace, have had to be sacrificed and ignored as part of this development process. In the meantime, other nations have been involved in the endless investment in weapons as part of their deterrence policies to survive.[116]

It should be borne in mind that those states that assumed war as a means to grow their economy will shoulder the burden of the toll of conflict. [117] Refugees who have suffered trauma and mental illness due to living in wars will form part of the developed countries' population.[118] This trauma can be conveyed to the next generation, and nobody will be excluded from its

[115] SIPRI Fact Sheet: Trends in International Arms Transfers (Stockholm International Peace Research Institute, 2016),p.2.
[116] Paupp, '*Redefining Human Rights in the Struggle for Peace and Development' (2014).p.38*;SIPRI Fact Sheet: Trends in International Arms Transfers (Stockholm International Peace Research Institute, 2016), p.4.
[117] Joshua Kurlantzick, '*A Great Place to Have a War: America in Laos and the Birth of a Military CIA'* (Simon & Schuster 2017), p.240; Amy Sawitta Lefevre and Roberta Rampton, 'U.S. gives Laos extra $90 million to help clear unexploded ordnance' *Reuters* (September 06,2016)
[118]Rising, 'Raped and tortured by IS, Yazidi women recover in Germany ' Associated Press (AP) (August 24, 2016) Accessed on 23 August 2017

devastating consequences. [119] This burden is borne by all states sooner or later. The impacts of wars can be reflected in actions taken by victims of violence, which may tend towards violence and terrorist activities, [120] as is currently happening in Europe and the United States. The terrorist activities occurring in France, Belgium, Spain, the UK and the US have shown that the disturbing effects of wars on people can easily spread around the world.[121] In fact, the money which was earned by selling armaments to the Middle East and African countries will be spent on neutralising the disturbing effects of the same wars.[122] According to the Global Peace Index (2017), "The number of deaths from terrorism has risen dramatically since 2011, from fewer than 10,000 to over 30,000".[123] In Europe, terrorist-related deaths have more than doubled between 2011 and 2016, with a considerable rise in early 2016. [124]

The priceless losses caused by wars and military activities are not limited to humanitarian losses, as they also encompass environmental consequences, including deforestation, desertification, drought, climate change, global warming and loss of biodiversity, and lethal effects of chemical and nuclear weapons[125] on the environment.[126] Militarism impacts the environment at different levels: First, the production of military equipment and weapons degrades the environment by using enormous toxic chemicals in conventional armaments. Nuclear weapons through all phases, from mining and enriching uranium to bomb fabrication, have hazardous impacts on the

[119] Yehuda and others, 'Holocaust Exposure Induced Intergenerational Effects on FKBP5 Methylation' (September 1, 2016), p. 372.
[120] Sayed Zia Sais, '*Who is Winning the War in Afghanistan?*' (Xlibris Corporation 2011), p. 159.
[121] Emma Graham-Harrison and others, 'Munich attack: teenage gunman kills nine people at shopping centre ' *The Guardian* (July 22, 2016);BBC 'Attack on Nice: Who was Mohamed Lahouaiej-Bouhlel?' (August 19, 2016) <http://www.bbc.com/news/world-europe-36801763> Accessed March 18, 2018;Bonnie Malkin, Alan Yuhas and Kate Lyons, 'Orlando shooting – as it happened' *The Guardian* (Florida June 13, 2016)
[122] Roche, '*The Human Right to Peace' (2003), pp. 35-36.*
[123] IEP, Global Peace Index 2015: Measuring Peace, its Causes and its Economic Value (Institute for Economics and Peace, 2015).p.29.
[124] Ibid.p.30.
[125] Canberra Commission, Report of the Canberra Commission on the Elimination of Nuclear Weapons (Canberra: Department of Foreign Affairs and Trade, 1996), part 1,p.1.
[126] Marty Branagan, '*Global Warming, Militarism and Nonviolence: The Art of Active Resistance'* (Palgrave Macmillan 2013), pp. 6-7.

ecosystem.[127] The effects of radioactive releases on people who have lived near these areas have included cancer among children. Second, deployment and testing have their own devastating impacts on nature. Third, the largest aspect of war-related damage has been observed during the use of armaments.[128] Using weapons of mass destruction, including nerve gas in World War II, Agent Orange in the Vietnam War, uranium weapons in the Balkans and chemical weapons in the Iraq-Iran war, has led to irreversible damage to the environment. Fourth, the storage and reprocessing of military waste have dangerous effects on the planet, both during wars and even in times of peace. [129] Although some international legal instruments [130] endeavour to control the devastating impacts of armaments on the environment, the spirit of war prohibits these treaties from being completely realised. The UN's Rio Declaration of 1992, Principle 24, recognises warfare as inherently destructive towards sustainable development and the environment. However, the World Summit on Sustainable Development in Johannesburg in 2002 endeavoured to marginalise this issue, regardless of NGOs' insistence on considering it. [131] The current trend towards the militarisation and weaponisation of space, excessive military expenditure and economic plans which involve heavy burdens on the ecosphere signify serious environmental exploitation.[132]

The UNEP Frontiers Report (2016) warns of critical issues associated with climate change, namely loss and damage to ecosystems due to war, as the most important global concern. The losses of billions of dollars, food crises,

[127] Simon Doolittle, 'Ten Reasons Why Militarism is Bad for the Environment' (Spring 2003) No. 22 (22) DifferentTakes: A Publication of the Population and Development Program at Hampshire College, p. 1.

[128] David Hay-Edie 'The Military's Impact on the Environment: A Neglected Aspect of the Sustainable Development Debate' (*International Peace Bureau, Geneva,* 2002) <https://www.ipb.org/wp-content/uploads/2017/03/briefing-paper.pdf> Accessed January 25, 2018,p.4.

[129] William Gay, '*Negative Impacts of Militarism on the Environment*' in Andrew Fiala (ed), '*The Peace of Nature and the Nature of Peace'* (Brill Rodopi, 2015),p.54.

[130] The Geneva Protocol (1928), Biological Weapons Convention (BWC) 1972, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1977) and the 1993 Chemical Weapons Convention (CWC)

[131] WSSD 'Johannesburg Declaration on Sustainable Development' (4 September 2002) in Report of the World Summit on Sustainable Development, UN Doc A/CONF.199/20

[132] Abeer Majeed, '*The Impact of Militarism on the Environment: An Overview of Direct and Indirect Effects: A Research Report'* (Physicians for Global Survival 2004),p.29.

the spreading of disease and the creation of environmental refugees are some consequences of environmental degradation. [133] Additionally, governmental investment in relation to massive military expenditure, including research, development and subsidies for the military industry, prohibits states from allocating resources to environmental protection.[134]

Overall, it can be understood that the grief caused by war cannot be equalled by the pleasure which can be derived from it. Humanitarian crises including genocide, disappearances, displacement, rape and the maiming of people causes long-term mental trauma which can be transferred to the next generation, with serious consequences for society, and environmental crises including global warming, air pollution, soil pollution, water pollution, radioactive emissions, and their devastating impacts on the biosphere, cannot be easily ignored. Some so-called "just wars", such as wars on terror, can be replaced by less hazardous methods. It is undeniable that the contemporary wars on terror in Afghanistan, Iraq and Libya, have not been successful experiences for the international community, and the threat of terrorism not only still exists, but has also been intensified, and terrorist groups such as *Da'esh* have emerged and grown in the chaotic context and hatred caused by wars.[135]

Therefore, even from the utilitarian perspective, war, even in certain parts of the world, to provide pleasure to a larger population, cannot be justified. This is because the immediate and long-term disturbing consequences of wars will affect the whole world's population in the short-term or long-term. [136] Additionally, the major exporters of sophisticated armaments should understand that, although the money earned from the arms industry

[133] UNEP, The United Nations Environment Programme Frontiers 2016 Report: Emerging Issues of Environmental Concern (UNEP, 2016)

[134] Majeed, '*The Impact of Militarism on the Environment: An Overview of Direct and Indirect Effects: A Research Report' (2004),p.29.*

[135] The Foreign Affairs Committee, Libya: Examination of intervention and collapse and the UK's future policy options, Third Report of Session 2016–17 (House of Commons, Foreign Affairs Committee, September 14, 2016)

[136] e.g. See the UN Security Council Resolution on 'The Situation in the Middle East' determining that "the situation in Yemen continues to constitute a threat to international peace and security" UNSC 'The situation in the Middle East' S/RES/2402 (2018), p. 2/3.

is considerable, a larger amount of money will be spent to defuse the environmental and humanitarian crises caused by the same armaments.

Considering the above discussion, which refutes the utility of war, in a utilitarian test to assess the righteousness of an action, [137] war would fail. When war is identified as an immoral action, the opposite measure constitutes a moral action, and society has a duty to support individuals and groups in having the right to that moral value. Thus, the right to peace can be supposed to be realised in societies with a utilitarian viewpoint, and attain the necessity support. In other words, the right to peace can be incorporated in Mill's definition of a right. This issue is of particular importance, as some effective international sectors, such as the UN Security Council, have taken the utilitarian approach. [138] Moreover, as discussed previously, nobody in the world can be excluded from the devastating consequences of wars, thus, peace can be accepted as an intrinsic value in utilitarianism, and there should be a right to it. Therefore, this philosophy undoubtedly supports the right to peace which provides remedies to prevent violence, as it acknowledges that prevention is easier, less costly and more effective than a cure.

4.3 Griffin's Perspective on the "Right to Peace": An Opposing View

The current section explores the philosophy of human rights from Griffin's perspective, representing a contemporary approach. This perspective is noteworthy, as it provides a different view of human rights and rejects the human right to peace that is the targeted right for the purpose of this research. Although Griffin accepts the concept of group rights, he explicitly denies the right of peoples to peace. He considers the right to peace in the category of rights which have been overlooked by courts and the law, and categorises this right as a manifesto right, which cannot be claimed. He regards the right to peace merely as an aspiration without any reasonable

[137] Donnelly, '*Universal Human Rights in Theory and Practice' (2013), p.42.*
[138] Boyle, '*World Politics and International Law' (1985), p.125.*

foundation for being a right, and believes that some rights, such as the right to life and the right to peace, lack an exact framework, and, as a result, can be interpreted restrictively or expansively, while the correlative obligation of law must be codified in detail. He concludes that, as the obligations of the law to realise such rights have not been determined, they cannot be plausible human rights.[139]

This study analyses Griffin's perspective on the right to peace, and endeavours to explore to what extent his ideas regarding this right is plausible. Additionally, it examines Griffin's methodology to determine whether there is a basis for the right to peace within that framework, or, in other words, whether this right can be justified even whilst considering Griffin's formulation of human rights.

4.3.1 Griffin's Methodology & the Right to Peace

The clear difference between Griffin and other philosophers who have been discussed in this research relates to the manner in which they view the issue of rights. Griffin asserts that rights based on a particular philosophical perspective can be easily overlooked by those who do not believe in that particular approach, whereas rights should have the ability to be accepted by all human beings, including those with different desires and perspectives. Accordingly, human rights based on a certain school of thought cannot fulfil the aim of integrating all members of a society and the international community to establish a stable world. Additionally, if a moral principle which is the source a human right reaches a deadlock, and this is possible, it is not clear what will happen to human rights derived from that principle.[140] Griffin believes that Kant and Mill have overlooked the historical facts and have employed rights as instruments to articulate their own general ethical theories. He asserts that they address the subject from above, adopting a "top-down" approach, and they consider human rights to be derived from a fundamental principle, namely the categorical imperative, or utility.

[139] Griffin, *'On Human Rights' (2008), p.209.*
[140] Ibid.pp.5-16

However, Griffin's "bottom-up" approach initially notes current human rights which are actually occurring in life, and then seeks higher principles which can explain the weight of those human rights and can resolve conflicts between rights. In other words, his methodology derives human rights from facts in human life.[141]

Similarly, a consideration of historical contexts as the origin of rights has been taken into account by Bobbio, who believes that human rights arise from specific conditions in history "characterised by the embattled defence of new freedoms against old powers".[142] He perceives the modern human rights expressed in the Universal Declaration of Human Rights as the rights which were recognised "following the tragedy of the Second World War, in an époque which commenced with the French Revolution and included the Soviet Revolution".[143] Accordingly, so-called human rights are the result of human civilisation, and the development of the contents of human rights proves that these rights cannot have a solely natural root, but can also have a historical root.

Analysing human rights through a historical lens supports the importance of the historical events in the formulation of human rights, and thus, the effectiveness of historical events in the emergence and the evolutionary trend of human rights is an undeniable fact. However, historical fact can be interpreted differently through different lenses. For instance, Grotius and Hobbes both lived during the European intellectual era, and also witnessed major wars: Hobbes experience the civil war in England, while Grotius lived through the Thirty Years' War in Europe; [144] however, they had different outlooks, and, as a result, prescribed different remedies. Grotius did not accept Hobbes's "war of all against all", and believed that the modification of war through law and morality was possible.[145] Additionally,

[141] Ibid.pp.29,35.
[142] Norberto Bobbio, '*The Age of Rights*' (Allan Cameron (tr), Reprint (edn), 1st Published 1996, Polity Press 2005), p.18.
[143] Ibid
[144] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004),p.11.
[145] Kingsbury, 'A Grotian Tradition of Theory and Practice: Grotius, Law, and Moral Skepticism in the Thought of Hedley Bull ' (1997),p.33.; Grotius' letter of 11 April 1643

it can be mentioned to Grotius and Machiavelli that both employ the historical methodology; [146] however they produce completely different results.

It appears that in order to have a universal right, a value should be justified by the globally dominant philosophies and it also should be a demand emerging from historical facts. Considering the role of philosophy in exploring solutions to existing dilemmas in human lives, it can be conceived that even the formulas of philosophers such as Kant or Mill were at the mercy of historical facts, and originated from their societies' demands. Thus, philosophical viewpoints cannot be considered abstract formulations. For instance, Socrates (500-400 BCE) who highlighted the ethical dimension of life in the philosophical foundations of Western culture, had witnessed the disturbing effects of the Peloponnesian War on ethical values and suffered from the impact of war. In fact, those unfavourable circumstances inspired Socrates to support and promote the overlooked moral aspects of life and return those values to the centre of attention with a focus on the morality and the humanity in his philosophy. [147] Therefore, it can be concluded that the sparks of philosophical theories were emitted through historical events, and human rights potentially pre-exist in nature and natural law, but historical and social events activate these potentials. This approach to human rights allows some values to become a legal right, considering the demands of the world in every age. Thus, the current concerns of the contemporary human being, such as peace, sustainable development and an uncontaminated environment which their importance have been manifested through contemporary events can be recognised and claimed as human rights through the evolutionary trend of human rights

It can be understood that moral principles and historical facts should be simultaneously considered as the source of inspiration for human rights. In

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to his brother Willem de Groot comments on De Cive. The letter is printed in Grotius, Epistolae Quotquot Reperiri Potuerunt 951-52 (Amsterdam 1687)

[146] Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005), p.6.*

[147] Andreas Sofroniou, '*Moral Philosophy, from Socrates to the 21st Aeon'* (PsySys Limited 2010), p.32.

this regard it can be mentioned to the historical trend of the emergence of the right to peace that the first approach to this right related to the particular historical context of the last decade of the Cold War. In that circumstance, the right of peoples to peace recognised in the African Charter of Human and Peoples' Rights, Article 23, in 1981, and subsequently declared by the UN General Assembly Declaration on the Right of Peoples to Peace in 1984. The second occasion on which the international community appeared concerned about this right was when the United States planned to invade Iraq in 2003 that can undoubtedly be classified as an act of aggression.[148] Thus, those two historical events (the Cold War and the US invasion of Iraq) made the international community more conscious regarding peace as a right. Thus, it can be understood that rights have potentially existed, and historical events have activated them, causing them to be recognised.

Griffin advances a methodology to assess whether an issue is a human right or not. He views human rights as involving the protection of three capacities and the exercise of them. Accordingly, he identifies three features necessary to be an agent to have rights: autonomy, minimum provision and liberty. Although Griffin does not conclude that there is a right to peace based on his suggested formulation, all three values in his account are supportive to the right to peace, and these capacities are in reciprocal relations with the elements within the conceptual framework of the right to peace. Accordingly, autonomy is the essential principle in the conceptual framework of the right to peace, because this right gives people autonomy to decide between war and peace, while, in the absence of this right, this decision is mostly made by rulers, who do not pay the material and immaterial costs of war. Additionally, in the absence of peace, it is impossible to have access to vital instruments to make desires real, and minimum provision cannot be provided. In other words, the right to peace guarantees access to minimum provision in order to exercise normal agency. Finally, free human beings choose to live in peace, and, in light of the right to peace, people will not be unwillingly involved in war, and can exercise

[148] Alexander Orakhelashvili, 'The High Court and the crime of aggression' (2018) 5 (1) Journal on the Use of Force and International Law, p. 3.

their liberty, with their liberty being respected through peace. Therefore, all three pillars linked to agency support the right to peace, and are also supported and realised by the right to peace.

Moreover, Griffin criticises the International Covenant on Civil and Political Rights, Article 20.1, asserting that "any propaganda for war shall be prohibited by law", which constitutes one of the components of the right to peace. According to Griffin, if this article means the denial of the freedom to propagandise for the purpose of war, there is no acceptable justification for this prohibition in any interpretation of human rights. He asks why this kind of propaganda should be prohibited for a war of self-defence.[149] Additionally, Griffin refers to the African Charter, Article 23(1), which states that all people have "the right to national and international peace and security". He accepts the rationality of a collective right to security, similar to individual rights to security, but he strongly denies the right to peace, and he asks whether a war of self-defence against invasion can be a violation of the right to peace of peoples.

In reply to the criticism regarding the prohibition of war propaganda, it should be considered that propaganda is defined as "Information, ideas, opinions, or images, often only giving one part of an argument, that are broadcast, published, or in some other way spread with the intention of influencing people's opinions". [150] *Black's Law Dictionary* describes propaganda as "[t]he systematic dissemination of doctrine, rumour, or selected information to promote or injure a particular doctrine, view or cause". [151] It does not seem plausible that a country in the position of justified defence would need to use propaganda to incite people to participate in war. The normal usage of propaganda is in wars which are without sufficient legal justification to provoke people to accept and participate in it. A war of self-defence is legally accepted in international law and based on the UN Charter, Chapter VII, Article 51; the country which is invaded has the right to defend. However, states can seek other

[149] Griffin, '*On Human Rights' (2008).p.194.*
[150] Cambridge Advanced Learner's Dictionary (CUP, 2008)
[151] Black's Law Dictionary (9th (edn), available at WESTLAW BLACKS, 2009)

remedies rather than wars of self-defence to stop the aggressor and remove the threat, and thus a war of self-defence under the seventh chapter of the UN Charter is the only other option (Article 33-38). Therefore, a defence war involving all of the necessary legal justifications does not need propaganda, and as a result, there would not be any justification for war propaganda in international law.[152] Additionally, the right to peace includes provisions regarding the defence tactics against violence. These tactics are beyond a war of self-defence, and they involve the peaceful settlement of disputes via such methods as negotiation, arbitration and other peaceful settlements, according to the UN Charter.[153] This tactic was used in the P5+1 negotiation with Iran, instead of war, to solve the existing nuclear problem, and it was successful when compared with the strategy adopted regarding Iraq and Libya in relation to their nuclear dilemmas.[154] Based on the philosophy of the right to peace, war is not the only rational response to an invasion. The significant criterion of international law is the provision of remedies to guarantee a lack of violence. From the perspective of the right to peace, if a country has not taken all measures to solve the existing problem via other solutions rather than war, it will violate its own citizens' right to peace.[155]

In order to address whether the right to peace and the right to self-defence are two clashing strategies, these two rights are analysed. Aggression, as "the gravest of all crimes against peace and security throughout the world",[156] is considered the main violation of the right to peace. The international law regime considers the waging of war and the use of force against the sovereignty of other states illegal (UN Charter, Article 4(2)), and self-defence is the only exception to this principle. The inherent right to

[152] See Michael G. Kearney, '*The Prohibition of Propaganda for War in International Law*' (OUP 2007), p. 243.
[153] See Bell, '*On the Law of Peace: Peace Agreement and the Lex Pacificatoria' (2008), p. 290.*
[154] The Foreign Affairs Committee, Libya: Examination of intervention and collapse and the UK's future policy options, Third Report of Session 2016–17 (House of Commons, Foreign Affairs Committee, September 14, 2016) ;Security Council Press Statement on Libya (September 07, 2018) United Nations Support Mission in Libya (UNSMIL)
[155] Catherine Maia and Ayissi Ayissi, 'Peace through Constitution: The Importance of Constitutional Order for International Peace and Security' (2011) 19 Afr YB Int'l L, p.205.
[156]UNGA 'Peace through deeds' (17 November 1950) UN Doc A/RES/380 (V)

self-defence, derived from natural law and from customary international law, [157] has been clearly recognised and preserved, individually and collectively, by the UN Charter, Article 51. Thus, not all parties engaged in war are violators of people's right to peace; the party which initially waged war has violated the right to peace. In other words, in any situation except that described by the UN Charter as self-defence, the act of invasion and the use of force constitute the crime of aggression and crimes against peace, according to the Nuremberg Tribunal, the UN Charter's prohibition on the use of force, the law of state responsibility[158] and the Rome Statute, Articles 5.1(d) and 8 *bis*. Chapter VII of the UN Charter, Article 39, authorised the Security Council to maintain international peace and, if necessary, to impose sanctions on the aggressor state to bring an end to conflicts. This article can pose a difficult dilemma for the international community when the aggression is committed by one of the permanent members of the Security Council or its allies, and the right to veto for these members can counteract the function of the Security Council.[159] However, this problem can be reduced by considering the Security Council answerable within the UN system.[160]

Self-defence can be problematic when it is broadly interpreted and when it provides excuses for engaging in war, especially wars as a form of collective self-defence on behalf of a victim nation. It should be noted that self-defence requires specific prerequisites and circumstances,[161] and the right to self-defence that is referred to by modern international law has a restricted definition, limited by Article 2, paragraphs 3 and 4, of the UN

[157] M.C. Alder, '*The Inherent Right of Self-Defence in International Law*' (Springer 2012), p.3; E. McWhinney, '*The September 11 Terrorist Attacks and the Invasion of Iraq in Contemporary International Law: Opinions on the Emerging New World Order System*' (Martinus Nijhoff Publishers 2004), p.25.

[158] ILC, Responsibility of States for Internationally Wrongful Acts (2001), Annex to UNGA Res 56/83 (December 12, 2001), as corrected by UN Doc A/56/49 (Vol. I)/Corr.4, Article 50.1(a)

[159] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008).pp.322-323.

[160] Henderson, 'Authority without Accountability? The UN Security Council's Authorization Method and Institutional Mechanisms of Accountability' (December 1, 2014)

[161] S.A. Alexandrov, '*Self-Defense Against the Use of Force in International Law*' (Kluwer Law International 1996), pp. 24-25.

Charter.[162] The International Court of Justice has constantly adopted a strict interpretation of right of self-defence based on Article 51 of the UN Charter in its judgements in *Nicaragua*,[163] *Oil Platforms*,[164] *DRC v Uganda*,[165] and rejected the claims that tried to justify the use of force as self-defence. Additionally, it rejected the claim by Israel that "the construction of the Barrier is consistent with Article 51 of the Charter of the United Nations, its inherent right to self-defence and Security Council resolutions 1368 (2001)[166] and 1373 (2001)[167]" [168] passed after the terrorist attacks of 9/11. As Gray articulates, the Court "has resisted calls to widen its view of the scope of self-defence".[169] Additionally, the threat of force under Article 2(4) of the UN Charter is described as "only identified, clearly established, and expressly formulated threats".[170]

The restricted interpretation of self-defence asserts an undeniable right that cannot only be in contrast to the right to peace, but it also supports the pillars of perpetual peace, and decreases the motivation for aggression.[171] The ICJ's interpretation of self-defence is based on Article 3(g) of the *Definition of Aggression*, Article 51 of the UN Charter, and the two requirements for self-defence in customary law, namely necessity and proportionality.[172]

[162] e.g. See Oil Platforms (Islamic Republic of Iran v. United States of America) (Judgement) [2003] I.C.J. Rep. 161, p. 199, para. 78.
[163] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] I.C.J. Rep. 14, para 195, 230, 247.
[164] Oil Platforms (Islamic Republic of Iran v. United States of America) (Judgement) [2003] I.C.J. Rep. 161, para 51, 64.
[165] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Judgment) [2005] I.C.J. Rep. 168, para 146.
[166] UNSC 'Resolution 1368' (12 September 2001) UN Doc S/RES/1368
[167] UNSC 'Resolution 1373' (28 September 2001) UN Doc S/RES/1373 (2001)
[168] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] I.C.J. Rep. 136, para 138, 139.
[169] Gray, '*The ICJ and the Use of Force*' (2013), p. 259.
[170] Raphaël van Steenberghe, 'The Law Against War or Jus Contra Bellum: A New Terminology for a Conservative View on the Use of Force? ' (2011) 24 Leiden Journal of International Law, p. 760; See Olivier Corten, '*The Law Against War: The Prohibition on the Use of Force in Contemporary International Law*' (Sutcliffe, C. (tr), Hart Publishing 2010), p. 111.
[171] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003),pp.93-97.
[172] Gray, '*The ICJ and the Use of Force*' (2013), pp. 251-252.

Self-defence can be extended to collective self-defence on behalf of the victim nation, however, subject to the consideration of all necessary conditions by the Charter, it cannot be assumed as a violation of the right to peace. It should be constantly borne in mind that self-defence has a concrete framework,[173] and, going beyond its borders,[174] it can convert the act of self-defence to one of aggression. [175] The ICJ rejected pre-emptive self-defence based on its interpretation within the strict confines of Article 51 of the UN Charter.[176] However, this argument is more difficult to sustain with regard to possible armed attacks involving use of nuclear weapons, given the nature of these weapons.[177]In Nicaragua case the USA had explicitly justified its intervention as collective self-defence against an armed attack. Conversely, the ICJ articulated that

> "the principle of non-intervention would certainly lose its effectiveness if intervention were to be justified by a mere request for assistance made by an opposition group in another state. It was difficult to see what would remain of the principle of non-intervention in international law if intervention which was already allowable at the request of the government were also to be allowed at the request of the opposition. This would permit any state to intervene at any moment in the internal affairs of another state."[178]

The Court emphasized that a third state is not allowed to implement the right of collective self-defence upon its own evaluation of the circumstances and without a request by the victim state.[179] However, as Franck analyses,

[173] O'Connell, 'Responsibility to Peace: A Critique of R2P' (2010), p. 48.
[174] UN Charter, Art 2, paras 3-4
[175] McWhinney, '*The September 11 Terrorist Attacks and the Invasion of Iraq in Contemporary International Law: Opinions on the Emerging New World Order System' (2004), p.68.*
[176] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Judgment) [2005] I.C.J. Rep. 168, para 148.
[177] Gray, '*The ICJ and the Use of Force*' (2013), p. 256.
[178] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] I.C.J. Rep. 14, para 208, 246;Gray, '*The ICJ and the Use of Force*' (2013), p. 244.
[179] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] I.C.J. Rep. 14, para 195, 196, 199. Also see;Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Judgment) [2005] I.C.J. Rep. 168, para 148.

although a high threshold was set by the ICJ majority in the *Nicaragua* case, it appeared that the Court considered adequate evidence of a persistent, significant outline of support for indirect aggression would certainly make the victim entitled to resort to military force in self-defence under Article 51. This approach can be observed in the practice of the political organs as a higher tolerance towards states that are in wars with terrorists and rebels across borders to defeat them at safe havens.[180]

According to Article 51, the right of self-defence should be considered as a temporary right which continues till necessary measures to preserve international peace and security have adopted by the Security Council.[181] As de Zayas discusses, "even in legitimate self-defence situation, this does not justify the continuation of a war. Article 51 is intended to allow immediate self-help, but only 'until the Security Council has taken measures necessary to maintain international peace and security.' This means that the victim of aggression cannot use the initial aggression as pretext to conduct a full-fledged war without approval of the Security Council."[182] In fact, Article 51 is applied by a "quasi-jury" in the international system that includes the UN Security Council, UN General Assembly, the ICC and the ICJ. The perception of the facts by these principal UN bodies are inevitably at the mercy of the "global information network" which informs and manifests public opinion.[183]

Therefore, even considering collective self-defence on behalf of the victim nation cannot be a threat against the right to peace, but also facilitates the implementation of the right to peace, subject to the accurate implementation of its formula. In fact, as Dinstein analyses, "[o]nly when the universal liberty to go to war was eliminated, could self-defence emerge as a right of signal importance in international law. [...] The evolution of the idea of self-defence in international law goes "hand in hand" with the prohibition of

[180] Thomas M Franck, '*Recourse to Force: State Action against Threats and Armed Attacks*' (CUP 2003), p. 65.
[181] Christine Gray, '*International Law and the Use of Force*' (4th (edn), OUP 2018), p. 131.
[182] De Zayas, '*Peace as a Human Right: The Jus Cogens Prohibition of Aggression*' (2011), p. 34.
[183] Franck, '*Recourse to Force: State Action against Threats and Armed Attacks' (2003), p. 67.*

aggression".[184] Therefore, the law of self-defence serves to preserve the existing international legal order, and pursue common general aims to protect international peace and security.[185]

The 2001 invasion of Afghanistan and the 2003 War on Terror in Iraq, carried out by the US, were claimed as defence wars against terrorism following the 2001 September 11 attacks.[186] However, the idea of the right to peace explicitly confirms that this kind of defence war is an absolute violation of the right to peace of the citizens of the US, Afghanistan and Iraq. The US, as the country attacked by terrorists, must ensure that it has already applied all of the tactics possible to defend its citizens.[187] In fact, the main function of the right to peace is to present alternatives to war, as discussed in Chapter 3 in regard to the conceptual framework of this right and its components. The right to peace equips peoples against violence by elimination of the cause of a war, rather than a war of self-defence. However, using force to defend oneself, considering all of the provisions of the seventh chapter of the UN Charter, is regarded as the ultimate remedy. If the international community is equipped with instruments, such as the Kampala amendments to the Rome Statute (ICC), to prosecute aggression, the possibility of aggression will be decreased. In other words, the right to peace prohibits the possibility of violence, instead of defending against violence, as prevention is better than a cure.

Moreover, Griffin's phrase "manifesto rights" could be used to signify all human rights before finding practical methods to realise them. Undoubtedly, the first and second generations of human rights initially suffered from a lack of empirical mechanisms. The lack of practical methods to engage in a procedure cannot deny the necessity of that procedure. For example, it is not rational to claim that a place is an imaginary place because its address is unknown. Similarly, if the empirical methods of the realisation of the right

[184] Yoram Dinstein, '*War, Aggression and Self-Defence*' (2nd (edn) CUP 1995), pp. 176-177.
[185] van Steenberghe, 'The Law Against War or Jus Contra Bellum: A New Terminology for a Conservative View on the Use of Force? ' (2011), p. 788.
[186] Myra Williamson, '*Terrorism, War and International Law: The Legality of the Use of Force Against Afghanistan in 2001*' (1st Published 2009, Routledge 2016), p.192.
[187] Maia and Ayissi, 'Peace through Constitution: The Importance of Constitutional Order for International Peace and Security' (2011), p.205.

to peace are not clear, the nature of that right cannot be denied. As can be understood, Griffin's criticisms regarding the right to peace are arguable.

4.3.2 Locating the Right to Peace in Griffin's Formulation

At this juncture, Griffin's methodology for the recognition of a human right is applied to evaluate whether peace can be proven as a human right, although he himself did not conclude such a right based on this methodology. According to this model of thought, agency means not only having certain capacities for autonomous thought, liberty and minimum provisions, but also the ability to exercise them. Thus, the human being needs these capacities and abilities to be entitled to human rights. Additionally, it views human rights as involving the protection of these three capacities and the exercise of them. Griffin advances a methodology to assess whether an issue is a human right or not. For example, he assesses the right to education based on his formula, and examines whether it is really a human right. For this purpose, first, he asks whether the targeted subject (e.g. education) is necessary to be a normal human agent. If the answer is affirmative, that thing is definitely a human right. However, if the answer is negative, there will be a second question. In the case of education, the answer to the first question is negative, because an uneducated person can be a normal agent. The second question considers whether that right (e.g. education) is necessary for the exercise of normal agency. As education is required to implement agency, Griffin concludes that education is a human right, because normal agency includes both having certain capacities and exercise them.[188] In other words, a human right is a right that is required to exercise certain capacities, and "the value behind human rights is not just the dignity of being able to be this sort of agent but also of being one. This sort, however, centres on our being able to form a conception of a worthwhile life and then pursue it; that is the source of its dignity".[189]

[188] Griffin, '*On Human Rights' (2008), p.47.*
[189] Ibid

Considering these reasons, he deduces that the right to education is a human right, and that it can protect one's human status.

For the purpose of the present research, it is necessary to consider whether peace is required to be a normal agent. The answer is negative, because people in war situations are normal agents as well. Then, the second question is asked: Is peace necessary for the exercise of normal agency? The answer is absolutely affirmative, because, in a war zone, none of Griffin's capacities (autonomy, liberty and minimum provisions) can be exercised. Thus, as peace is required to protect human status, it can be concluded that peace is a human right. As can be observed, even based on Griffin's formula to assess the factuality of a human right, peace can be justified and proven to be a human right.

Conclusion

This chapter sought to address the third research sub-question concerning the philosophical groundwork for the right to peace. At first, it laid philosophical groundwork for this right based on Kant's philosophy, considering the influence of this philosophy on the modern idea of human rights. The research explored the idea that human dignity, as the foundation of human rights in Kantianism, provides a normative basis for the progressive realisation of the right to live in peace, and can determine the limits of entitlements and duties. The research showed that this right can produce perpetual peace, though other motivations behind the act of peace, such as profitable aims or fear, are not able to provide sustainable peace. Moreover, the right to peace is in accordance with the Universal Principle of Right in Kant's philosophy, and can be recognised as a legal right at national and international levels; however, it requires institutional protection to be transferred from the realm of ethics to the realm of law.

Second, considering the influence of utilitarianism on political bodies, which are the main decision-makers regarding international peace, such as

the UN Security Council,[190] the study examined whether this philosophy supports such a right. Apparently, there should not be any space for the right to peace in this philosophy, as peace may not necessarily bring utility. This chapter elaborated the grief and pleasure caused by war, and illustrated how the whole population of the world can be affected by the overwhelming consequences of wars. The study noted that humanitarian crises cause long-term mental trauma which can be transferred to the next generation, with serious consequences for society. Additionally, devastating impacts of wars on the environment cannot be overlooked. It is undeniable that the chaotic context and hatred caused by wars cultivate terrorist groups and violence from below. Therefore, the disturbing immediate and long-term consequences of wars will affect the whole world's population in the short term or the long term. Thus, although the money earned from the arms industry is considerable, a larger amount of money will be spent to defuse environmental and humanitarian crises caused by the same armaments. This point of view coincides with the discussion on the transformation of energy from one form to another form that has been explored in relation to the philosophy of Kant and the effect of the will. Therefore, the study refuted the utility of war and proved it to be an immoral act from the perspective of utilitarianism. It showed that the opposite measure, namely peace, is compatible with the principle of utility and that it produces the utmost utility, and, as a result, the right to peace can be supported by this model of thought.

Third, this chapter analysed criticisms on the right to peace by a contemporary philosopher James Griffin and responded to them. Although Griffin explicitly rejects the right to peace, this research has proven that all three values in his formula of human rights – namely liberty, autonomy and minimum provision – are supported and realised by the right to peace, and that these capacities have a reciprocal relationship with the elements within the conceptual framework of the right to peace. This research will advance practical mechanisms to enforce the right to peace through international legal systems in Chapter 5, and thus, Griffin's claim regarding the impracticality of this right was refuted. It elaborated that the right to peace

[190] Boyle, '*World Politics and International Law' (1985),p.125.*

and the right to self-defence are not clashing strategies, but also they are supportive to each other. Additionally, the study employed Griffin's formula to determine whether a value can be a human right or not. As a result, it explored that the right to peace can be confirmed even through Griffin's formulation.

Therefore, considering the aforementioned sound philosophical basis for the right to peace, it is expected that this right can attract institutional sufficient protection from states and judicial bodies to be recognised and implemented at national and international levels.

Chapter 5: Mechanisms for the implementation of the “Peoples’ Right to Peace”

Introduction

The review of the existing literature regarding the right to peace has underlined an evident gap in relation to its implementation mechanism in the legal framework of this right. In order to respond to the central research question, which investigates practical mechanisms in international law to implement the right to peace; international legal orders are examined to explore the available and competent instruments for this purpose.

At the outset, the research discusses the essential prerequisites to realising and implementing such a right. Subsequently, the functions of international judicial bodies are studied with regard to the enforceability of peoples’ right to peace. As the existing resolutions on the right to peace do not deal with implementation mechanisms, the study endeavours to explore a remedy based on the conceptual-legal framework for the right to peace discussed in Chapters 2 and 3 of this thesis. Based on the methodology for establishing a right to peace described in Chapter 2, peace should be tangible, and it should move from a moral scope to a legal scope in order to be recognised as an enforceable right. Taking into account the concept of peace as the absence of violence, as introduced in Chapter 2, peace can be an accessible concept through defence mechanisms aimed at combating violence. Accordingly, peace will never be accessible if nations remain incapable of defending themselves against violence. Therefore, the meta-right to peace is

implemented by adopting policies which are equipped against violence. Among different categories of violence, the study concentrates on violence as a result of international conflicts or conflicts between states addressed by the *jus ad bellum*. However, it takes into account that the current world is extensively involved in conflicts within states and civil wars which are not addressed by the *jus ad bellum*. The research, it is hoped, will achieve a remedy which can encompass even the dilemma of civil wars, in light of the recognition of the right to peace.

Considering the focus of this project on war between states as a sort of political violence, crimes against peace and aggression, along with the existing jurisprudence on these crimes, are analysed, and the possible remedies as regards the prohibition of war and the preservation of peace are presented. However, it should not be overlooked that some other aspects of violence would be automatically removed in consequence of the abolition of this category of violence. In this way, the role of international judicial bodies, particularly the International Criminal Court (ICC), is discussed. This chapter examines how the role of this court can be developed to prosecute aggression and to contribute to the ending of impunity in relation to crimes against peace. In this regard, obstacles and deficiencies affecting the potential realisation and implementation mechanism of peoples’ right to peace are identified. Additionally, the study discusses self-defence in the context of modern international law, namely UN Charter Article 51. However, in Chapter 4, in response to criticisms from Griffin, it was broadly examined whether self-defence can be categorised as a form of violation of the right to peace, or whether it is excluded from this category.

The research takes into account the loopholes in the Kampala Amendments to the Rome Statute, and endeavours to present a mechanism which equips peoples to prevent war, not only by avoiding aggression, but also by controlling their rulers in light of the right to peace and its impact on peoples’ destinies.

5.1 Defence Tactics Aimed at Combating Violence to Make Peace Accessible

In order to explore defence tactics aimed at combating violence, the concept of violence and its origins should be accurately identified. The identification of the foundations of violence can facilitate their removal, and, as a consequence of removing the causes, the possibility of violence will be eliminated. The study considers that there are various types of violence, dependent on the context and the objective of violence.

Subsequently, considering the focus of the research, the chosen category of violence is analysed, and the mechanism through which violence can be abolished is explained. To this end, the available international law instruments that can be applicable to defend against this kind of violence are identified and analysed. The attributing instruments are categorised, and the most practical ones for this purpose are presented.

5.1.1 The Conception of Violence and its Sub-division Political Violence from Above

At this juncture, the conceptualisation of violence is a crucial step prior to seeking a practical tactic to defend against violence. Thus, the first step is the detection of the conceptual framework for violence, including its material and mental elements. Violence is a complicated and multi-dimensional term that is loosely employed in different contexts, and in different disciplines. According to the *Oxford English Dictionary*, violence is defined as "the exercise of physical force so as to inflict injury on, or cause damage to, persons or property; action or conduct characterized by this: treatment or usage tending to cause bodily injury or forcibly interfering with personal freedom".[1] To be more precise, violence is considered "the intentional application of extreme force against X in such a way that it is

[1] Oxford English Dictionary (Clarendon Press, 1998)

destructive of objects and physically injurious to animals and persons".[2] However, the consequences of violence can also be physical and non-physical injuries. Therefore, the scope of violence encompasses structural violence, through which some social structure or social institution can hurt people by prohibiting them from fulfilling their fundamental freedoms and inherent rights.[3] Additionally, it can be understood from these definitions that violence is not necessarily connected to an unlawful intention, but also that any action which has destructive impacts, either physically or non-physically, can be assumed to be violence. Therefore, the use of violent means, even for legal purposes, can be considered as violence.

The elimination of violence requires the identification of the causes of violence.[4] Baumeister outlines four major causes of violence, indicating that perpetrators of violence act under the influence of one of these reasons or a combination of them. In the case of a combination of causes, the defence tactic will be more complicated. Baumeister believes that violence is systematically and socially constructed, and he denies the root of violence in the genes or in the nature of human beings.[5] To streamline removal mechanisms, the causes of violence are divided into four general categories. The first concerns the high aspiration to achieve a material aim, such as money or power, without undergoing the requisite legitimate process. The second relates to the perception of disrespect and degrading treatment which arouse feelings of hatred and revenge. The third concerns the belief that one ideology is supreme, or the one most suitable for creating a better world, and so other ideologies and their followers should be demolished. The fourth involves some psychological and biological disorders. [6]

[2] Johan Degenaar, '*The Concept of Violence*' in N. Chabani Manganyi and André du Toit (eds), '*Political Violence and the Struggle in South Africa'* (Palgrave Macmillan, 1990), p.71.
[3] Galtung, 'Violence, Peace, and Peace Research' (1969), p.175.
[4] A statement on violence that was adopted by an international meeting of scientists, convened by the Spanish National Commission for UNESCO, in Seville, Spain, on 16 May 1986
[5] Roy F. Baumeister, '*Why Is There Evil?*' in NN Kittrie, R Carazo and JR Mancham (eds), '*The Future of Peace: In the Twenty-First Century'* (Carolina Academic Press, 1997), p.7.
[6] Ibid

The nature of the goal of violence determines the thematic category of violence. Violence with political aims is categorised as political violence, and is conducted by rulers or by people aiming towards political goals, such as political power or political reformation. When violence is committed by authorities and states, it is classified as political violence from above, such as repression, institutional state violence, state terrorism and its extreme form, aggression which is targeted for this study. [7]

5.1.2 Available International Law Instruments to Defend against Aggression

Political violence from above has been a strategy for states to achieve their goals throughout history, although there is no winner as a result of violence in many cases. There is a belief that having stronger armaments brings more success and power, and being equipped with the most advanced weaponry guarantees stability and solidity.[8] As Ruggiero discusses, violence is not committed by an individual or a group, but the violent context perpetrates violence.[9] This argument coincides with Kantianism that asserts even devils are coerced to act in an exemplary manner within a correct system.[10] One solution to avoid violence is modifying the system of thought in a systematic way, as "wars begin in the minds of men".[11] In fact, Humans' behaviours are learned via social culture, and are influenced by education or miseducation (e.g. propaganda, education in service to the oppressor, misleading and inaccurate information[12]). As can be observed, cultures can have a significant impact on the prohibition of violence which occurs due to any of the abovementioned reasons. Thomas Merton elaborates on the role

[7] Ruggiero, '*Understanding Political Violence: A Criminological Analysis' (2006), pp.28,78.*
[8] Barash, David P., The Disparity between biological and cultural evolution in the pursuit of peace, In Nicholas N. Kittrie, Rodrigo Carazo and James R Mancham (eds), *The Future of Peace in the Twenty-First Century* (Carolina Academic Press 2003), p.38.
[9] Ruggiero, '*Understanding Political Violence: A Criminological Analysis' (2006), p.161.*
[10] Wight, '*Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant, and Mazzini' (2005),p.55*; Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), p.112.
[11] David Adams and others, 'The Seville Statement on Violence' (October 1990) 45 (10) American Psychologist, p. 1167.
[12] *Encyclopedia of the Social and Cultural Foundations of Education (SAGE Publications, 2009)*, p.506.

of culture and the model of thinking in maintaining peace, along the following lines:

> "Violence rests on the assumption that the enemy and I are entirely different: the enemy is evil and I am good. The enemy must be destroyed and I must be saved. But love sees things differently. It sees that even the enemy suffers from the same sorrows and limitations that I do. That we both have the same hopes, the same needs, the same aspiration for a peaceful and harmless human life. And that death is the same for both of us. Then love may perhaps show me that my brother is not really my enemy and that war is both his enemy and mine. War is our enemy. Then peace becomes possible."[13]

Therefore, approaches towards war and peace can be influenced by different kinds of teachings. This fact has been misused by many states to organise their peoples to join and support wars.[14] In fact, the education system, based on biased approaches, can cultivate violence in a systematic way. Incorporating peace studies in the education system can develop a culture of peace that may become an effective instrument in addressing the roots of conflict, in building a society with a lower probability of conflict, and, ultimately, in eliminating violence. [15] As such, there is a need for cosmopolitan education which prescribes a sense of duty required to create a world in which peaceful coexistence is possible.[16] It equips children with instruments necessary to evaluate and criticise national and international policies aimed at promoting peace. [17] The necessity of a cultural revolution regarding war and peace is elaborated by Douglas Roche as follows:

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[13] Jim Forest, '*The Root of War is Fear: Thomas Merton's Advice to Peacemakers*' (Orbis Books 2016), p.165.

[14] H.J. Eysenck, War and Aggressiveness, In Kittrie, Carazo and Mancham (eds), 'The Future of Peace in the Twenty-First Century' (2003), pp.27-28.

[15] Denise Bentrovato and Marie Nissanka, 'Teaching peace in the midst of civil war: tensions between global and local discourses in Sri Lankan civics textbooks' (August 14, 2018) 30 (3) Global Change, Peace & Security, p.370.

[16] Pinherio Walla, 'Kant on Cosmopolitan Education for Peace' (June 7, 2018), p. 343.

[17] Ibid. p.345.

> "The claim that serious disputes cannot be resolved without warfare rings hollow in the modern age, which has at its disposal a wide array of UN tools. If states will not put themselves under the purview of the UN in resolving conflict, that is a sad reflection of their own obduracy. But at least they should be deprived of any legitimacy by the international community in claiming their war is "just". We still live in a period of political ambiguity. The logic of just war has been superseded by the scientific, cultural, and legal developments of the modern world. But politically, society lags behind, burdened by the trappings of the culture of war."[18]

Thus, Violence can be prevented by modifying approaches and policies towards nonviolence, through the development of a culture of peace and non-violence which requires culture-intensive activities founded on promoting tolerance and moderation.[19] A cultural revolution to influence thoughts towards peaceful approaches could involve a prolonged plan at national and international levels. To this end, the role of international, regional and national cultural organisations, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO),[20] and the approaches taken by these to encourage states to adopt policies aimed towards peace are crucial.[21] Political violence can originate from various individual perspectives and the influence of people on each other, as policies are made by individuals. However, based on the Carnegie Commission on Preventing Deadly Conflict, contemporary lethal conflicts are not unavoidable, and do not emanate naturally from human interactions. Instead, these acts of violence are intentionally planned by political powers.[22] Therefore, for the purpose of this research which targets state

[18] Roche, '*The Human Right to Peace' (2003),p.49.*
[19] UN Doc A/HRC/RES/32/28 ;UN Doc A/Res/71/189
[20] See UNESCO Doc 29C/59, paras. 8-9. available online at: http://unesdoc.unesco.org/images/0011/001100/110027E.pdf
[21] David Keane, '*UNESCO and the Right to Peace*' in David Keane and Yvonne McDermott (eds), '*The Challenge of Human Rights past, Present and Future'* (Edward Elgan, 2012), p. 74;See UN Doc A/HRC/39/31, para 70.
[22] Carnegie Commission on Preventing Deadly Conflict, Preventing Deadly Conflict: Final Report (Carnegie Commission on Preventing Deadly Conflict, Washington D.C, 1997)

violence particularly aggression, the defence tactic goes beyond mere cultural change.

Violence requires two main components to be recognised as an act of violence: first, the deliberate action of one person; second, the suffering of another.[23] Therefore, omitting one of the two main pillars of violence can help to prevent violence. This procedure is possible either through making the perpetrator unable to commit a violent action or by making the vulnerable immune from violence. Making perpetrators unable to commit a violent act is possible either by disarming them or by codifying rules to prosecute perpetrators. Regarding the last mechanism, the Rome Statute and the Kampala amendments can make a great contribution to starving the roots of state violence in the case where the leader is the perpetrator. The second remedy that enables the vulnerable to be safe from violence is possible by equipping peoples with the right to peace, or, in other words, by facilitating them to claim a life of peace. In other words, the right to peace necessitates the adoption of appropriate policies to guarantee that people can live in non-violence. This remedy requires binding legal documents to enable peoples to litigate the right to peace against any peace violator, including their own ruler or an external aggressor, before an international judicial body. In this way, supporting and monitoring bodies such as treaty bodies are required to protect and promote the fulfilment of this right. Considering that, at this juncture, the resolutions on the right to peace are not binding; it appears that the only available international instrument to implement the right to peace is the instrument through which the perpetrator would be unable to commit violence. Therefore, jurisprudence over the crime of aggression should be examined to identify the attributing facilitators.

In order to make the perpetrator unable to commit a violent action and considering the similarity between the right to peace and freedom from fear in their approach to eliminate aggression,[24] American president Franklin D.

[23] Baumeister, '*Why Is There Evil?*' (1997), p.7.
[24] UN Doc A/HRC/14/38 p.12., p.12; Schabas, '*Freedom from Fear and the Human Right to Peace*' (2012), p. 36.

Roosevelt's interpretation of freedom from fear is worth mentioning. He asserts that "a world-wide reduction of armaments" should be "to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour – anywhere in the world".[25] Two fundamental components are outstanding in Roosevelt's interpretation to secure freedom from fear: the worldwide reduction of armaments and the prohibition of the act of physical aggression. His suggestion could encompass both outlawing the use of force and outlawing the production of weapons.

The United Nations imposed a ban on the use of force in the UN Charter, Article 2(4), and it promotes disarmament by activities related to nuclear, biological, chemical and conventional weapons disarmament and non-proliferation through the United Nations Office for Disarmament Affairs (UNODA). However, it cannot be expected to facilitate worldwide disarmament when the economic benefits of arms trade prohibit states from adopting policies aimed towards the worldwide reduction of armaments. [26] Additionally, many states formulate their policies based on the philosophy of the deterrence theory inherited from the Cold War, [27] hoping to be immune to attack. However, being equipped to make use of force can be perceived as a threat of force that is banned by Article 2(4). These two notions, "threat of force" and "use of force" in Article 2(4) are both unlawful. [28] Additionally, as Judge Cançado Trindade stresses in his dissenting opinion, in the case of *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament:*

[25] Franklin D Roosevelt 'Four Freedoms Speech ' (1941) <http://www.americanrhetoric.com/speeches/fdrthefourfreedoms.htm> Accessed November 08, 2017

[26] SIPRI Fact Sheet: Trends in International Arms Transfers (Stockholm International Peace Research Institute, 2016),p.2.

[27] Henry D. Sokolski, '*Getting MAD: Nuclear Mutual Assured Destruction, Its Origins and Practice*' (Strategic Studies Institute, U.S. Army War College 2004), pp. 202-203.

[28] Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] I.C.J. Rep. 226, para 47-48; Treaty on the Prohibition of Nuclear Weapons (July 7, 2017) UN Doc A/CONF.229/2017/8, Article 1.

> "The strategy of 'deterrence' has a suicidal component. Nowadays, in 2016, twenty years after the 1996 ICJ Advisory Opinion, and with the subsequent reiteration of the conventional and customary international legal obligation of nuclear disarmament, there is no longer any room for ambiguity. There is an *opinio juris communis* as to the illegality of nuclear weapons, and as to the well-established obligation of nuclear disarmament, which is an obligation of result and not of mere conduct. Such *opinio juris* cannot be erased by the dogmatic positivist insistence on an express prohibition of nuclear weapons; on the contrary, that *opinio juris* discloses that the invocation of the absence of an express prohibition is nonsensical, in relying upon the destructive and suicidal strategy of 'deterrence'."[29]

Bilateral and multilateral treaties supported by the UNODA are part of international law instruments that can contribute to prohibiting state violence. The UNODA has achieved some progress towards its aims in providing institutional support to set up norms which are hand-in-hand with the General Assembly and its First Committee, in addition to the Disarmament Commission, the Conference on Disarmament and other bodies. [30] However, the office has always been confronted by obstacles from states, especially states whose economy is partly based on the arms trade.[31] Additionally, there is an a priori hypothesis that disarmament is a utopian dream that cannot be possible in real international affairs. This belief can serve as a serious obstacle in the way of the office's aims.[32] Furthermore,

[29] Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), (Diss. Op. Judge Cançado Trindade) [2016]I.C.J. Rep, 907, para 141.

[30] Dembinski-Goumard D., 'International Geneva Yearbook: Organization and activities of international institutions in Geneva' (2008) XX Ybk 028 , p.113.

[31] SIPRI Fact Sheet: Trends in International Arms Transfers (Stockholm International Peace Research Institute, 2016),p.2.

[32] Angela Kane, 'The United Nations and Disarmament: Old Problems, New Opportunities, and Challenges Ahead' Massachusetts Institute of Technology, Cambridge, Massachusetts (October 22, 2014) https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2014/10/Final_AK_speech_at_MIT_22-October-2014.pdf Accessed March 17, 2018, p.5; Paul Taylor and A.J.R. Groom (eds), *Global Issues in the United Nations' Framework* (Palgrave Macmillan 1989), p. 141.

regardless of the Arms Trade Treaty (ATT)[33], arms transfer continues across borders legally and illegally, [34] and this provides equipment used for violence around the world, fuelling conflicts, terrorism and organised violence. Therefore, there is a huge gap between law and practice, so the implementation of treaties is a crucial phase that can turn treaties' words into action.[35]

On the other hand, the effectiveness of the discussion on disarmament in maintaining international peace and security cannot be totally denied. For instance, it should be mentioned that the Joint Comprehensive Plan of Action (JCPOA) on the issue of Iran's nuclear program, approved by p5+1[36] (China, France, Russia, the United Kingdom and the United States, plus Germany) and the Islamic Republic of Iran,[37] is one of the significant international law instruments to avert war.[38] This plan, consistent with Article 2(3) of the UN Charter regarding peaceful settlement of disputes, prevented another war in the Middle East and North Africa (MENA), whereas the nuclear ambitions of Iraq[39] and Libya[40] led to them engaging in two wars in that region.[41] Although the United States unilateral withdrawal from this deal could significantly lessen its impact.[42] However, "[i]n the path towards nuclear disarmament, the peoples of the world cannot remain

[33] Arms Trade Treaty (ATT) (opened for signature: June 3, 2013, entered into force: December 24, 2014) UN Doc A/RES/67/234 B

[34] ICRC 'Statement by the ICRC President, Peter Maurerto the Third Conference of States Parties to the Arms Trade Treaty: Failure to manage arms trade responsibly is putting a dirt cheap price on the lives of civilians' (2017) <https://www.icrc.org/en/document/failure-manage-arms-trade-responsibly-putting-dirt-cheap-price-lives-civilians> Accessed October 05, 2017

[35] Ibid

[36] The E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy)

[37] Joint Comprehensive Plan of Action (JCPOA) July 14, 2015

[38] UNODA, 'The United Nations Disarmament Yearbook' (2016) vol. 41 (Part II) UNYB 1, p.4.

[39] Jacques E. C. Hymans, '*Achieving Nuclear Ambitions: Scientists, Politicians, and Proliferation'* (CUP 2012), p.119.

[40] Ibid. pp. 239-240.

[41] See OHCHR, Statement on the occasion of International Day of Peace by Alfred De Zayas (UN, September 21, 2015)

[42] Mark Landler 'Trump Abandons Iran Nuclear Deal He Long Scorned' (*The New York Times,* May 8, 2018) <https://www.nytimes.com/2018/05/08/world/middleeast/trump-iran-nuclear-deal.html> Accessed July 25, 2018

hostage of individual State consent. The universal juridical conscience stands well above the "will" of the State."[43]

The importance of disarmament is crucial to the maintenance of international peace and the implementation of the right to peace to such a point that the Norwegian Nobel Committee awarded the International Campaign to Abolish Nuclear Weapons (ICAN) the Nobel Peace Prize for 2017. This principal civil society actor has engaged in great efforts to abolish nuclear weapons under international law.[44] Although disarmament is an effective mechanism to prevent wars, it cannot be a full guarantee against war. In other words, disarmament may deprive the aggressive state of the necessary equipment for committing aggression, but it cannot deter states from planning to wage war. In fact, the possibility of aggression may be lessened, but it is not eliminated, due to the existence of the motivation behind aggression. Aggressor states may lose their motivation if there will be a definite prosecution for the act of aggression. Thus, another possible mechanism by which to prevent violence is a powerful international judiciary system through which the crime of aggression would be seriously prosecuted and impunity would be ended. The fact that the implementation of the right to peace is closely interrelated with the prosecution of aggression, and this can impose obligations and limitations on states at both national and international levels can be the reason for the marginalisation of this right.[45] In other words, as the main threat to international peace is planned by the leaders and policy-makers of states, there has been unwillingness among states to agree on a mechanism by which to prosecute aggression, and implement the right to peace.[46] Considering the importance of the prosecution of aggression in realising the right to peace, the international instruments attributed to this mechanism are broadly discussed in the next section.

[43] Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), (Diss. Op. Judge Cançado Trindade) [2016]I.C.J. Rep, 907, para. 321.
[44] The Nobel Peace Prize 2017 - Press Release (October 6, 2017) Nobelprize.org. Nobel Media AB 2014. Web.
[45] Schabas, '*Freedom from Fear and the Human Right to Peace*' (2012), p.37.
[46] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008), p.327.

5.2 Jurisprudence on the Violation of the "Peoples' Right to Peace"

As underlined in Chapter 3 regarding the legal framework of the right to peace, this meta-right imposes a duty on states to adopt policies to maintain international peace and to provide nations with a life of peace. Thus, any policies which lead to the violation of peace such as the use of, or threat to use of force against the integrity of the other state – or, in a broader interpretation, any policy which leads to the involvement of a nation in a violent situation, either by its own ruler or by another state – can be assumed to be a violation of the right to peace. It should be taken into account that, in light of the comprehensive interpretation of international law, nations are considered components in a system whose components are in a systematic relation to each other, and which impact on each other. No nation can be considered an abstract entity, and thus, depriving a nation of a peaceful life, even by its own ruler, can threaten international peace and security. The right to peace can be proposed as a remedy to create immunity for nations against the violation of peace which causes chaos to the international community. It can be understood that the main concern of the right to peace regime is a life of peace, regardless of the issue of whether the violator is the ruler of the same country (an internal factor) or is another state (an external factor). Although international conflicts between states are not the mere aspect of the violation of the right to peace; aggression, as Ferencz believes, is the main threat to peace, and that it cannot be controlled except by inventing a precise functional definition of it.[47] Thus, the study examines the trend of creating norms to outlaw the act of aggression, along with key conceptions of the *jus ad bellum*. Therefore, to explore this mechanism, the research briefly considers the history of jurisprudence on this crime, and subsequently examines the contemporary international legal practice regarding aggression and the possible remedies.

[47] Benjamin B. Ferencz, '*Defining International Aggression, the Search for World Peace: a Documentary History and Analysis (vol.1)*' (Oceana Publications 1975), pp. 3-4.

To explore the jurisprudence on this crime, the research examines the London Charter of the International Military Tribunal IMT (1945) Article 6(a) and the Charter for the Tokyo International Military Tribunal (1946) Article 5(a), which grant jurisdiction over "crimes against peace" to these tribunals.[48] Additionally, it discusses the UN Charter prohibitions of the use of force except in cases of self-defence or under the authorisation of the Security Council, via Articles 2(4), 39 and 51, and also UN General Assembly Resolution 3314(XXIX) 1974, providing a definition of aggression which affirms "the principles of international law" as recognised by the London Charter and the Nuremberg judgment.[49] Subsequently, the role of the International Criminal Court and the Kampala Amendments to the Rome Statute in prosecuting the crime of aggression are underscored.

5.2.1 The Prosecution of "Crimes against Peace" and "Aggression"

The origins of the creation of norms for legitimate wars can be found in ancient civilizations, such as Chinese, Hindu, Egyptian, Assyrian-Babylonian, Islamic, and Western civilizations, and this framework was gradually developed by the 17th century.[50] Mo Ti (ca. 470 BC-ca. 391 BC) advised abandoning and outlawing international aggression, as the greatest of all crimes.[51] In Europe, the ancient Greek city-states were intensively involved in the Peloponnesian wars (431-404 BC),[52]and the use of force as a national policy was the unconditional right of a sovereign nation in feudal

[48] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014), p.307.* ; United States of America v. Von Weizsäcker et al. (Ministries case), US Military Tribunal Nuremberg, April 11-13, 1949. TWC, Vol. XIV, 308

[49] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014), p.309*; Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008), p.328.

[50] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008), p. 207.

[51] Ferencz, '*Defining International Aggression, the Search for World Peace: a Documentary History and Analysis (vol.1)' (1975), p.3*;Benjamin Wong and Hui-Chieh Loy, 'War and Ghosts in Mozi's Political Philosophy' (July, 2004) 54 (3) Philosophy East and West, pp. 360-361.

[52] Thucydides, '*History of The Peloponnesian War' (1977), Book V, pp.155-179.*

Europe of the Middle Ages (476-1450).[53] Roman law made attempts to control wars and distinguished lawful wars from unlawful wars, based on natural law. Accordingly, a war that was officially proclaimed with senate approval and for acceptable reasons, such as the protection of territory or defence of honour, was recognised as a lawful war.[54] Francisco de Vitoria (1480-1546) underlined self-defence as an ethical reason for a lawful war, "when harm has been inflicted",[55] and affirmed the necessity of punishment for unjust aggressors. [56] Accordingly, "[i]f there was a legitimate arbitrator to judge between the two parties to a war, he would have to condemn the unjust aggressor and perpetrator of the damage not only to the restitution of all goods stolen, but also to making good the costs of losses incurred by the war".[57] Vitoria described the permissible parameters of self-defence, the idea of proportionality, the limits of military necessity and the responsibility of state leaders, and his formula established one of the bases for the definition of aggression in later centuries.[58]

Hugo Grotius (1583-1645) defines the law of nations *(jus gentium)* based on the rule of law, as "justice brings peace of conscience, while injustice causes torments and anguish […] The state which transgresses the laws of nature and the law of nations *(jus gentium)* cuts away the bulwarks which safeguard its own future peace".[59] Conversely, he considers using force to protect legitimate rights that are not incompatible with law, and, as a result, war can be used as a rational instrument to preserve society.[60] Grotius established a mechanism by which peaceful settlement is possible through negotiation, arbitration and collaboration,[61] although he does not completely

[53] Ferencz, '*Defining International Aggression, the Search for World Peace: a Documentary History and Analysis (vol.1)' (1975), p.4.*
[54] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008),p.313.
[55] Francisco de Vitoria, '*Vitoria: Political Writings'* (Pagden A and Lawrance J (eds), Reprinted (edn), CUP 2001), p. 303.
[56] Ibid. pp. 303-304.
[57] Ibid.p.304.
[58] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008), p.314.
[59] Hugo Grotius, '*Hugo Grotius on the Law of War and Peace'* (Neff, Stephen C. (ed), Student (edn), CUP 2012), p.6.
[60] Brauch, 'The Three Worldviews of Hobbes, Grotius and Kant' (2004),p. 5.
[61] Ibid. p.11.

outlaw war.[62] He asserts that everyone who illegally wages war is liable for the act of aggression, and even military officers who were able to avoid such destruction should be regarded as responsible.[63] One of the significant points that Grotius makes is that it is illegal to launch a war against a state which has a tendency towards arbitration.[64] Additionally, he mentions the obligation to avoid assisting anybody who follows immoral causes in waging a war.[65] Therefore, in light of his teachings, the international community gradually rejected illegal forms of war and attempted to formulate remedies against aggressive wars. These efforts to prohibit aggressive wars can be observed in plans to establish international order, such as the writings of Kant in his *perpetual peace sketch*, and, subsequently constituted the bases for international regulations to recognise aggression as a crime to be prosecuted in later centuries.

In the evolutionary trend of plans aimed at the prohibition of aggression, major multilateral treaties have had significant impacts on the development of contemporary jurisprudence on the crime of aggression,[66] including the Hague Conventions of 1899 and 1907 on the Pacific Settlement of International Disputes;[67] the Treaty of Versailles, 1919, which condemned aggressive war, and attempted to codify the modern concepts of *jus ad bellum* and *jus in bello;*[68] the Covenant of the League of Nations,1920, which prohibited external aggression against the territorial integrity;[69] the Kellogg-Briand Paris Pact of 1928 on the renunciation of war as an

[62] Ibid. p.7.
[63] Grotius, '*On the Law of War and Peace' (2004), Chapter X, Section IV.*
[64] Ibid.Chapter XXIII, Section VIII.
[65] Ibid, ChapterXVII, Section III.
[66] Ferencz, '*Defining International Aggression, the Search for World Peace: a Documentary History and Analysis (vol.1)' (1975), p. 4.*
[67] Convention for the Pacific Settlement of International Disputes [First Hague, I], (signed July 29, 1899, entered into force September 4, 1900) 32 Stat.1779, TS 392, 1 Bevans 230. ;Convention for the Pacific Settlement of International Disputes [Second Hague, II] (signed October 18, 1907, entered into force January 26, 1910) 36 Stat. 2199, T.S. 536, 1 Bevans 577.
[68] Treaty of Peace with Germany [Treaty of Versailles] (adopted June 28, 1919, entered into force January 10, 1920) 225 CTS 188.
[69] Article 10, Covenant of the League of Nations, 1919, 1 Int. Leg. 1, 7.

instrument of national policy; [70] the 1945 London Charter, which criminalised war; [71] and the United Nations Charter of 1945 (Art 2(4)), which prohibited the use of force except in the case of self-defence.

The Kellogg-Briand Pact which outlawed the use of war to resolve disputes among the signatory nations [72] achieved considerable affirmation by the international community, [73] and, the effectiveness of the pact was subsequently affirmed by the Nuremberg Tribunal (1946).[74] However, the use of the word "war" in the pact raised some problems in regard to the realisation of the pact's aim. In fact, states might claim that their use of force does not technically amount to war, and so it would not violate the prohibition of the pact, as war is commonly recognised as a particular technical condition.[75] Regardless of this point, Ian Brownlie considers the significance of this pact alongside the UN Charter as the main resources for the limitation of the use of force by states.[76] As Robert Kolb discusses, "[t]he pact was the decisive turning point from the partial *jus ad bellum* of the covenant of 1919 to the *jus contra bellum* of the period since 1928".[77]

After the Second World War, the London Charter of the International Military Tribunal IMT (August 1945) gave jurisdiction over "crimes against peace" to the Nuremberg International Military Tribunal, and, for the first time in history, these acts were criminalised. Article 6(a) of this charter defined crimes against peace as the "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties,

[70] General Treaty for Renunciation of War as an Instrument of National Policy [Kellogg-Briand Pact of Paris], (signed August 27, 1928, entered into force July 24, 1929) 94 UNTS 57.
[71] Agreement for the prosecution and Punishment of Major War Criminals of the European Axis [London Charter], (signed August 8, 1945, entered into force August 8, 1945) 82 U.N.T.S. 279, 59 Stat. 1544, E.A.S. No. 472.
[72] Kellogg-Briand Pact of Paris, 1928, Article I,II.
[73] Antonio Cassese and others, '*International criminal law; Cases & Commentary*' (OUP 2011),p.242.
[74] Ian Brownlie, '*International law and the use of force by states*' (Clarendon Press 1963),p.80.
[75] Elihu Lauterpacht, 'The Legal Irrelevance of the" State of War"' (1968) 62 Proceedings of the American Society of International Law at Its Annual Meeting (1921-1969),p.62.
[76] Brownlie, '*International law and the use of force by states' (1963).p.91.*
[77] Robert Kolb, '*International Law on the Maintenance of Peace: Jus Contra Bellum'* (Edward Elgar Publishing 2018)Part I, Ch 2, Section F(1), para 1.

agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing".[78]Additionally, according to this article, rulers and military leaders shall be held personally responsible for waging aggressive war.[79] Therefore, the Charter of the International Military Tribunal of Nuremberg can be considered the first legal instrument that has dealt with this crime. The importance of this Tribunal goes further: the IMT declared in its judgment at Nuremberg that, "to initiate a war of aggression, […], is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole".[80] However, as Antonio Cassese elaborates, the category of the crimes against peace that was established at Nuremberg has been ignored in modern times, and not even one case in this category has been prosecuted by any court since the Second World War.[81]

Conversely, in consequence of the Nuremberg provision regarding crimes against peace, it was alleged that the charter created a new law[82] and that the Tribunal was applying a law *ex post facto.*[83] This claim was dismissed by the Nuremberg Tribunal, and it made reference to different treaties which banned aggressive wars. The Tribunal stated that aggressive war has been recognised as a crime in international law since the Kellogg-Briand Pact (the general treaty for the renunciation of war, in 1928). However, the Kellogg-Briand Pact had not given the individual criminal responsibility. It

[78] London Charter, 1945, Article 6(a); Also See Charter of the International Military Tribunal for the Far East (signed January 19, 1946, amended April 26, 1946) TIAS No 1589, 4 Bevans 27., Article 5(a)

[79] Charter of the International Military Tribunal Article 6(a); Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014),p.307.*

[80] United States of America et al v. Goering et al, Judgements and Sentences of the International Military Tribunal, Nuremberg, September 30- October 1, 1946 (1947) 41 AJIL 172

[81] Cassese and others, '*International criminal law; Cases & Commentary' (2011),p.238.*

[82] Telford Taylor, '*The Anatomy of the Nuremberg Trials: A Personal Memoir'* (Alfred A. Knopf, INC. 1992), p. 629.

[83] A law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such' factor deed. Black's Law Dictionary (9th (edn), available at WESTLAW BLACKS, 2009)

is now accepted that a crime of aggression is dealt with under customary international law. [84] As Bassiouni and Frencz state,

> "Although aggression had never been universally defined, it was clear to the Court that the leaders of a State that deliberately and wantonly attacked its neutral neighbours without warning or just cause could not be exculpated. It would be a travesty of justice to allow them to escape merely because no one had previously been convicted of the crime against peace."[85]

According to the IMT, the rank or situation of the persons who launched a war of aggression did not matter. Twenty-four major Nazi war criminals were indicted by the IMT for conspiracy to commit crimes against peace, in addition to war crimes and crimes against humanity.[86] In the Ministries Case, *US v. Von Weizsacker et al.*,[87] in which 17 high-level officials in the German government and the Nazi party were charged with aggression; with three of them finally being convicted, the Tribunal stated that aggressive invasion is historically considered a violation of international law. The Tribunal explained that attempts to justify military interventions, provides proof of the existence of an international law standard banning the act of aggression.[88] Additionally, the IMT considered law to be a dynamic system which is adaptable to global circumstances.[89]

[84] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014),p.308.*

[85] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008), p.214.

[86] Robert H. Jackson, '*The Case against the Nazi War Criminals: Opening Statement for the United States of America'* (Alfred A Knopf 1946)

[87] United States of America v. Von Weizsäcker et al. (Ministries case), US Military Tribunal Nuremberg, April 11-13, 1949. TWC, Vol. XIV, 308

[88] Cassese and others, '*International criminal law; Cases & Commentary' (2011),p.244.* ;United States of America v. Von Weizsäcker et al. (Ministries case), US Military Tribunal Nuremberg, April 11-13, 1949. TWC, Vol. XIV, 308

[89] Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, September 30–October 1, 1946 (1948) vol 22, 411 at 460-461.

Moreover, the elements of crimes against peace were analysed for the first time in the Nuremberg Military Tribunal. In the *High Command case*,[90] the Tribunal affirmed that knowledge is not a sufficient mental element in crimes against peace, and that the accused must play an influencing role in the policy-making process leading to war.[91] According to both the Nuremberg and Tokyo Tribunals, involvement in a "common plan or conspiracy for the accomplishment" of mere crimes against peace[92] creates a form of liability.[93] Considering conspiracy to be a form of agreeing to perpetrate a crime, regardless of the outcome of such an agreement,[94] both tribunals recognised conspiracy as a crime when it was actually implemented.[95] Thus, conspiracy is not recognised as an inchoate offence similar to that which exists in relation to genocide.[96] The main message from Nuremberg was that "the aggressive use of armed force" and any plan that eventually leads to aggressive war should be forbidden in order to avoid any consequent catastrophe.[97] Therefore, the Nuremberg judgement created international law standards to legally condemn aggression[98] as the greatest of all human crimes. It devised a formula to make international peace possible by holding the party responsible for aggression culpable regardless

[90] United States of America v. Wilhem Von Leeb et al. (High Command case) (Judgement) (October 27, 1948) Case No. 12, XI Trials of War Criminals before the Nuremburg Millitary Tribunals under Control Council Law No. 10462 NMT 462,486.

[91] Cassese and others, '*International criminal law; Cases & Commentary' (2011), pp.244-248.*

[92] London Charter, 1945, Art. 6;Tokyo Charter, 1946, Art. 5(c);France et al. v. Goering et al. (1946) 22 IMT 203, P.469.

[93] William A Schabas, '*Genocide in International Law: The Crime of Crimes*' (2nd (edn), CUP 2009), p.312;Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014), p. 368.*

[94] Schabas, '*Genocide in International Law: The Crime of Crimes' (2009), p.310.*

[95] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014),pp.356.367-368.* ; France et al. v. Goering et al. (1946) 22 IMT 203, pp. 467-468.

[96] Schabas, '*Genocide in International Law: The Crime of Crimes' (2009), p.310*; Convention on the Prevention and Punishment of International Crime of Genocide (signed December 9, 1948, entered into force January 12, 1951) 78 UNTS 277., Art. 3(b)

[97] Hans-Peter Kaul, 'The Nuremberg Legacy and the International Criminal Court-Lecture in Honor of Whitney R. Harris, Former Nuremberg Prosecutor' (2013) 12 (3) Wash U Global Stud L Rev,p.642.

[98] Rep. by Justice Robert H. Jackson, to Pres. Harry S. Truman, International Conference on Military Trials: London, 1945 (Oct. 7, 1946), available at http://avalon.law.yale.edu/imt/jack63.asp.

of his/her rank, aiming to establish a permanent judiciary with international jurisdiction over crimes against peace and humanity. [99]

The IMT revolutionised the law, and, as a result, the principles recognised and articulated in the Nuremberg Charter and the IMT judgement were subsequently unanimously affirmed by the first General Assembly of the United Nations.[100] The Charter of the United Nations, the successor to the League of Nations, prohibited the use of aggressive force, to prevent another catastrophic international war. The expression "threat or use of force" was deliberately chosen in Article 2(4), in order to remove any ambiguities in previous peace pacts, as the word "war" in the Kellogg-Briand Pact led to debates regarding the threshold of the technical concept of war.[101] The drafters of the UN Charter did not define aggression, because no definition can encompass every possible form of aggression. Article 39 of the UN Charter refers to "threat to the peace", "breach of the peace" and "act of aggression" alongside each other, and, the existence of these three conditions has been left to the Security Council to be determined, whereas this body was gradually paralysed due to its political approaches and the power of veto of its permanent members.[102] If the Security Council could not act based on its function of maintaining international peace and security due to the use of the veto, the General Assembly shall consider the issue directly, and may issue any urgent recommendations to return to international peace and security or use of the mechanism of the special emergency session. [103] It appears that the significant loophole in international law which made the Security Council and the General

[99] Ferencz, '*Defining International Aggression, the Search for World Peace: a Documentary History and Analysis (vol.1)' (1975), Author's preface.*
[100] GA Res 95(I) (1946), Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008), p.320.
[101] Lauterpacht, 'The Legal Irrelevance of the" State of War"' (1968),p.62.
[102] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008),p.322.
[103] UNGA 'Uniting for Peace' (3 November 1950) UN Doc A/RES/377(V)

Assembly non-functional was the lack of a comprehensive definition of aggression to be used in determining aggression in that context.[104]

The ambiguity in the conceptual framework for aggression facilitated breaches of the UN Charter regulation on the banning of the use of aggressive force. Alongside international discussions to define aggression conducted by the General Assembly, the international community was involved in various aggressive wars. Ostensibly, defining aggression was more difficult than committing acts of aggression. In fact, states were aware that defining and criminalising the act of aggression could lead to their prosecution in the future.[105] Eventually, in 1974, the UN General Assembly approved a definition of aggression by consensus. Subsequently, the proposed definition was adopted without a vote by the UN General Assembly as Resolution 3314(XXIX).[106] In this resolution, "the principles of international law" recognised by the London Charter and the Nuremberg judgment were entirely affirmed,[107] aiming to provide a guideline to the Security Council in determining aggression to prevent the use of aggressive force.[108]

The resolution derived the central definition of aggression from Article 2(4) of the UN Charter, and it considers the role of the Security Council in determining the aggressive use of force and also the seriousness of the act drawn from Article 39 of the UN Charter. The resolution clarified different aspects of aggression by setting a non-exclusive list in Article 3, subject to the Security Council affirmation. It did not deal with individual criminal

[104] Julius Stone, '*Aggression and World Order: A Critique of United Nations Theories of Aggression'* (Reprint (edn), 1st Published 1958, The LawBook Exchange, LTD. 2007),p.184
[105] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008),p. 327.
[106] UNGA 'Definition of Aggression' (14 December 1974) UN Doc Res 3314 (XXIX)
[107] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014),p.309.*
[108] Ferencz, '*Defining International Aggression, the Search for World Peace: a Documentary History and Analysis (vol.1)' (1975), p. 4.*

responsibility for the act of aggression, and it was presented to the Security Council merely as a guideline in determining aggression by states.[109] Although, according to the International Law Commission, the definition of aggression by GA Resolution 3314 (XXIX) is not a definition for judicial use,[110] this definition was used by the International Court of Justice (ICJ) in its consideration of unlawful use of force by states, and the ICJ recognised the provision in Article 3(g) of the resolution as customary international law.[111] The ICJ judgements on the merits in four cases - *Corfu Channel*,[112] *Nicaragua*,[113] *Oil Platforms*,[114] and *DRC v Uganda*[115] - and its Advisory Opinions - the *Nuclear Weapons* Opinion[116] and the *Wall* Opinion[117] - discussing the legality of the use of force have had a significant role in developing the law on the use of force. The Court has constantly taken a strict view of the prohibition of the use of force in Article 2(4) of the UN Charter, and has not allowed extensive exceptions to the rule. [118] It rejected any claim that a state may unilaterally use force along with the function of the Security Council or the ICJ.[119]

As discussed, the definition of aggression by GA Resolution 3314 (XXIX) constituted the first stepping stone for the potential position of the crime of aggression within the jurisdiction of the International Criminal Court (ICC).

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[109] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014), p.309*; UN Doc Res 3314 (XXIX) Para 4, Article 4, Article 5(2).

[110] ILC, Report of the International Law Commission on the Work of its Forty-sixth Session, 02 May- 22 July 1994, UNGA Official Records, Forth- ninth Session, Supplement No. 10, A/49/10 (1994), Commentries, P. 38, Para. 6.

[111] Page Wilson, '*Aggression, Crime and International Security: Moral, Political and Legal Dimensions of International Relations*' (Routledge 2009),p.105.

[112] Corfu Channel Case Judgement of April 9th, 1949: I.C.J. Reports (1949), 4.

[113] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] I.C.J. Rep. 14

[114] Oil Platforms (Islamic Republic of Iran v. United States of America) (Judgement) [2003] I.C.J. Rep. 161

[115] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Judgment) [2005] I.C.J. Rep. 168

[116] Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] I.C.J. Rep. 226

[117] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] I.C.J. Rep. 136

[118] Gray, '*The ICJ and the Use of Force*' (2013), p. 237.

[119] Ibid.p. 246. ;See Corfu Channel Case Judgement of April 9th, 1949: I.C.J. Reports (1949), 4., p. 35.

Considering that the International Criminal Court is currently only a judicial body to prosecute aggression, the potential jurisdiction of this Court over this crime is analysed in the next section, and it examines how the role of the Court can be developed to implement the right to peace.

5.2.2 The Role of the ICC and the Kampala Amendments to the Rome Statute in Prosecuting the Crime of Aggression

The crime of aggression which was initially prosecuted in Nuremberg went into partial hibernation for decades, when no international court dealt with this crime. In efforts to establish an international criminal court, the International Law Commission proposed the draft statute which considered the crime of aggression within the jurisdiction of the potential court; however, it did not define aggression. [120] Additionally, the Commission considered a provision requiring the affirmation of the commitment of the act of aggression by the Security Council,[121] considering Article 39 of UN Charter, on the role of the Security Council in relation to maintaining international peace and security. In fact, during the negotiations on incorporating the act of aggression within the jurisdiction of the International Criminal Court, there was resistance by the permanent members of the Security Council to include aggression in the Rome Statute, unless the Council's affirmation would be considered as a precondition, whereas such an obstacle did not affect the Nuremberg Tribunal. [122] Ultimately, the resultant arguments on this issue were reflected in Article 5(1)(d) and 5(2) of the Rome Statute (1999). Accordingly, Article 5(1) (d) incorporated aggression in the subject jurisdiction of the Court, but specific conditions were determined in Article 5(2). Accordingly, no case of aggression could be tried by the ICC, unless the states parties to the Rome Statute agree on some further provisions.[123] In order to fill the existing gap

[120] UN Doc A/49/10, Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014).p.310*
[121] UN Doc A/49/10, Article 23, p.43.
[122] Schabas, '*Freedom from Fear and the Human Right to Peace*' (2012), p.44.
[123] Mauro Politi and Giuseppe Nesi, '*The International Criminal Court and the Crime of Aggression'* (Ashgate Publishing 2004), p.188.

regarding the crime of aggression in the Rome Statute, the Preparatory Commission for the ICC (1999-2002), and also the Special Working Group on the Crime of Aggression (SWGCA, 2003-2009) conducted negotiations, and, eventually, the SWGCA reached a consensus on the definition of the crime of aggression in 2009.[124] Subsequently, the amendments to the Rome Statute were adopted by consensus by the review conference of the ICC Statute in Kampala (Uganda), in 2010. According to these amendments[125], Article 5(2) is deleted from the statute, and a definition of aggression is added in the new Article 8 *bis.* The Kampala Conference (2010) adopted the definition of aggression that had been determined by the UN General Assembly in 1974 on the definition of the crime of aggression to remedy the deficiency in the Rome Statute on this issue. In addition, the plan for the Court to exercise its jurisdiction over this crime is articulated in the new articles 15 *bis* and 15 *ter*. Three main elements involved in the crime of aggression can be understood from Article 8 *bis*:

1- The perpetrator must be a "person in a position effectively to exercise control over or to direct the political or military action of a State", or, in other words, a political or military leader.[126]

2- The Court must be convinced that the perpetrator was involved in the planning, preparation, initiation or execution of the act of aggression.

3- The act must amount to the threshold described by GA Resolution 3314 (XXIX), and must constitute a manifest violation of the UN Charter in terms of character, gravity and scale.[127]

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[124] Liechtenstein Institute, Handbook Ratification and Implementation of the Kampala Amendments to the Rome Statute of the ICC: Crime of Aggression, War Crimes (Liechtenstein Institute on Self-Determination, 2012), p.3.

[125] Rome Statute as amended by amendments on the Crime of Aggression arts. 8bis, 25 bis, (adopted on June 11, 2010, entered into force May 8, 2013) C.N.651.2010.TREATIES-8

[126] Yoram Dinstein, '*The Crime of Aggression under Customary International Law*' in Leila Nadya Sadat (ed), '*Seeking Accountability for the Unlawful Use of Force*' (CUP, 2018), pp. 299 and 301; Art 25 bis, Rome Statute

[127] Liechtenstein Institute, Handbook Ratification and Implementation of the Kampala Amendments to the Rome Statute of the ICC: Crime of Aggression, War Crimes (Liechtenstein Institute on Self-Determination, 2012)

As can be observed, the most serious forms of illegal use of force between states can be subject to the Court's jurisdiction, and individual or collective legal self-defence, including actions authorised by the Security Council, are excluded from the definition of aggression.[128] Although aggression creates grounds for the commission of other crimes, including genocide, crimes against humanity and war crimes, it differs remarkably from those crimes, and it is contemplated from the *jus ad bellum* aspect, dealing with state responsibility in international law. The crime of aggression can merely be committed on behalf of a state and by persons in policy-making positions in a state. However, genocide, crimes against humanity and war crimes may be committed by any member of the armed force of a state or whoever is affiliated with a state, and even non-state actors.[129]

Conversely, the predecessor of this article in the London Charter implicitly recognises all persons who perform the act of aggression as being individually responsible. The persons accused before the Nuremberg Trial were not necessarily in high political or military positions, and some were industrialists who aided the waging of war.[130] Meanwhile, according to the definition of aggression in Article 8 *bis*, a perpetrator of aggression is a person who effectively exercises control over a state or a person who directs the political or military action of a state. Therefore, political superiors are the only people responsible for this crime. Senior military persons may be accused of war crimes, but they cannot be indicted for not having refused to implement aggressive plans except in countries where the military occupies a policy-making position. In other words, the Kampala definition exclusively considers political leaders and excludes those who have the power to influence policy. However, it is difficult to assume that the act of

[128] Ibid. p.161;Noah Weisbord, 'Judging Aggression' (2011) 50 (1) Colum J Transnat'l L , p. 82.

[129] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014),p.312*; Cóman Kenny, 'Prosecuting Crimes of International Concern: Islamic State at the ICC?' (2017) 33 (84) Utrecht J Int'l & Eur L, p.139. ; Rome Statute of the International Criminal Court (adopted July 17, 1998, entered into force July 1, 2002) 2187 UNTS 90., Article 25 & 28.

[130] UN War Crimes Commission, Law Reports of Trials of War Criminals (1949) vol. x, P. 1, 123.; Case No. 57. The I.G. Farben Trial, Trial of Carl Krauch and the twenty-two others, United States Military Tribunal, Nuremberg, 14TH August, 1947-29TH July, 1948

aggression can be completed by an individual, and hence the punishment of an individual for this crime is not only insufficient, but also it can unjustly acquit the collective.[131] Additionally, this definition did not encompass aggression committed by non-state actors or individual mercenaries who are not supported by a state.[132]

It appears that although certain crimes by non-state actors can be prosecuted by the ICC,[133] use of armed force by non-state actors are not encompassed by the crime of aggression within the Rome Statute. The reason may be due to the legal foundation for the crime of aggression which is the prevention of the threat or use of armed force by states based on Article 2(4) of the UN Charter. Additionally, as the High-level Panel on Threats, Challenges and Change recognises "The norms governing the use of force by non-State actors have not kept pace with those pertaining to States."[134] As McDougall concludes, incorporating the use of armed force by non-state actors into the crime of aggression can merely undermine this crime. [135]

Moreover, it is difficult to evaluate whether certain uses of force, such as most cyber-attacks, amount to the required threshold of "gravity and scale" to qualify as "manifest" breaches of the UN Charter. There is little guidance in the Kampala resolution and its *travaux* dealing with the interpretation of these parameters.[136]

Based on Article 8 *bis* of the Rome Statute, "planning, preparation, initiation or execution" constitute material elements of the act of aggression. However, Article 6 of the Nuremberg and Tokyo IMTs Charters includes "conspiracy" in addition to the above-mentioned elements. These elements,

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[131] C. McDougall, '*The Crime of Aggression under the Rome Statute of the International Criminal Court'* (Cambridge University Press 2013), pp. 108-110.
[132] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014), p.314*; Kirsten Sellars, ''*Crimes Against Peace' and International Law'* (CUP 2013),p.290.
[133] Kenny, 'Prosecuting Crimes of International Concern: Islamic State at the ICC?' (2017), p.135.
[134] UNGA, Report of the High-Level Panel on Threats, Challenges and Changes (December 02, 2004) 59th Session UN Doc. A/59/565
[135] McDougall, '*The Crime of Aggression under the Rome Statute of the International Criminal Court' (2013), pp. 108-110.*
[136] Tom Ruys, 'Criminalizing Aggression: How the Future of the Law on the Use of Force Rests in the Hands of the ICC ' (November 9, 2018) 29 (3) European Journal of International Law , p. 908.

such as planning and preparation, overlap in some respects, because preparation without a clear plan of aggression may be implausible. Moreover, neither of the IMTs Charters (Nuremberg and Tokyo) nor the ICC considered the threat to use military force as a form of aggression. In other words, the act of the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state in a manner which is inconsistent with the Charter of the United Nations must be completed to invoke international criminal responsibility.[137]

Two mental elements are considered in the amendments to the Rome Statute for the crime of aggression. First, the perpetrator must have been "aware of the factual circumstances that established that such a use of armed force was inconsistent with the Charter of the United Nations". [138] Second, the perpetrator should have been "aware of the factual circumstances that established such a manifest violation of the Charter of the United Nations".[139] Therefore, the intention of the perpetrator to wage aggressive war, or his/her knowledge of the intent of waging aggressive war, is not a prerequisite required to form the crime of aggression,[140] whereas, at the Nuremberg Tribunal, under Article 6, the knowledge of the perpetrator about the plan and the collective intent to wage aggressive war was a necessary subjective mental element.[141] It can be understood that aggression can be contemplated in two ways: first, it is a wrongful act committed by states which breaches Article 2(4) of the UN Charter, and it gives rise to state liability without requiring any special intent. The other way is to consider aggression a wrongful act that creates individual criminal

[137] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014), p.315.*

[138] ICC Assembly of States Parties, Review Conference of the Rome Statute, Officioal Records, 'The Crime of Aggression' (10 June 2010) ICC Doc RC/Res 6, Annex II, Amendments to the Elements of Crimes, Article 8 bis, Crime of Aggression, Elements, para 4.

[139] Ibid, Annex II, Amendments to the Elements of Crimes, Article 8 *bis*, Crime of Aggression, Elements, para 6.

[140] Gerhard Kemp, '*Individual Criminal Liability for the International Crime of Aggression*' (Intersentia 2010),p.235.

[141] Judgment of the Nuremberg International Military Tribunal 1946 (1947) 41 AJIL 172, at 300.

responsibility which requires the subjective mental elements of the crime,[142] which in this case is awareness of the inconsistency of the act with the UN Charter's obligations.

The Kampala Amendment illustrated the conceptual and legal framework for the crime of aggression, and it provided a mechanism through which this crime can be prosecuted. The jurisdiction over aggression will be exercised over the state that ratified or accepted the Kampala Amendments, and there is also the possibility to withdraw it.[143] Therefore, the Court has jurisdiction merely over the state parties which accepted the jurisdiction of the Court over the crime of aggression and did not declare to withdraw it at the time of the prosecution.

At this juncture, a dilemma arises: it is alleged that, from the beginning, the crime of aggression has been incorporated within the Court's jurisdiction by virtue of Article 5(1) (d) of the Rome Statute, and, based on Article 12(1) of the statute, all states parties to this statute have already accepted the Court's jurisdiction over the crime of aggression. Therefore, it can be assumed that all state parties to the statute have already accepted the jurisdiction of the Court over the crime of aggression; otherwise, they would have opted out of the Kampala Amendments. In contrast, there is another perspective which claims that the acceptance of the Court's jurisdiction over this crime requires active consent by attentively ratifying the amendments, as the jurisdictional regime governing the crime of aggression is a consent-based regime.[144] In this case, the Court's jurisdiction over the crime of aggression applies merely to state parties which ratified the amendments and also did not opt out. In other words, although the aggression can be prosecuted when it is committed even by a state party which has not ratified the Kampala Amendments in the territory of a state party which has ratified the

[142] Antonio Cassese, '*Cassese's International Criminal Law*' (Cassese A and others (eds), 3rd (edn), OUP 2013), p.142.
[143] Rome Statute, Article 15 *bis*
[144] Liechtenstein Institute, Handbook Ratification and Implementation of the Kampala Amendments to the Rome Statute of the ICC: Crime of Aggression, War Crimes (Liechtenstein Institute on Self-Determination, 2012), p.10.

amendments,[145] the aggressor state party is not indicted if it opted out of the amendments.[146]

Therefore, the possibility of opting out of amendments via a straightforward declaration to the Registrar of the Court can render Article 8 *bis* powerless. It appears that there is a kind of impunity for citizens from states which are not party to the Rome Statute and citizens from states parties which have opted out of the amendments. However, this concern does not exist in relation to war crimes, crimes against humanity and genocide, as there is the possibility of litigation against individuals even from states that are not parties to these crimes, if the crime was committed on the territory of a state party to the Rome Statute.[147]

The Kampala Amendments facilitated the prosecution of crimes of aggression in the ICC via two ways, state referral or Security Council referral, and further conditions are stated in Articles 15 *bis* and 15 *ter*.[148] When the ICC tries an individual for the crime of aggression, the Court has already been persuaded that aggression has been committed. To determine the commission of aggression, a remedy was proposed by the International Law Commission (ILC) in the draft of the ICC Statute, considering the role of the Security Council under the UN Charter. Accordingly, the Council, prior to the ICC prosecution, must determine that a state had committed the act of aggression. Conversely, there are contrasting viewpoints in relation to this issue, due to the political nature of the Security Council, as it is difficult to stop a political body from being political. In addition, there is the

[145] Sean Murphy, '*The Crime of Aggression at the International Criminal Court*' in Marc Weller, J.W. Rylatt and A. Solomou (eds), '*The Oxford Handbook of the Use of Force in International Law*' (OUP, 2015), p.545.
[146] Ibid.p.549.
[147] Article 12(2)(a), Rome Statute ; Kenny, 'Prosecuting Crimes of International Concern: Islamic State at the ICC?' (2017), pp. 128-129.
[148] According to Article 15 *bis* (3), the court shall exercise its jurisdiction over this crime after 1 January 2017 subject to the adoption of the amendment to the Statute by 30 State Parties, and promulgation by the ICC Assembly of States Parties. On 26 June 2016, the thirtieth State, the State of Palestine, deposited its instrument of ratification of the Kampala Amendments. Liechtenstein Institute, Handbook Ratification and Implementation of the Kampala Amendments to the Rome Statute of the ICC: Crime of Aggression, War Crimes (Liechtenstein Institute on Self-Determination, 2012), p.1.

possibility that permanent members of the Council can use the power of veto over cases relating to themselves and their allies and, as a result, block many cases involving aggression. Although the UN member-states have suggested reforming the UNSC and veto,[149] there is no willingness among permanent members of the Council to discard the power which allows them to control the UN action along lines favourable to their interests.[150] In order to address this problem, it was proposed to consider a remedy involving a role for the UN General Assembly or the International Court of Justice (ICJ) (in view of its advisory jurisdiction) in determining the crime of aggression to avoid any blockage. [151] The result of the negotiations regarding the Security Council's role in the Kampala Conference was reflected in the formula of Articles 15 *bis* and 15 *ter*, without involving the UN General Assembly or the International Court of Justice (ICJ). [152] Accordingly, the prosecutor has the authority to handle cases of aggression after the endorsement of the UN Security Council. In the lack of acknowledgment of the crime of aggression by the Council, the prosecutor must initially enquire into the Council's opinion, and can launch an investigation subject to having received no response from the Council within six months. During all of these procedures, the investigation or prosecution can be suspended for 12 months by the Security Council, based on Article 16 on deferral of an investigation or prosecution. In other words, this article can be abused by that political body for political purposes. [153]

Furthermore, the jurisdictional scope of the aggression amendments is narrower than other crimes under the Rome Statute. It is limited to the states parties to the Rome Statue, subject to the aggressor state not having opted

[149] General Assembly Resumes Debate on Security Council Reform, with Several Divergent proposals still under Consideration, GA/10484 (July 20, 2006) UN

[150] L. Dorosh and O. Ivasechko, 'The UN Security Council permanent members' veto right reform in the context of conflict in Ukraine' (June 2018) 12 (2) Central European Journal of International and Security Studies, p. 157.

[151] UNPCNICC 'Proposal submitted by Bosnia and Herzegovina, New Zealand and Romania, Conditions under which the Court shall exercise jurisdiction with respect to the crime of aggression' (23 February 2001) UN Doc PCNICC/2001/WGCA/DP.1

[152] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014).p. 330* ; Nicolaos Strapatsas, '*Aggression*' in William A Schabas and Nadia Bernaz (eds), '*Routledge Handbook of International Criminal Law'* (Routledge, 2011), p.163.

[153] Michael Anderson, 'Reconceptualizing Aggression' (2010) 60 (2) Duke LJ , p.438.

out of the amendments. Therefore, there is impunity for aggressive leaders of a non-party state and leaders of the states parties which have opted out of the amendments.

Moreover, it is difficult to assume the complementary jurisdiction of the ICC for the crime of aggression, considering the fact that the perpetrator must be in the highest position of policy-making in a state.[154] The high threshold that has been considered in the definition of aggression by the ICC can exclude some important forms of the use of force by states from the jurisdiction of the Court.[155] Another point is that the ICC Statute does not deal with the state's responsibility regarding the crime of aggression,[156] and it is expected that the Court will clarify the vague points in the amendments.[157] On the other hand, as Kreß discusses, the number of ratifications may increase due to the fact that there are some grey legal areas in which the Court will not exercise its jurisdiction over the crime of aggression, including anticipatory self-defence, self-defence against a non-state armed attack, and humanitarian intervention.[158]

Although there are many concerns regarding the success of the ICC in prosecuting the crime of aggression, and there have been some comments on the content of the amendments, including ambiguity and uncertainty in its definition,[159] if the jurisdiction of the ICC over the crime of aggression enables it to prevent even a few state leaders from waging war, it will contribute to the maintenance of peace and security in many parts of the world. In fact, the passive approach from the international community to the violation of the territorial integrity of other countries may encourage the aggressor state to repeat the act of aggression towards other states. This

[154] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014), p.328.*
[155] Ibid, p.327; Kemp, '*Individual Criminal Liability for the International Crime of Aggression' (2010), p.234.*
[156] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014), p.327.*
[157] Ibid, p.324.
[158] Claus Kreß, 'On the Activation of ICC Jurisdiction over the Crime of Aggression' (March 1, 2018) 16 (1) Journal of International Criminal Justice, p. 10.
[159] Ruys, 'Criminalizing Aggression: How the Future of the Law on the Use of Force Rests in the Hands of the ICC ' (November 9, 2018), p. 899.

issue was raised, by the Committee on Foreign Affairs of the European Parliament, as a reason for Russia's aggression towards Ukraine (2014) following its invasion of Georgia (2008). [160] Additionally, as Mégret discusses "[t]he decline of aggression and the rise of atrocity crimes in the hierarchy of international crimes are therefore arguably not just vaguely parallel phenomena; they are deeply correlated." [161] Thus, states must contribute to the rule of law at the international level by ratifying these amendments "to help fulfil the promise of Nuremberg that never again would those who dare to commit the crime of aggression do so with impunity". [162] Therefore, the momentum from Kampala can be used to partially deter the crime of aggression that is the highest violation of the *jus ad bellum*, and so the ratification of the amendments can serve as a remedy to realise the right to peace and freedom from fear that has been forgotten for many years.

5.3 The Normative Status of the implementation Mechanism of the Right to Peace in International Law

Finally, the research seeks a remedy to break the present blockade of the implementation mechanism, due to the existing loopholes and deficiencies in the related international legal instruments. The dilemma concerns how a human right such as the right to peace can be implemented and can make individuals and states accountable for its violation, regardless of wide spread reluctance among states to implement this right. In order to solve this problem, the study endeavours to locate the position of the implementation

[160] Committee on Foreign Affairs of the European Parliament, Report on the strategic military situation in the Black Sea Basin following the illegal annexation of Crimea by Russia (2015/2036(INI)) ; See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), (Preliminary Objections, Judgment) [2011] I.C.J. Rep. 70 ; Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation) (Provisional Measures Order) [April 19, 2017] I.C.J. Rep, p. 104

[161] Frédéric Mégret, 'International Criminal Justice as a Peace Project' (November 9, 2018) 29 (3) EJIL, p. 853.

[162] Liechtenstein Institute, Handbook Ratification and Implementation of the Kampala Amendments to the Rome Statute of the ICC: Crime of Aggression, War Crimes (Liechtenstein Institute on Self-Determination, 2012), p.4.

mechanism of the right to peace within the international legal system. To this purpose, it examines this mechanism through the formula of *jus cogens* to explore whether it can be covered by such a system.[163]

The study does not intend to produce or introduce a new peremptory norm, as it considers that "any excess in characterizing rules as peremptory ones, without carefully considering whether or not such characterization is shared by the international community, risks undermining the credibility of *jus cogens* as a legal category, distinct from natural law and apt to perform important systemic functions."[164] Therefore, it only reveals the traces of existing peremptory norms within the legal-conceptual framework of the right to peace to prove the importance and enforceability of this right.

According to the Vienna Convention on the Law of Treaties (Articles 53 and 64), both pre-existing norms and newly emerging norms can be encompassed by the *jus cogens* formula, subject to possessing other criteria necessary for this special formulation.[165] Therefore, being either a pre-existing rule or a newly emerging area of law cannot affect the possibility of being a norm of *jus cogens*.[166] In fact, the rules of *jus cogens* are dynamically emanated from the international legal system to make international law enforceable.[167] These norms grant power to the international legal bodies, as they can judicially and effectively legitimise the enforcement of human rights regardless of the limits imposed by some obstacles. As Conklin elaborates "[p]eremptory norms reinforce and guard the ethos of the international community".[168] These norms can include both

[163] ILC, Report of the International Law Commissionon the Work of its 66th Session (5 May–6 June and 7 July–8 August 2014) UN Doc A/69/10 ; Egon Schwelb, 'Some Aspects of International Jus Cogens as Formulated by the International Law Commission' (October 1967) 61 (4) The American Journal of International Law, p. 946.
[164] Andrea Bianchi, 'Human Rights and the Magic of Jus Cogens' (June 1, 2008) 19 (3) EJIL, p. 505; See also Thomas Weatherall, '*Jus Cogens: International Law and Social Contract*' (CUP 2015), p.444.
[165] Vienna Convention on the Law of Treaties (signed May 23, 1969, entered into force January 27, 1980), 1155 UNTS 133., Articles 53, 64.
[166] See The content of jus cogens, ILC, Report of the International Law Commission, Fifty-eighth session (1 May-9 June and 3 July-11 August 2006) UN Doc (A/61/10), para 33.
[167] Predrag Zenovic, 'Human Rights Enforcement via Peremptory Norms- A Challenge to State Sovereignty' (2012) (6) RGSL(Riga Graduate School of Law) Research Papers .p.17.
[168] William E. Conklin, 'The Peremptory Norms of the International Community' (August 1, 2012) 23 (3) EJIL, 859.

rights[169] and duties, depending on the nature of the norm.[170] The long-established peremptory norms in international law concern three common criteria: a commitment to the dignity of humanity[171] which necessitates fundamental rights and freedoms; the common interests of states in international order; and international peace and security.[172] At this juncture, in view of the above-mentioned criteria regarding *jus cogens* norms, it is necessary to examine the extent to which the implementation of the right to peace can be encompassed by such a regime which is formulated. Scrutiny of the fundamental components constituting the philosophical groundwork for the right to peace reveals crucial elements in that structure in accordance with those three common criteria of *jus cogens* norms as detailed in the following paragraphs.

First, in the philosophical framework of the right to peace, this right was established as a categorical imperative and according to the Universal Principle of Right. It was meticulously determined that the right to peace emanates from dignity. Consequently, its implementation guarantees the maintenance of dignity, which is one of the main concerns in the *jus cogens* framework. It is undeniable that violence destroys the dignity of both the victim and the perpetrator; thus, dignity cannot be maintained in a war, which is intrinsically accompanied by violence.[173] Dignity necessitates the development of a situation which includes obligatory measures to maintain peace and also the "prosecution of peace-violators or aggressors". In fact,

[169] Espiell, '*Self-Determination and Jus Cogens*' (1979), pp. 167, 171;W. Paul Gormley, '*The Right to Life and the Rule of Non-derogability: Peremptory Norms of Jus Cogens*' in B.G. Ramcharan (ed), '*The Right to Life in International Law'* (Martinus Nijhoff, 1985), p. 125.
[170] Zenovic, 'Human Rights Enforcement via Peremptory Norms- A Challenge to State Sovereignty' (2012).p.26; Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (Fall 1996), p.74;ILC, Report of the Study Group on Fragmentation of International Law: Difficulties arising from the Diversification of Expansion of International Law (April 13, 2006) UN Doc A/CN.4/L.682, para 374.
[171] Offending fundamental notions of human dignity shocks the conscience of humanity.
[172] Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (Fall 1996), pp.68-69; Ian Brownlie, '*Principles of Public International Law'* (7th (edn), OUP 2008), p. 511.
[173] e.g. Violation of Article 3 of the European Convention on Human Rights (prohibition of "inhuman or degrading treatment") in the context of the armed conflict that occurred between Georgia and the Russian Federation in August 2008. Georgia v. Russia, App No 38263/08 (ECHR, December 13, 2011), paras 28-29 ;Grand Chamber hearing in case brought by Georgia against Russia over 2008 Conflict (May 23, 2018) ECHR 183 (2018), p.1.

human dignity, as the foundation of human rights, provides a normative basis for the progressive realisation of the right to live in peace, and can determine the limits of entitlements and duties.

Second, based on the philosophical groundwork for the right to peace, the other criterion of the formula of *jus cogens,* namely the common interests of states in international order, can be met by the implementation of this right. It was broadly argued in Chapter 4 that the disturbing immediate and long-term consequences of wars will affect the whole world's population in the short term or the long term. [174] Thus, although the money earned from the arms industry is considerable, a larger amount of money will be spent to defuse environmental and humanitarian crises caused by the same armament. Finally, the third criterion in the formula of *jus cogens*, namely international peace and security, constitutes the main aim of the implementation mechanism of the right to peace which equips peoples against violence. Therefore, all three criteria in the formula of *jus cogens* are explored in the conceptual-legal groundwork for the right to peace, and inevitably in its implementation mechanism.

Furthermore, it was observed in the conceptual framework of the right to peace that this right is strongly interrelated with the right to life,[175] as in the lack of peace; the right to life can be easily violated.[176] Thus, the right to peace is systematically linked with a crucial key factor which is concerned with *jus cogens* norms, namely the right to life.[177] To clarify this link, de Zayas refers to Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR 1966) and its relevant "general comments". [178]

[174] e.g. The impcat of the situation in Yemen on international peace and security S/RES/2402 (2018), p. 2.
[175] A.A. Tikhonov, '*The Inter-Relationship Between the Right to Life and the Right to Peace*' in B.G. Ramcharan (ed), '*The Right to Life in International Law'* (Martinus Nijhoff Publishers, 1985), p. 105.
[176] Ibid ; James Spigelman, 'The Forgotten Freedom: Freedom from Fear' (2010) 59 (3) The International and Comparative Law Quarterly, p.550.
[177] International Convention on Civil and Political Rights (signed December 16, 1966, entered into force March 23, 1976), 999 UNTS 171., Article 6; Vienna Convention on the Law of Treaties, 1969, Articles 53 & 64;Gormley, '*The Right to Life and the Rule of Non-derogability: Peremptory Norms of Jus Cogens*' (1985), p. 125.
[178] De Zayas, '*Peace as a Human Right: The Jus Cogens Prohibition of Aggression*' (2011),p.37.

According to this article, "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Consequently, the interpretation adopted by the related treaty body affirms the prevention of war as the supreme duty of states, and asserts that "[w]ars and other acts of mass violence continue to be a scourge of humanity resulting in the loss of lives of many thousands of lives every year. Efforts to avert the risks of war, and any other armed conflict, and to strengthen international peace and security, are among the most important safeguards for the right to life."[179] Additionally, as O'Connel elaborates "[a]ffirming the right to life is incompatible with advocating greater resort to war".[180] Accordingly, the obvious connection between the "right to life" and the implementation of the "right to peace" is an undeniable fact. It is noteworthy that in an interpretation on the right to life, the duty to prohibit aggression is articulated as a supreme duty. [181] It determines that the right to life and the right to peace are analogous structures with a core element – a duty to prohibit war.[182]

As discussed previously, the prosecution of aggression as the implementation mechanism of the right to peace constitutes one of the core elements of the legal framework of this right. The act of aggression, which is identified as the main violation of the right to peace, is one of the particular crimes concerning the overriding interests of the international community which results in a lack of respect for their dignity, and it has a direct impact on the peace and security of the human race.[183] This act is

[179] UNHRC 'General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life' (30 October 2018) / UN Doc CCPR/C/GC/36, para 69.

[180] Mary Ellen O'Connell, '*The Arc toward Justice and Peace*' in Margaret M. DeGuzman and Diane M. Amann (eds), '*Arcs of Global Justice: Essays in Honour of William A Schabas*' (OUP, 2018), p. 483.

[181] e.g. See cases which raise issues under Article 2 (right to life) of the European Convention following Russia's aggression against Georgia and Ukraine:Grand Chamber hearing in case brought by Georgia against Russia over 2008 Conflict (May 23, 2018) ECHR 183 (2018) ;Ukraine v. Russia, App No 20958/14 (ECHR);Grand Chamber to examine four complaints by Ukraine against Russia over Crimea and Eastern Ukraine (May 09, 2018) ECHR 173 ;Georgia v. Russia, App No 38263/08 (ECHR, December 13, 2011)

[182] William A. Schabas, '*The Right to Life*' in Andrew Clapham and Paola Gaeta (eds), '*The Oxford Handbook of International Law in Armed Conflict*' (OUP, 2014), p. 382.

[183] Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (Fall 1996), pp.68-69.

criminalised under customary international law.[184] The norm attributing the prohibition of aggression was confirmed as the pre-existing norm of international law in light of the London Charter and Nuremberg Tribunal judgments, and was articulated in Article 2(4) of the UN Charter. The UN Charter, to which the whole international community is party, makes this norm non-derogable, and any derogation entitles the victim to invoke self-defence and entitles the Security Council to collective self-defence.[185] Thus, the peremptory nature of the prohibition of the use of inter-state force is originated from both Article 2(4) as well as an independently valid general customary law.[186]

The prohibition of the use of force embodied in Art 2(4) of the UN Charter was confirmed by the ICJ in the Nicaragua case as a principle of *jus cogens*. In this case, it is stated that "The principle of non-use of force belongs to the realm of *jus cogens*".[187] Additionally, in the case of Armed Activities on the Territory of the Congo, the prohibition of aggression was acknowledged as belonging to *jus cogens* by Judge *ad hoc* Dugard.[188] He asserted that "where a violation of a norm of *jus cogens* is alleged, the respondent State cannot raise a reservation to the Court's jurisdiction to defeat that jurisdiction. In such a case, *jus cogens*, in effect, trumps the reservation".[189] The ICJ, in its advisory opinion in the case of Accordance with International Law of the Unilateral Declaration of Independence in Respect to Kosovo, referred to "the unlawful use of force" as being among "egregious violations of norms

[184] William A Schabas, '*An Introduction to the International Criminal Court*' (5th (edn) , 1st Published 2001,CUP 2017), p.133; Lord Goldsmith, Attorny General,UNSC 'Iraq Resolution 1441', S/RES/1441 (2002) March 2003, para.34.
[185] James A Green, 'Questioning the Peremptory Status of the Prohibition of the Use of Force' (2011) 32 (2) MichJ Int'l L, p.226. The ICJ asserted, in the Barcelona Traction case (1970), the "outlawing of acts of aggression" as one of norms which impose erga omnes obligations;Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) [1970] I.C.J. Rep. 3, para. 34.
[186] Dinstein, '*War, Aggression and Self-Defence' (1995), p. 106.*
[187] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] I.C.J. Rep. 14, para 190.
[188] Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), (Sep. Op. Dugard) [2006] I.C.J Rep, 86., para 10.
[189] Ibid, para. 3.

of general international law, in particular those of a peremptory character (*jus cogens*)".[190]

It can be observed that the key implementation mechanism of the right to peace, namely the prosecution of aggression, is linked with a long established peremptory norm, namely the prohibition of aggression. This linkage can impact on the implementation mechanism of this right. This claim can refute other doctrines and policies which are in contrast with the implementation of this right which is involved with the prohibition of aggression,[191] as "*jus cogens* rules always prevail over any inconsistent rule of international law, whether contained in a treaty or in customary international law".[192] It can be discussed that unilateral acts which are in conflicts with a peremptory norm are invalid.[193] Additionally, as Damrisch argues violations of peremptory norms can be under universal jurisdiction.[194]

Furthermore, according to Blokker, "the question of whether or not a state has committed an act of aggression is not only a political but also a legal question"[195], thus, the ICJ as a judicial body should be involved to solve problems in this category.[196] This issue can impact the authority of the Security Council, a political body, over the crime of aggression.[197] Additionally, as Gray discusses, "the Security Council's primary role in the

[190] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) [2010] I.C.J. Rep. 403, p. 437, para 81.
[191] Stefan Talmon, 'Jus Cogens after Germany v. Italy: Substantive and Procedural Rules Distinguished' (December 2012) 25 (04) Leiden Journal of International Law, p. 1000; O'Connell, 'Responsibility to Peace: A Critique of R2P' (2010), p. 49.
[192] Jurisdictional Immunities of the State (Germany v. Italy :Greece intervening), (Judgment) [2012] I.C.J. Rep. 99, p. 140, para 92; Art 64, Vienna Convention on the Law of Treaties, 1969
[193] Rodríguez Cedeño, Víctor, Ninth Report on Unilateral Acts of States, (April 06, 2006) UN Doc A/CN.4/569 and Add.1, Invalidity of unilateral acts, Principle 7, Para 6.
[194] Furundžija Case (Judgment) ICTY-95-17/1 (December 10, 1998), para 156; Lori F. Damrisch, '*Comment: Connecting the Threads in the Fabric of International Law*' in Stephen Macedo (ed), '*Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes Under International Law'* (University of Pennsylvania Press, 2006), p.94.
[195] Niels Blokker, 'The Crime of Aggression and the United Nations Security Council' (December 15, 2007) 20 (4) Leiden Journal of International Law, p. 880.
[196] As under the UN Charter, the ICJ is empowered to make determinations that aggression has been committed. Ibid, p. 891.
[197] Alexander Orakhelashvili, 'The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions' (2005) 16 (1) EJIL, p.60.

maintenance of international peace and security,[198] and its special functions with regard to self-defence,[199] do not exclude ICJ jurisdiction over cases with which the Security Council is concerned."[200] In fact, the ICJ has the jurisdiction to determine whether an act of aggression has been committed in its judgements as well as in its advisory opinions.[201] However, it is observed that the Court has not expressly referred to Article 2(4) of the UN Charter in its judgements.[202] It seems that the Court intentionally applied this language to prevent dissensions over its jurisdiction to determine the existence of an act of aggression, especially that in *Nicaragua* (*Jurisdiction and Admissibility*), the USA had argued the inadmissibility of Nicaragua's Application due to claiming an unlawful use of armed force, or breach of the peace, or acts of aggression against Nicaragua. However, these issues should be determined by the Security Council based on Chapter VII of the Charter. Conversely, the Court held that Nicaragua's claims were not issues encompassed by Chapter VII. [203] In the *Nicaragua* case, the Court applied customary international law by referring to state practice and *opinio juris.* To this purpose, the key General Assembly resolutions, particularly the *Declaration on Friendly Relations*[204] and the *Definition of Aggression,*[205] were used.[206]

[198] Article 24 UN Charter
[199] Article 51 UN Charter
[200] Gray, '*The ICJ and the Use of Force*' (2013), p. 237; See Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] I.C.J. Rep. 14 para 93-101.
[201] Blokker, 'The Crime of Aggression and the United Nations Security Council' (December 15, 2007), p. 883.
[202] e.g. In the Corfu Channel case, the Court asserted that "the UK violated the sovereignty of Albenia" Corfu Channel Case Judgement of April 9th, 1949: I.C.J. Reports (1949), 4., p.36;Also In the Oil Platforms case the Court held that the USA's actions could not be justified as measures "necessary to protect its essential security interests" under Article XX of the 1955 Treaty of Amity. Oil Platforms (Islamic Republic of Iran v. United States of America) (Judgement) [2003] I.C.J. Rep. 161, p. 179, para. 32.
[203] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] I.C.J. Rep. 14, para 89, 90, 94; Gray, '*The ICJ and the Use of Force*' (2013), p. 240.
[204] UN Doc A/RES/2625 (XXV)
[205] UN Doc Res 3314 (XXIX)
[206] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] I.C.J. Rep. 14, para 183, 202, 204;Gray, '*The ICJ and the Use of Force*' (2013), pp. 242-243.

According to Article 66 (a) of the Vienna Convention of Law of Treaties, the International Court of Justice will gain jurisdiction over agreements that are in conflict with peremptory norms, namely here the implementation of the right to peace, which can be very successful for the realisation of this right. However, the study considers "the fact that a dispute relates to compliance with a norm having such a character,[...], cannot of itself provide a basis for the jurisdiction of the Court [ICJ] to entertain that dispute."[207] In fact, as Mik discusses, there are some central problems which weaken the function of *jus cogens* in the international legal order, such as the possibility of declaring the lack of jurisdiction by the ICJ. [208] Additionally, "[p]ractice has illustrated that the recognition of the peremptory status of a particular norm is no guarantee of effective enforcement of the norm and the values it represents,"[209]

Conclusion

This chapter explored practical mechanisms to implement and enforce the right to peace in response to the central research question, which investigated how the right to peace can be enforced through international law instruments. Considering the focus of this research on state political violence addressed by the *jus ad bellum*, this chapter investigated international legal remedies that can equip nations against aggression, which is recognised as the gravest violation of the right to peace.

At the outset, violence and its sub-category aggression, for the purpose of this research, were conceptualised to explore defence mechanisms aimed at combating violence to make peace accessible and to implement the right to peace. Accordingly, the research sought remedies to legally abolish the act

[207] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia),(Judgment) [2015] I.C.J. Rep, 3, p. 47, para 88; Armed Activities on the Territory of the Congo (New Application : 2002) (Democratic Republic of the Congo v.Rwanda), (Jurisdiction and Admissibility, Judgment) [2006] I.C.J. Rep, 6. pp. 31‑32, para. 64.
[208] Cezary Mik, 'Jus Cogens in Contemporary International Law' (2013) 33 Polish YB Int'l L, p. 93.
[209] De Wet, '*Jus Cogens and Obligations Erga Omnes*' (2013), p. 560.

of aggression by making states powerless to commit such acts or by protecting a vulnerable nation against aggression. To this purpose, the worldwide reduction of armaments was suggested. However, the study discussed how this remedy cannot assure the prohibition of aggression, as the motivation to engage in aggression will remain. The study concludes that the serious prosecution of aggression through the international legal system can serve as a more secure solution. Thus, the developments in jurisprudence on the act of aggression and its criminalisation were scrutinised. Accordingly, prominent treaties which involve preventing states from waging war in international law were pinpointed. This crime, which was criminalised for the first time by the Charter of the International Military Tribunal at Nuremberg (IMT Charter) in 1945, was defined by UN GA Resolution 3314(XXIX) in 1974, and was subsequently quoted by the Kampala Conference (2010) to fill the gap in the Rome Statute (1998) regarding the crime of aggression (the new Article 8 *bis*).

The study examined the strengths and weaknesses of the only available international legal instrument to implement the right to peace, namely the Kampala Amendment. Although the important role of this amendment is undeniable, the research discussed some existing deficiencies that can hinder the implementation of the right to peace. For instance, the governing regime on this crime is different from other crimes under the jurisdiction of the Court, and only persons who effectively exercise control over or direct the political or military action of a state can be considered culpable for the act of aggression.[210] Additionally, the endorsement of the UN Security Council is required for handling the cases by the prosecutor (Articles 15 *bis* and 15 *ter*). Moreover, the possibility of opting out of amendments via a straightforward declaration to the Registrar of the Court is another problematic point which can render Article 8 *bis* ineffective. Furthermore, the narrower scope of jurisdiction regarding aggression compared with other crimes under the Rome Statute is another problem which creates impunity for aggressive leaders of a non-party state and leaders of the states parties

[210] Rome Statute as amended, Art. 25(3) bis

which have opted out of the amendments when aggression has been committed against a state party.

In order to overcome the aforementioned obstructions of the implementation mechanism, this chapter examined whether the enforcement mechanism of the right to peace can be linked to a peremptory norm. First, it was noted that long-established *jus cogens* norms in international law[211] concern three common criteria: A commitment to the dignity of humanity which necessitates fundamental rights and freedoms; the common interests of states in international order; and international peace and security. [212] The study explored that all three criteria in the formula of *jus cogens* are substantive part of the philosophical groundwork for the right to peace, and subsequently its implementation mechanism. Second, the study referred to the conceptual-legal framework of the right to peace to explore central components which are seriously concerned by international law. Accordingly, it was observed that the right to peace is systematically interrelated with the right to life, which is identified as a key aspect in the framework of *jus cogens.*[213] Furthermore, the prosecution of aggression, which has been identified as the implementation mechanism for this right, is linked with one of the long-established norms of *jus cogens*.

Considering the linkage between the implementation mechanism of the right to peace and a peremptory norm can empower international judicial bodies such as the International Court of Justice to gain jurisdiction over agreements that are in conflict with the implementation of this right, based on Article 66 (a) of the Vienna Convention of Law of Treaties. However, there is no guarantee of enforcement of peremptory norms.[214] Additionally, not only the shadow of authority of the UN Security Council over the

[211] Including the prohibition of slavery, piracy, genocide, the use of force or aggression, and crimes against humanit (torture and racial discrimination), Brownlie, '*Principles of Public International Law' (2008), p.511*; Zenovic, 'Human Rights Enforcement via Peremptory Norms- A Challenge to State Sovereignty' (2012), p.26.
[212] Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (Fall 1996), pp.68-69.
[213] Gormley, '*The Right to Life and the Rule of Non-derogability: Peremptory Norms of Jus Cogens*' (1985), p. 125.
[214] Markus Petsche, 'Jus Cogens as a Vision of the International Legal Order' (2010) 29 (2) Penn St Int'l L Rev , p.273.

implementation of this right can be gradually removed, but also this political body should be answerable in respect of its decisions in this regard, considering that it is one of the duty-bearers of the right to peace.

All in all, despite all the problems along the way, the recognition of the enforcement mechanism of the right to peace at this level can have a significant impact on international peace in progress to bring an end to the politicisation of the formula for peace through the judicialisation of it.

Chapter 6: Conclusion

Introduction

This project was conducted to remedy the existing deficiencies in the international law forum in dealing with the widespread war and conflict currently existing in the world, and the lack of efficient mechanisms to maintain peace which is a prerequisite for the full enjoyment of human rights. It endeavoured to initiate a solution with a bottom-to-top approach, reflecting peoples' voices, instead of the existing mechanisms which consider the problem from above. This people-centred approach goes along with the formula of the 2030 Agenda for Sustainable Development of the United Nations which aims to ensure "no one is left behind".[1]

The research hypothesised the people's right to peace as a possible remedy to equip people against policies which promote war, and thus facilitate a life of peace. In this way, it raised the central research question of how the right to peace can be enforced in the international law system. Accordingly, five substantive research sub-questions have been developed which have been left vague in the existing international law documents regarding the right to peace, including the following: how the right to peace can be established; the conceptual-legal framework of this right, and whether this right secures the necessity of a legal standard in the context of international law; what adequate philosophical justification can rationalise and legitimise it; and, finally, how such a right can be legally enforced at the international level.

[1] UN Doc. A/RES/70/1, p. 31, para. 72.

Based on the responses to the aforementioned questions, the research illustrated the enforcement mechanism for the right to peace.

Considering the interdisciplinary approach of the research and the nature of the research sub-questions, primary and secondary literature from multidisciplinary areas, such as international law, philosophy and politics, were analytically consulted through a recursive literature review. This project was conducted based on a cosmopolitan theoretical basis derived from the philosophy of Kant, due to its considerable influence on the development of modern international human rights law, and also due to its significant capacity for discussing human rights, peace and the right to it. However, other philosophical theories, such as realism, rationalism and utilitarianism, are discussed to enrich the research in considering different viewpoints and to avoid unconscious dogmatism. Additionally, the research employed a combination of research methods from different disciplines which had a dynamic connection with the research sub-questions and which were compatible with the literature. Therefore, a set of methods, including conceptual framework analysis, doctrinal analysis and reflective equilibrium methods were employed to address the research sub-questions and, finally, the central research question.

6.1 Summary of the Research Findings

At the outset, in order to analytically respond the first research sub-questions, the research developed a methodology to establish the right to peace and show how such a right can be founded. In order to ensure a systematic approach, the right which was targeted in this project was broken into its constituting components, namely right and peace, and each component was studied separately. First, the research elucidated the general formulation of legal human rights and investigated how some values can be transformed into a form of legal right and be universally implemented. To this end, the concept of right in the idea of human rights was discussed from different perspectives. The research explored the idea that the right, for the purpose of this research, should be a right with the capacity of being

claimed, which differs from what has been introduced in the existing soft law regarding the right to peace (it merely symbolises a moral value with rhetorical worth). In this way, different formulas of right were presented to arrive at a consistent idea of rights via the reflective equilibrium method. Accordingly, various judgements regarding this concept were elaborated and evaluated to achieve a meticulous and rational conception for a claimable right.[2]

The research found that the word "right" has been loosely employed in different contexts and disciplines. Thus, the right to peace which is declared by the related resolutions is not definitively clear as regards whether it implies a moral value without legal impacts or whether it asserts a legal right with the capacity to be claimed and implemented by judicial bodies. Therefore, the research sought a formula for the term "right" which enables the right to peace to be recognised as a legal right. After considering a set of judgements on the concept of rights, this study elaborated on the conception of right for the purpose of the right to peace as an entitlement to a status that is morally permissible, one which can be claimed by a right-holder against a duty-bearer who is responsible for adopting policies to guarantee that status. This status is not granted by grace, donation or kindness, but rather, moral and legal obligations cause society to realise them.[3] Therefore, if a right to something is stated, it means that legal claims are valid in terms of impelling society to provide individuals with that thing. This formula of rights has a technical connection with justice. Therefore, the term "right" for the purpose of this research is considered a sub-category of "rights" alongside other statutory rights that are claimable before a judicial body.

The right to peace is a mediator which streamlines the actualisation of pre-existing values – in this case, peace – in the form of an actual rule.[4] In other words, the right to peace serves as the catalyst which transforms a pre-existing moral value, peace, into legal entitlements in the system of human rights law and activates potentials by which human dignity is maintained.

[2] Follesdal, '*Methods of Philosophical Research on Human Rights*' (2009), p. 233.
[3] Henkin, '*Human Rights: Ideology and Aspiration, Reality and Prospect*' (2000), p.5.
[4] Kennedy, '*A Critique of Adjudication [fin de siècle]' (1998), pp.306-307.*

Thus, the right to peace can be assumed to be a mediator which converts a value judgement, namely peace, to a factual judgement. Accordingly, right-holders can legally claim their entitlements upon the duty-bearer in the relevant legal system which provides right-holders with a standard legal remedy to enforce their rights. In this system, the right-holders enjoy their rights due to the duty-bearer's legal obligations, not by grace.[5]

In this formulation, the contents of legal obligation for duty-bearers should be tangible, precise and concrete. There has been a substantial difference between the contents of legal obligations in the right to peace and other human rights that have been recognised so far, because peace requires special strategic policies at national and international levels, along with solidarity.[6] Thus, the study considered the right to peace as a meta-right which imposes duties on duty-bearers to adopt policies towards the institutional realisation of the right to peace.

The other aspect which was explored regarding the quiddity of right for this right is its individualistic or collectivistic aspect, which impacts on the domain of right-holders and the concept of peoples in the term "peoples' right to peace". The study found that there is not necessarily a rigid border between collective and individual human rights, and some contemporary concerns in the discussion of human rights, such as sustainable peace, an uncontaminated environment and sustainable development, make both individuals and societies involved.[7] Thus, the right to peace entitles individuals, groups and nations to a life of peace. Simultaneously, such a right burdens rulers and states, individually or collectively, with the responsibility of adopting policies aimed towards providing a life of peace for right-holders.[8] Therefore, every component of a community can claim his/her rights individually or collectively through a society which seeks to secure rights and the freedom of its members.

[5] Henkin, 'International Human Rights as Rights ' (Fall 1979), p.438.
[6] Bailliet, '*Normative Foundation of the International Law of Peace*' (2015), p.55.
[7] Ibid. p.53.
[8] Alston, 'Peace as a Human Right' (October 1, 1980), p. 319.

Collective rights, recognised during the development of human rights, reflect the views of people who are collectively suffering from difficulties such as violence, oppression, an unhealthy environment or a lack of sustainable development. Therefore, collective rights are not considered to be outside the scope of human rights, but they also add value to the framework of human rights, and enrich it. The strongest point in this new version of human rights is that it does not consider the right-holder as an abstract entity, but it relates to collective suffering.[9]

The right to peace, with both individual and collective dimensions, is categorised as a hybrid right. This nature of the right to peace prevents it from being accused of some unpleasant attributes, such as egotism, irresponsibility and indifference to others that can occur as a result of exclusively individual rights due to their emphasis on rights rather than responsibilities.[10] Therefore, a right such as the right to peace, with hybrid characteristics, is partly an individual right that entitles every human being to be involved in any efforts aimed towards peace, such as the right to participate and impact on decision-making in relation to peace-related-policies, and also applies in the case of policies violating peace and the right to refuse to participate in the implementation of such policies.[11]

Conversely, to a certain extent, it is a collective right which entitles nations not to be subjected to violations of *jus ad bellum*,[12] and it entitles nations to claim the right to the implementation of disarmament policies and the prosecution of aggression under efficient international legal orders.[13] Hence, the right to peace is understood as a meta-right that empowers both individuals and nations to claim against duty-bearers in order to make and protect policies to guarantee international peace.

The study noted that the second component in the conceptual framework of the right to peace, namely “peace”, employed in different contexts and

[9] Baxi, '*The Future of Human Rights' (2008), pp.34-35.*
[10] Sunstein, ' Rights and Their Critics' (1995), pp.498-499.
[11] Bilder, 'The Individual and the Right to Peace, The Right to Conscientious Dissent' (October 1, 1980)
[12] Bailliet, '*Normative Foundation of the International Law of Peace*' (2015), p.55.
[13] Marks, 'Emerging Human Rights: A New Generation for the 1980s ' (1980), p.446.

disciplines, suffers from ambiguities in terms of scope, aims and duration. However, in the process of establishing a right to peace, it is crucial to explore which interpretation of peace has been considered, and also whether peace has the necessary criteria which enable it to be recognised as a right or not. In fact, the description that is provided for the term "peace" can affect the methodology used for the establishment of the right to peace. Depending on how peace is defined, the right to peace can seem more rational. In order to explore a comprehensive definition of peace, dominant philosophical perspectives concerning peace were highlighted. Accordingly, the conceptions of peace from three prevailing models of thinking, namely realism, rationalism and cosmopolitanism, were discussed.

The study examined realism which considers politics at the mercy of international anarchy and human nature, and which places the strongest emphasis on the negative aspect of every phenomenon in any inductive reasoning. In this methodology, war emanates from human nature, and thus suffering is unavoidable.[14] From this perspective, domestic peace can be preserved by force, while anarchy and a state of war are fundamental facts of international relations.[15] Thus, any international political superiority is denied by sovereign states, and, eventually, war regulates relationships.[16] Realist peace is defined as the temporary absence of war which exists because of fear of the other's power or as a consequence of contracts, and thus, there is no place for perpetual peace. Contemporary realists believe that peace in the world is equal to a power balance among existing states, and can be achieved periodically only through power balance policies,[17] hegemony or mutual deterrence, fear and terror.[18] This type of peace can be adversarial, restricted or precarious peace, or it may be conditional. Therefore, however, the absence of war may seem to be a peaceful situation;

[14] Farrington, '*Greek Science: Its Meaning for Us ' (1961), p.40.*
[15] Hobbes, '*Leviathan' (1996) , Chapter 13, p.88*;Donnelly, '*Realism and International Relations' (2000), p.15.*
[16] Bassiouni, 'Searching for Peace and Achieving Justice: The Need for Accountability' (Fall 1996), p.13.
[17] Soendergaard, 'The Political Realism of Augustine and Morgenthau: Issues of Man, God, and Just War' (2008), pp.10 & 13.
[18] Allan, '*Measuring International Ethics: A moral scale of war, peace, justice, and global care*' (2010),p.108.

a potential war is always hidden behind the veil of peace.[19] Based on this view, peace can be defined both broadly and narrowly. A broad definition considers peace to be "the interval between wars", and war as the essence of international relations. A narrow definition, meanwhile, considers peace to involve only "peace treaties and their obligations in post war situations".[20] Peace from the realist perception is an unrealistic and unsustainable situation, and cannot be considered a right.

The research sought to address the concept of peace through the lens of rationalism, as rationalism is a vision between two extremist viewpoints: those who believe nothing is lawful in war, and those for whom all things are lawful in war. This methodology suggests the peaceful settlement of disputes via conferences and arbitration, and it considers war as the last remedy available after attempting other alternatives.[21] Peace, from this perspective, is defined as a dynamic conception linked to justice, beyond the absence of war, one which can be achieved as the rational outcome of cooperation among states in light of the rule of law. This kind of peace can be sustainable, as there is an intention to maintain it by cooperation under the rule of law.

In seeking to establish the conception of peace among dominant philosophies, the study noted the role of cosmopolitanism, also known as Kantianism, which has made a substantial contribution to theories of peace through *Perpetual peace: A philosophical sketch* and the book *The metaphysics of morals.*[22] This model of thought formulates "perpetual peace" as the ultimate end of all national rights. This formulation encompasses all necessary prerequisites for peace, including: transparency in contracts, respect for the integrity of states, disarmament, the refusal of budget allocation for hostility, the banning of forceful interference, and consideration of ethical and legal principles during war.[23] Additionally, Kant designed a three-pillar structure to realise lasting peace. Accordingly,

[19] Ibid.pp.107-109
[20] Hoffmann, '*Peace and Justice: A Prologue*' (2006), p.12.
[21] Grotius, '*On the Law of War and Peace' (2004),BookII,Chapter XXIII, p.214.*
[22] Page, '*Peace Education: Exploring Ethical and Philosophical Foundations' (2008), p.41.*
[23] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), pp.93-97.

sustainable peace can be possible only when states are structured internally according to republican principles, when they are structured externally into a voluntary league that supports and promotes peace and when they respect the human rights not only of their own citizens, but also of foreigners.[24] As can be observed, Kantian peace is not merely at the level of theoretical hypotheses, but also deals with empirical issues. Therefore, in the cosmopolitan approach, peace is not a static condition; it is a right-based dynamic conception with all of the necessary pillars required for perpetual peace. This kind of peace certainly cannot be limited to the absence of war, and it is expanded to encompass the realisation of justice and human rights. In this formula, Kant makes peace tangible and practical, and excludes peace from the realm of virtue, making peace capable of becoming a right. This dynamic peace is a result of a system that has the capacity to realise human rights and justice.

The study noted that the existing international documents on the right to peace consider "peace" as the subject of entitlement in regard to this right.[25] The resolution adopted by the General Assembly on 19 December 2016 provides a specific definition of peace and describes it as more than the absence of conflict, conceptualising it as a phenomenon which necessitates "a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured". [26] Therefore, in light of progressive interpretations of peace, this resolution stretches beyond the negative interpretation of peace that merely involves the absence of war. The application of the word "conflict" instead of "war" in this definition indicates the very careful and special consideration of the drafters of the resolution to avoid the use of the word "war" because of its specific technical criteria, and, as a result, the word "conflict" can encompass a more expansive range of disputes than those suggested by the word "war".

[24] Kleingeld, '*Kant's Theory of Peace*' (2006), p.477.
[25] UN Doc A/RES/39/11 ;UN Doc A/Res/71/189
[26] UN Doc A/Res/71/189, Annex, p. 3.

As can be observed, the approach to a classic definition of peace is gradually being modified to produce outcomes which are compatible with the current requirements of societies that are threatened by structural, environmental and cultural violence. Therefore, there is a tendency towards expanding the concept of peace from absolute negative peace to positive peace. The contemporary conceptual framework of positive peace considers peace not only as the absence of war, but also as the elimination of structural violence which prevents the activation of human potentials. Ultimately, in a more positive approach, global care, which is concerned with the responsibility of individuals, groups and nations to each other, is desirable.

A common element among different concepts of peace is the absence of violence, which includes direct, structural, cultural and environmental violence. Thus, peace is described as the absence of any kind of violence which disables an individual's or a group's potential to flourish. As a result, nations should be capable of conceiving procedures for defending human beings against violence to access a peace which involve non-violence. In light of progressive interpretations, peace is no longer merely an imaginary utopia to be realised by abstract moral principles; instead, it is a tangible objective that can be obtained by conscious efforts based on peoples' willingness, which is rationally defined as peaceful coexistence. From this perspective, peace is not a static event or goal, but is a dynamic process or dynamic policy that never stops. This type of peace is the groundwork for the realisation of all dimensions of human rights that are demanded in Article 28 of the Universal Declaration of Human Rights. Tangibility and enforceability are essential criteria which enable moral values to be recognised as legal rights.[27] Therefore, peace should have an accessible criterion which allows it to be a legal right, and the right to peace should be possessed by right-holders in order to be claimed and subsequently enforced. To this purpose, nations should be equipped against violence via mechanisms and policies facilitating the prosecution of aggression, disarmament and the abolishment of the use of weapons of mass destruction.

[27] Donnelly, '*Universal Human Rights in Theory and Practice' (2013), p. 11.*

Considering the methodology for the establishment of the right to peace based on the conceptual framework, the legal framework of this right can be confirmed.

The study found that the content of entitlement, the identity of the duty-bearers and the characteristics of right-holders are not clear in the existing international declarations on this right. This ambiguity can be one of the obstacles in the way of the recognition of this right as a legal right. In light of Kant's methodology, the content of entitlement includes policies aimed towards the following: remaining at peace and in a neutral instance when other states are at war; securing and guaranteeing the continuance of peace after its establishment; and structuring alliances or confederations for collective self-defence against any possible attacks from internal or external sources.[28] Accordingly, first, states are obliged not to be involved in disputes which occur between other states. Second, states are obliged to remain at peace and to avoid any measure which could harm a peaceful situation, such as aggression or the proliferation of armaments. Third, states are obliged to adopt all necessary measures to defend their nations against aggression, including forming alliances to ensure that they are equipped for self-defence.

Furthermore, Kant's perpetual peace plan entitles people to participate in decision-making as regards waging war, as they pay the material and immaterial costs of war.[29] Thus, the right to peace entitles rights-holders (peoples) to decide on their destiny, between living in peace and living in war.[30] Therefore, this right has a correlation with the right to self-determination, which is of crucial importance in international law with an *erga omnes* character. In fact, the right to peace, as a post-Cold War right, echoes the voice of nations and empowers them to take control of their destiny. Contrary to other remedies which solve the problem from above, the right to peace involves a bottom-up approach to remedy a dilemma, which allows peoples to become involved in policy-making. In view of the

[28] Kant, '*Kant Political Writings' (2012), p.170.*
[29] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), p.113.
[30] Ibid

common key factors of these two rights, they can co-exist. It should be considered that this study discussed the importance of the right to self-determination in the context of the right to peace, and thus, it does not "transpose the *jus contra bellum* to the situation of self-determination".[31]

Therefore, the content of entitlement can be expanded to include the following: participation in decision-making concerning the use of force and the right to enquiry into such policies; changing such policies through free speech, free petition or free assembly; and, finally, refusal of participation in the implementation of policies where there is evidence of the immorality of such policies. Simultaneously, this right imposes duties on states to fulfil these conditions. As a result, nobody can compel people to become involved in aggressive or non-defending wars.[32] Thus, the peaceful settlement of disputes and reconciliation should take priority in states' policies to reduce tensions, and, at national levels, policies should be directed towards identifying any cause of violence in society, and combating it, in addition to strategically engaging people in policy-making. States have duty to maintain peace and promote a culture of peaceful coexistence and tolerance. They are not only banned from engaging in aggression, but also they have the duty of vigilance in the light of the principle of non-intervention. Disarmament is one of the crucial components of the content of obligations regarding the right to peace, although it has been ignored by the last resolution on the right to peace (Dec. 2016) alongside other obligations regarding individual aspects of this right.[33]

In analysing the content of entitlements and obligations, it is important to identify duty-bearers. For the purpose of this project, which focuses on state political violence, states are identified as the main duty-bearers. Additionally, considering the fact that crimes against peace are recognised

[31] Corten, '*The Law Against War: The Prohibition on the Use of Force in Contemporary International Law' (2010), p. 147.*
[32] Bilder, 'The Individual and the Right to Peace, The Right to Conscientious Dissent' (October 1, 1980), p. 387.
[33] UN Doc A/Res/71/189 ; UN Doc A/HRC/39/31

as leadership crimes,[34] leaders are supposed to be considered as the persons most responsible for the violation of this right. However, it is difficult to assume that such a crime would be committed by one person. In addition to the state's responsibility for the maintenance of peace, it is crucial to consider the role of the UN Security Council. According to the UN Charter, Chapter VII, the UN Security Council has the responsibility to maintain international peace and security by taking particular measures indicated in Article 39. It appears that, if the UN Security Council does not play its role properly,[35] it should be logically held responsible, whereas it has not been included as a duty-bearer in the related Declaration on the Right to Peace. Additionally, according to the advisory opinion on *Reparations for Injuries Suffered in the Service of the United Nations* (1949),[36] a subject of international law is an entity with the capability of possessing international rights and duties, and which has the capacity to secure its rights by making international claims.[37] Therefore, the Security Council has legal personality, and has the capability of possessing international rights and duties. When this entity does not fulfil its responsibility which is to secure international peace and security, it should be held responsible. Currently, the Security Council has the authority to determine what constitutes a threat to international peace, but without any accountability. However, it should be answerable through "the existing [UN internal] institutional mechanisms of accountability [...] in the International Court of Justice's advisory function as well as in the United Nations General Assembly's powers of discussion and recommendation, including under the *Uniting for Peace* resolution".[38] Thus, the Security Council can be considered a duty-bearer in the implementation of the right to peace, along with states; however, their duties are completely different.

[34] Cryer and others, '*An Introduction to International Criminal Law and Procedure' (2014), p.307.*

[35] e.g. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] I.C.J. Rep. 136

[36] Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] I.C.J. Rep. 174, p.174.

[37] Ibid, p.179.

[38] Henderson, 'Authority without Accountability? The UN Security Council's Authorization Method and Institutional Mechanisms of Accountability' (December 1, 2014), p. 489.

After clarifying the content of entitlements and obligations for the right to peace, and the identity of duty-bearers, it is crucial to indicate whether the right-holders are individuals, or people as a whole, or peoples collected as nations or specific groups.

In light of progressive contemporary interpretations of the concept of peace as the absence of violence, and its dimensions, which can even encompass peace with the planet and with nature, the right to peace, in its broadest sense, encompasses all members of the species *Homo sapiens*.[39] Therefore, the right to peace is a sub-category of human rights, which are understood as essentially universal moral rights whose active enforcement and promotion is permissible for everyone against any duty-bearer in the international law system. A trend analysis of the development of international human rights law indicates that there has been progress towards considering nations alongside individuals as right-holders. [40] The resolution on the right to peace adopted by the General Assembly in December 2016 explicitly declares peoples of the United Nations as right-holders,[41] and also contains a reference to "all members of the human family" and "everyone",[42] which identifies both individuals and nations as right-holders. Therefore, nations, groups and individuals possess the right to claim, individually or collectively, a life of peace against duty-bearers.

The study examined whether the right to peace with this special conceptual-legal framework developed to any degree from the evolutionary trend of the idea of human rights, or whether there is a scope in this ideology to incorporate the right to peace within it. It discussed how human rights are operational responses to some undeniable requirements based on the preliminary nature of the human being. Thus, it is logical to suggest that it is impossible to put all natural functions into operation in the absence of peace, especially for people directly involved in war which prevents individuals

[39] Tavani, '*Collective Rights and the Cultural Identity of the Roma: A Case Study of Italy' (2012), p.166.*
[40] Alston, 'The Shortcomings of a Garfield the Cat Approach to the Right to Development' (1985), p.516.
[41] UN Doc A/Res/71/189,annex, p.3.
[42] Ibid,annex, Page 4/6, Article 1

from fulfilling their true potential.[43] Therefore, the nature of the human being as the primary inspiration for the ideology of human rights affirms the necessity of peace in order to realise fundamental freedoms and rights. Additionally, the rational approach of this trend approves the idea that, logically, peace is a crucial situation which every human being must implement in order to ensure her/is rational rights and freedoms.[44]

In the evolutionary trend of the idea of human rights, the two significant threads of the right to peace– namely the Cyrus Cylinder (546 BCE), which is known as the first "Charter of the Rights of Nations"[45] and the Four Freedoms Speech (1941) – are noteworthy. To explore the impacts of the recognition of the right to peace in those contexts, the study examined evidence among different archives. The Cyrus Cylinder asserts that the struggle to maintain peace as an absolute duty for the ruler and as an absolute right for all was the secret underlying the stability and impressive achievements of Achaemenid Persia. The Achaemenid Persian Empire, one of the notable ancient civilisations, with a vast territory including various subordinate nations, extending from the Indian Ocean to the Aegean Sea, was known for its peace, prosperity and innovation for decades.[46] The architectural and artistic heritage of the era depicts an awareness of human rights and cultural diversity.[47] Evidence from the Fortification Tablets provides us with a comprehensive image of Cyrus's view of multiculturalism, as well as his religious and racial tolerance towards those he conquered. In light of his duty to adopt peaceful policies and provide nations with peace, he became able to realise freedom from fear, freedom of religion, the abolition of slavery, workers' rights, gender equality and social welfare.[48] The impact of this model of ruling was not limited to that area,

[43] Galtung, 'Violence, Peace, and Peace Research' (1969), p. 169.
[44] Kant, '*Perpetual Peace: A Philosophical Sketch*' (2003), p. 93.
[45] Wiesehöfer, '*Ancient Persia: From 550 BC to 650 AD' (2006),pp.44-45.*
[46] Josephus, '*The works of Flavius Josephus' (2015),Book XI -- From the First Year of Cyrus to the Death of Alexander the Great; Chapter 1*
[47] Frye, '*The Heritage of Persia' (1966), pp.123-124.*
[48] Hassani, 'Human Rights and Rise of the Achaemenid Empire: Forgotten Lessons from a Forgotten Era' (June 2007), p. 1.

but was also reflected in the Declaration of Independence (1776), in the effort to create a peaceful multicultural state.[49]

The second historical point which illustrates the ideology of the right to peace is the Four Freedoms Speech by Franklin Roosevelt, providing a remedy to overcome the impasse of the Second World War. This speech, which forms the core element of contemporary international human rights law, explicitly recognised freedom from fear which is analogous with the right to peace as a vital freedom which everyone should enjoy. The interpretation provided by Roosevelt regarding freedom from fear illustrates a world which is free from aggression. This overview, which identifies the absence of violence as a fundamental and inherent right for everyone, constituted the core element of major international human rights documents, including the Bill of Human Rights. The focus on disarmament and prohibition of aggression in Roosevelt's explanation of freedom from fear suggests a mechanism to make peace tangible and practical,[50] as it is not possible to prevent war while preparing for war.[51]

Roosevelt's Four Freedoms Speech was one of the influential starting points for contemporary modern international human rights law. Therefore, it can be concluded that the right to peace was raised when the term "human rights" was for the first time applied in a principal international document.[52] Accordingly, through the evolutionary trend of human rights, the right to peace reaches its highest point in the Universal Declaration of Human Rights, in the form of freedom from fear. However, the fourth freedom, namely freedom from fear, was forgotten step by step. The study explored that whenever the right to peace has been at the centre of attention, it has been effective for guaranteeing the realisation of other human rights, and

[49] Ferguson, 'The Cyrus Cylinder-Often Referred to as The "First Bill of Human Rights"' (May 2013), p. 39.

[50] Franklin D. Roosevelt's 'Four Freedoms Speech': Annual Message to Congress on the State of the Union, (January 06, 1941) Franklin D. Roosevelt Presidential Library, http://docs.fdrlibrary.marist.edu/od4freed.html

[51] Einstein, '*Einstein on Peace' (2017), p. 397.*

[52] Louis Henkin, "Human Rights from Dumbarton Oaks", in Ernest R May and Angeliki E Laiou (eds), *The Dumbarton Oaks Conversations and the United Nations, 1944-1994* (Dumbarton Oaks Research Library & Collection, Distributed by Harward University Press 1998), p.98.

whenever it was forgotten and ignored, the world has faced catastrophe and chaos.

Although this right was forgotten for years, it was highlighted in some international instruments, such as the UN GA Declaration on the Preparation of Societies for Life in Peace (1978),[53] the African Charter on Human and Peoples' Rights (1981),[54] the UN GA Declaration on the Rights of Peoples to Peace (1984),[55] the HR Council Declaration on the Promotion of the Right to Peace (2012, 2015),[56] the Human Rights Council Resolution on the Promotion of a Democratic and Equitable International Order (2011) [57] and the UN GA Declaration on the Right to Peace (2016). Although these declarations are not binding, and suffer from ambiguities regarding their implementation mechanisms, they can be considered major points in the development of the right to peace.

As can be observed, not only the footprints of the right to peace can be found in the evolutionary trend of the idea of human rights, but also there is scope to develop this right in human rights scholarship, as Philip Alston suggests that there is no rational basis to prohibit the recognition of human rights and allow greater scope for new individual or collective human rights.[58] In fact, making place for the right to peace contributes to the overcoming of the existing deficits in the current context of international human rights. The elements of values which can be perceived as the subject of human rights arise in special historical and social circumstances, and are open to exploration. Peace is one of these values that should be perceived as the subject of human rights. The current world circumstances manifest the necessity of the recognition of a right to this value more than ever. Therefore, as human rights cannot remain static, and there has been a dynamic development process compatible with ideas and circumstances, the right to peace can be incorporated in the body of human rights scholarship.

[53] UN Doc A/RES/33/73
[54] African Charter on Human and Peoples' Rights, 1981, Article 23 (1).
[55] UN Doc A/RES/39/11, annex, paras 1-2.
[56] UN Doc A/HRC/RES/20/15 ;UN Doc A/HRC/RES/30/12
[57] UN Doc A/HRC/RES/18/6
[58] Alston, 'Making Space for New Human Rights: The Case of the Right to Development.' (1988), p. 39.

Following the clarification of the conceptual-legal framework of the right to peace and its origins in the evolutionary trend of the idea of human rights, the overriding purpose of this study was to determine the enforcement mechanism for this right.

The research noted that, in order to implement such a right through international judicial systems, adequate legal-philosophical justification is required to rationalise and legitimise it. The existing literature on the right to peace does not justify the necessity of establishing a universal right to peace from philosophical viewpoints. This project endeavoured to lay philosophical groundwork for this right by consulting two influential moral philosophical perspectives on international law: First, Kantianism was addressed, due to its prevailing impact on the modern idea of human rights, and, second, the utilitarian perspective was considered, due to its considerable influence on the current dominant world policies concerning peace adopted by international political bodies such as the UN Security Council. [59]

From the Kantian perspective, any action which undermines human dignity is inherently immoral. Thus, no kind of violence can be accepted in this system, as it destroys dignity. Kant asserts that a moral, rational being has a tendency to reconcile disputes without using violence, and is capable of formulating rules to this end. Accordingly, not only the immoral act of violence should be avoided, but also, there is a duty to take all necessary measures to maintain peace. On the other side of this duty, there is a right for peoples who can claim from society the right to live in peace, as their dignity is denied in the absence of peace. In other words, the protection of human dignity is an a priori principle that imposes the duty of the protection of the right to peace upon states. The duty of duty-bearers (including the duty to adopt policies in order to maintain peace and not to violate peace) and the rights of right-holders are two elements that can contribute to the realisation of perpetual peace. Dignity is the capacity of being entitled to certain rights, and can be the determining groundwork for political rights

[59] Boyle, '*World Politics and International Law' (1985),p.125.*

and duties.[60] Thus, policies should be directed at considering human beings' dignity, and states have a duty to respect, promote and fulfil a human being's entitlement as a result of the dignity of humanity (state duty). From this perspective, human beings should always be considered as the ultimate end, and their dignity cannot be sacrificed for some further end, such as any justification for war. Therefore, human dignity, as the foundation of all human rights, provides a normative basis for the progressive realisation of the right to live in peace.

The research found Kant's *perpetual peace sketch* to serve as an outstanding contribution to the idea of the right to peace and making peace possible. In fact, this formulation removes any ambiguity in recognising the right to peace as a claimable right which serves as a catalyst to fill the existing gap between rhetorical peace and ideal peace. The analysis conducted in this study indicated that the right to peace is accordance with the Universal Principle of Right, and can be implemented as a legal right at national and international levels. This right can serve as a safeguard to guarantee perpetual peace. However, other motivations, such as economic reasons or deterrence due to fear, are not able to provide sustainable peace. Therefore, any success in realising peace as a legal right can empower nations to live in peace regardless of their leaders' desire for war, and this right will enable peoples to overcome any potential policies which oppose peace.

Furthermore, the research consulted utilitarianism to explore whether there is any justification for such a right in this system of thought, considering the influence of this approach on some international sectors, such as the UN Security Council, which has the main role of maintaining international peace.[61] At first glance, it seemed that there was no space for the right to peace in this philosophy, as it advocates any action which increases pleasure, and war might bring pleasure for some. Conversely, deepening our understanding of this model of thought led to considerable approval of the right to peace, as utilitarianism considers the total sum of pleasure for all

[60] Rosen, '*Dignity: Its History and Meaning' (2012).p.153.*
[61] Boyle, '*World Politics and International Law' (1985),p.125.*

people. [62] In a utilitarian test, the study evaluated whether the lack of peace in a few parts of the world can increase the happiness of the rest of the world. It discussed that there is no pleasure for anybody as a result of war. Problems as result of ongoing terrorism or the refugee crisis in the West are some examples of the devastating toll of war on the whole international community. Additionally, the research discussed how the losses caused by wars and military activities are not limited to humanitarian losses, but also encompass environmental consequences that are borne by the entire world. Overall, it was understood that the grief caused by war cannot be equal to or less than the pleasure which can be derived from it.

Comparing the material and immaterial costs of war and peace demonstrates that the toll of conflicts, and even the benefit gained from waging wars for armament exporter states, cannot maximise pleasure in the world. Considering the above discussion, which refutes the utility of war, the opposite measure, namely peace, is compatible with the principle of utility. As a result, it is rational that a philosophy based on the principle of utility would support the right to peace, and would provide remedies to prevent violence, as it acknowledges that prevention is easier, less costly and more effective than a cure.

Conversely, an in-depth review of the existing literature on the philosophy of the right to peace reveals considerable opposition from scholars and states. Among various divergent opinions, the research pinpointed James Griffin's criticisms on this right and endeavoured to respond to them. This contemporary philosopher has initiated a new perspective on the human rights idea, one which is different from Kant's and Mill's moral philosophical viewpoints. He presents a bottom-to-up approach considering the idea of human rights as the result of historical events, rather than philosophical viewpoints. In contrast, this thesis analysed the origins of different human rights, and concluded that moral principles and historical facts should be simultaneously considered as the source of inspiration for human rights.

[62] Mill, '*Utilitarianism' (1998). pp.13-14.*

Griffin explicitly rejects the right to peace and labels it as a manifesto right with no reasonable legal-philosophical foundation. [63] Although Griffin does not conclude that there is a right to peace based on his suggested formulation, this research has proven that all three values in his account – namely liberty, autonomy and minimum provision – are supported by the right to peace, and that these capacities have a reciprocal relationship with the elements within the conceptual framework of the right to peace. Moreover, Griffin criticises the prohibition of propaganda for war,[64] and he asks whether the right to peace rejects a war of self-defence against invasion. This study responded to his criticism by explaining the strict interpretation of the right to self-defence according to the ICJ's judgement in *Nicaragua*, *Oil platforms*, *DRC v Uganda*, and in its Advisory Opinions on *Nuclear Weapons* and the *Wall*. It was shown that the right of self-defence is not in conflict with the right to peace, but also it supports the legal framework of the right to peace. In addition, self-defence does not require war propaganda which only illustrates one part of the overall narrative in order to incite people to accept and become involved in war, as self-defence is logically and legally reasonable.[65] Additionally, this research, by suggesting practical implementation mechanisms for the right to peace through international judicial systems, refuted Griffin's claim regarding the impracticality of this right. The study noted that Griffin advances a formula to assess whether an issue is a human right or not. It examined his formulation, and observed that the right to peace is completely provable even through his formulation, although Griffin does not come to such a conclusion himself.

Considering the aforementioned sound philosophical basis for the right to peace, it is expected that this right would attract sufficient protection from states and judicial bodies to be recognised and implemented at national and international levels. The only thing that the right to peace requires to be

[63] Griffin, '*On Human Rights' (2008), p.209.*
[64] Ibid.p.194.; International Covenant on Civil and Political Rights (ICCPR), Article 20.1; See also UN Doc A/HRC/39/31, para 70.
[65] Cambridge Advanced Learner's Dictionary (CUP, 2008)

transferred from the realm of ethics to the realm of law is institutional protection. [66]

In response to the central research question, which investigated how the right to peace can be enforced through international law instruments, and in order to explore defence tactics aimed at combating violence to make peace accessible, the concept of violence and its causes were discussed. The study concludes that the concept of violence involves the use of violent means with destructive physical or non-physical impacts on human beings and the world around them. The act of violence can be committed structurally, through some social or political structures, by depriving peoples of their fundamental freedoms and inherent rights. Among different types of violence, the focus of this research is on state political violence addressed by the *jus ad bellum*, or aggression, which is recognised as the gravest violation of the right to peace. The research adopted a restrictive interpretation of the law on the use of force under the UN Charter, as described by Corten as *jus contra bellum*, rather than extensive policy-oriented approaches.[67]

The study discussed that violence is the result of a violent context that can include individuals or groups; thus, the modification of such a system requires systematic amendments in social, cultural, legal and political aspects. In order to legally eliminate aggression, either the perpetrator should be rendered unable to commit a violent action or the vulnerable person should be made immune from violence. Making perpetrators unable to commit a violent act is possible either by disarming them or by codifying rules to prosecute perpetrators through the international judicial system. Making the vulnerable empowered by being immune to violence can be practical for equipping nations with a right through which they will be empowered to claim a life of peace against any violator of peace, including

[66] Tasioulas, '*The Moral Reality of Human Rights*' (2007), p.76.
[67] Corten, '*The Law Against War: The Prohibition on the Use of Force in Contemporary International Law' (2010), p. 6*; van Steenberghe, 'The Law Against War or Jus Contra Bellum: A New Terminology for a Conservative View on the Use of Force? ' (2011) pp. 748-749.

their own ruler or an external aggressor, before an international judicial body.

Making states unable to commit an act of aggression can be possible by the worldwide reduction of armaments and by prohibiting the act of physical aggression. The United Nations ban on the use of force, [68] and also bilateral and multilateral treaties supported by the United Nations Office for Disarmament Affairs (UNODA), are crucial legal instruments to make perpetrators unable to engage in aggression, however, there is a huge gap between law and practice, and disarmament policies were bypassed by many states which follow the deterrence theory inherited from the Cold War, hoping to be immune to attack, or by states which profit from the economic benefits of the arms trade. Furthermore, although disarmament is an effective mechanism to prevent wars, it cannot be a complete guarantee of the elimination of aggression. The motivation behind aggression can be lost by the serious prosecution of aggression through a powerful international judiciary system and by ending impunity. This issue has been one of the major challenges in international law, and there has been reluctance amongst states to agree on a mechanism by which they may be prosecuted one day.

In the study of the jurisprudence on the violation of the peoples' right to peace, it can be concluded that there was no legal limitation preventing states from waging war in international law before 1919, and a few restrictions were imposed on the use of force based on the Hague Conventions (1899, 1907). The Covenant of the League of Nations (1920) attempted to restrict the autonomy to go to war, and the Kellogg-Briand Pact of 1928 improved this issue by condemning the resort to war. Crimes against peace and aggression were criminalised for the first time by the Charter of the International Military Tribunal at Nuremberg (IMT Charter) in 1945. The Charter of the United Nations (1945) attempted to complete this procedure via the prohibition of the use of force (Articles 2(4) and 39). In the effort to revitalise the legal concept of aggression in international law

[68] The UN Charter, Article 2(4)

to prohibit the waging of aggressive wars, a definition of aggression was presented by UN GA Resolution 3314(XXIX) in 1974 that was later cited by the Kampala Conference (2010) to fill the gap in the Rome Statute regarding the crime of aggression (the new Article 8 *bis*). The amendments to the Rome Statute regarding the prosecution of the crime of aggression provide certain conditions for the enforcement of the right to peace. However, the Kampala Amendment suffers from deficiencies.

The Kampala Amendment merely considers political leaders culpable in relation to aggression, and excludes those who have the power to influence policy, whereas it is difficult to assume that the act of aggression can be completed by an individual, and thus this type of prosecution can unreasonably ignore the collective. Article 8 *bis* of the Rome Statute asserts that "planning, preparation, initiation or execution" are material elements of the act of aggression, and that it does not encompass "conspiracy", which was included in Article 6 of the Nuremberg and Tokyo IMTs Charters, in addition to the above-mentioned elements. Moreover, the prosecutor has the authority to handle cases of aggression after the endorsement of the UN Security Council, without involving the UN General Assembly or the International Court of Justice (ICJ) (Articles 15 *bis* and 15 *ter*). Additionally, the possibility of opting out of amendments via a straightforward declaration to the Registrar of the Court can render Article 8 *bis* powerless.[69] The scope of jurisdiction of the aggression amendments is narrower than that relating to other crimes under the Rome Statute, and is limited to the states parties to the Rome Statue, subject to the aggressor state not having opted out of the amendments. Therefore, there is impunity for aggressive leaders of a non-party state and leaders of the states parties which have opted out of the amendments when aggression has been committed against a state party.

Moreover, it is difficult to assume the complementary jurisdiction of the ICC for the crime of aggression, considering the fact that the perpetrator

[69] Liechtenstein Institute, Handbook Ratification and Implementation of the Kampala Amendments to the Rome Statute of the ICC: Crime of Aggression, War Crimes (Liechtenstein Institute on Self-Determination, 2012), p.10.

must be in the highest position of policy-making in a state. The high threshold that has been considered in the definition of aggression by the ICC can exclude some important forms of the use of force by states from the jurisdiction of the Court. Another point is that the ICC Statute does not deal with the state's responsibility regarding the crime of aggression. Regardless of all deficits and ambiguities in the jurisdiction of the ICC over the crime of aggression, it can potentially have a considerable role in preventing aggression and contributing to the implementation of the right to peace.

Considering the existing loopholes in the related international legal instruments, including the Rome Statute, on the prosecution of aggression, the study sought for a remedy to break the present blockade of the implementation mechanism. The research examined whether there is a linkage between the implementation mechanism of the right to peace and a peremptory norm. It noted that long-established *jus cogens* norms in international law share three common components: a commitment to the dignity of humanity, the common interests of states in international order, and international peace and security. [70] According to the philosophical groundwork of the right to peace, this right, and consequently its implementation mechanism are established based on these main concerns in the *jus cogens* framework. Additionally, based on achievements regarding the components of the legal conceptual framework of the right to peace, in this thesis, this right is systematically linked with one of the crucial key factors of *jus cogens*, namely the right to life (Art. 6, ICCPR 1966). The duty to prohibit aggression is a supreme duty in the realisation of both the right to life and the right to peace. [71] The implementation mechanism of this right, namely the prosecution of aggression, is linked with a long-established norm of *jus cogens* that is the prohibition of aggression. Therefore, the right to peace, whether assumed as a pre-existing right or as a newly emerging right, could be argued as a crucial right which its implementation mechanism is linked to a peremptory norm, and may lead to

[70] Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (Fall 1996), pp.68-69.
[71] UN Doc CCPR/C/GC/36, para 69.

the negation of other doctrines, if they are in contrast with its implementation mechanism.

Identifying the linkage between the implementation of the right to peace and a peremptory norm facilitates international judicial bodies such as the International Court of Justice in gaining jurisdiction over agreements that are in conflict with the implementation of this right, based on Article 66 (a) of the Vienna Convention of Law of Treaties. Addressing this issue, which impacts the authority of some political bodies, such as the UN Security Council, over the implementation of the right to peace, can serve as a significant step in the realisation of sustainable peace in the world. In fact, the recognition of the implementation mechanism of the right to peace at this level can be a crucial step to end the politicisation of the formula for peace, and lead to its judicialisation.

6.2 Barriers to the Implementation of the Right to Peace

The study noted that there have been few studies on peace from a legal perspective, and peace has been viewed mainly through a political lens. This issue can create a barrier to adequate recognition and implementation of the right to peace as a legal right. This perspective locates peace within political agendas, and considers peace to be outside the scope of human rights discussions; as a result, it is difficult to assume that peace can be claimed as a legal human right. Accordingly, the issue of peace is addressed in political agendas under the authority of political bodies such as the UN Security Council or the UN General Assembly. From this viewpoint, judicial bodies involving human rights are merely responsible for individual rights which can indirectly impact on peace, and thus, raising peace as an entitlement in a human rights forum is theoretically invalid and politically useless. Based on this view, international judicial bodies have been primarily dedicated to "*jus in bello*" rather than "*jus ad bellum*". In this regard, the Rome Statute which mainly deals with war crimes, crimes against humanity and genocide, rather

than crimes against peace and aggression, should be mentioned.[72] Although the destructive impact of this kind of approach in the effort to realise and implement the right to peace is undeniable, there are supportive indicators during this process which can neutralise this barrier. The key supportive indicator is the fact that peace is the main purpose of international law, and different branches of international law are interrelated and indivisible; thus, human rights law, as one branch of international law, can encompass peace and the right thereof. Additionally, in light of progressive interpretations of human rights, this branch of international law cannot be indifferent to collective suffering as a result of the lack of peace.

The other obstacle concerns the loose and indefinite employment of terms "right" and "peace" in different contexts and legal instruments, whereas legal scholarship needs to be more precise.[73] These inaccuracies have become obstacles to the recognition and implementation of the right to peace. This problem was addressed in this project by providing a clear conceptual framework for the right to peace. The clarification of the components of this framework can respond to the challenge to the justiciability of the right to peace that is alleged as a barrier.

The other significant issue is that the right to peace needs to be protected both nationally and internationally in order to be implemented. This issue has not been raised in regard to individual human rights. This barrier can bring this movement to halt, considering the reluctance of states to implement the right to peace due to the possible limitations which it may impose on them. States realise that the implementation of this right can limit their authority and remove any impunity for the perpetrators of the crime of aggression, which is a leadership crime. Therefore, they show fewer tendencies towards the recognition of such a right. Although the Assembly of States Parties to the Rome Statute of the International Criminal Court activated the Court's jurisdiction over the crime of aggression as of 17 July

[72] Schabas, '*Freedom from Fear and the Human Right to Peace*' (2012), p. 37;Dimitrijevic, '*Human Rights and Peace*' (1998), p. 64.
[73] Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (November 1913).pp.30-32.

2018,[74] the existing loopholes in the Rome Statute regarding the crime of aggression are barriers to the full enforcement of the right to peace.

The achievements of this research, which endeavours to empower the UN Human Rights Council, the International Criminal Court and the International Court of Justice to deal with the issue of peace by discussing the nexus between the implementation mechanism of the right to peace and a peremptory norm, can remove part of the existing obstacles to implement this right. Additionally, peace can be claimed as an entitlement in the human rights law system, and this practice will challenge the current authority of the UN Security Council over this issue.

6.3 The Contribution of the Research to International Human Rights Law

This research critically analysed the existing literature on the right to peace and identified the deficiencies in the related soft law. It explored the fact that no specific legal-conceptual framework for the right to peace has been presented so far, whereas legal scholarship necessitates precision and accuracy. Thus, it endeavoured to remove ambiguities by illustrating a comprehensible structure for this right. To this end, it initiated and developed a methodology to establish the right to peace, along with the conceptualisation of components engaging this right, including "right" and "peace", through an inter-disciplinary lens. This methodology streamlined the implementation mechanisms for this right, while there is no mention of any practical method to implement this right in the related soft law. In this way, the contents of obligations and entitlements with both individual and collective aspects, in addition to the identity of right-holders and duty-bearers, were clearly indicated.

This research raised the possibility of considering the UN Security Council as part of the framework of duty-bearers for the first time. It analysed how a

[74] Assembly activates Court's jurisdiction over crime of aggression (December 15, 2017) ICC Press Release

political body such as the Security Council can be held answerable regarding the right to peace, based on the UN Charter, and also ICJ advisory opinion on *Reparations for Injuries Suffered in the Service of the United Nations* (1949),[75] as a source of international law (Art 38.1 (d) ICJ Statute).

The research explored the idea that the deliberately vague framework of the right to peace can tend towards the abuse of this right by some oppressive regimes.[76] However, the clear and precise formula of this right presented in this project empowers peoples against any violence from above, including even state oppression. The conceptual-legal framework of the right to peace addressed in this project also made a considerable contribution to the promotion of a democratic and equitable international order by suggesting the right to make decisions regarding peace and war for nations which pay the material and immaterial costs of war, as derived from Kant's *perpetual peace sketch*.

Furthermore, this research meticulously examined the two dominant philosophical viewpoints in international law and international relations, namely cosmopolitanism and utilitarianism, and determined that this right is justified by these philosophies. The philosophical groundwork laid by this research facilitates the enforcement of this right through international legal instruments. It explicitly indicated that the recognition of the right to peace can serve as a sound principle underlying the act of creating peace and can help to create sustainable peace. However, peace as a result of a balance of power or policies based on the deterrence theory is frangible. The achievements of this project can convince international legal political bodies which have an assertive influence over international peace, whether they are cosmopolitan or utilitarian, to modify their policies towards accepting and implementing the right to peace as a vindicated right for all nations.

Furthermore, basing this right in the Cyrus Cylinder and the practice of Cyrus as the first ancient document on human rights can strengthen the idea

[75] Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] I.C.J. Rep. 174, p.174.
[76] See UN Watch, Report: A Syrian-Backed Declaration on the Right to Peace (July 1, 2014)

of the right to peace. The practice of Cyrus is proof that the realisation of this right can bring stability and prosperity for a regime. The research has made a significant contribution to the literature on the idea of human rights by demonstrating that the first document of ancient human rights (the Cyrus Cylinder) and the first document of modern human rights (the Universal Declaration of Human Rights) invoke the idea of the right to peace.

This project critically examined the Kampala Amendments to the Rome Statute regarding the jurisdiction of the International Criminal Court (ICC) over the crime of aggression. It considered whether discussing the right to peace in the context of international criminal law adds to the existing laws and customs addressing the crime of aggression. Highlighting the prosecution of crime of aggression under the jurisdiction of the International Criminal Court as part of the enforcement mechanism for the right to peace can be supportive of the ICC and the Kampala Amendments in regard to the crime of aggression. Although this amendment has been active since July 2018, it needs to be accepted and ratified by more states to be fruitful. Thus, this study contributes to the ICC gaining greater ratification for jurisdiction over the crime of aggression. If this contribution enables the ICC to ban a few state leaders from waging war, peace will be maintained in many parts of the world, and certainly prevention is better than cure. Therefore, this project can contribute to the fulfilment of the promise of the Nuremberg Tribunal, which was to ban impunity in regard to the crime of aggression. [77]

The other contribution of this project to international human rights law scholarship relates to its formulation for addressing the implementation of the right to peace and its linkage with a peremptory norm. In fact, this study shed light on the traces of two peremptory norms, namely the prohibition of aggression and the right to life, in the conceptual-legal framework of the right to peace to support the implementation of this right within the international law system. The recognition of the right to peace at this level can be a crucial step to end the politicisation of the formula for peace, and

[77] Hofmann, '*Benjamin Ferencz: Nuremberg Prosecutor and Peace Advocate' (2013), p.9.* ; Ben Winks, 'Receiving the Right of Peoples to Peace: Concepts, Contents and Consequences' (2014) 39 S Afr YB Int'l L , p. 297.

lead to its judicialisation. This approach can serve as a way out of the current impasse regarding states not party to the Rome Statute. Additionally, it not only minimises the political impact of the UN Security Council on the enforcement process regarding the right to peace, but also it considers this political body as one of the duty-bearers of this right. This approach goes beyond the implementation mechanism used by the ICC, which is dependent on the UN Security Council's decisions. This new formula may facilitate engagement with other aspects of the violation of peace in the contemporary world, such as internal conflicts, state terrorist attacks and proxy wars.[78]

All in all, this project presented a bottom-to-top remedy to address the current impasse regarding the lack of international peace. It noted that the existing remedies for peace presented by leaders who are involved in committing war cannot be productive. [79] Hence, it considered a solution by engaging and empowering the victims of wars. It can be concluded that this project added value to current international law by developing an undeveloped right, namely the right to peace, with the aim of achieving the goal 16 of the 2030 Agenda for Sustainable Development and influencing the responsibility of the UN Human Rights Council on the promotion of the right to peace.

6.4 Areas for Further Research

This study addressed the right to peace in the context of *jus ad bellum*, and it deliberately concentrated on political violence from above, specifically war. However, there are still areas which require supplementary study concerning this issue, in order to develop this right and elevate it to an advanced level of recognition and enforcement.

One avenue for further study would be examining defence mechanisms against other aspects of violence, and the right to peace could be discussed

[78] IEP, Global Peace Index 2017: Measuring Peace in a Complex World (Institute for Economics and Peace, 2017), p.2.
[79] Bassiouni and Frencz, '*The Crime Against Peace & Aggression: From Its Origins to the ICC*' (2008),p.320.

via a broad interpretation, considering the concept of positive peace, which is beyond the notion of the absence of war, and which can be expanded to global care. It should be taken into account that war between states is not the sole aspect of the violation of peace in the contemporary world. Thus, other aspects should be considered in the implementation mechanism, especially considering the recent decrease in the number of interstate wars and the significant increase in the number of internal conflicts and terrorist attacks. There are possible areas for further research dealing with the threat of terrorism and counter-terrorism regimes.

Additionally, future research into proxy wars, civil wars and wars by non-state actors should be conducted to arrive at a comprehensive mechanism in order to provide peoples with a life of peace. It may seem that these crimes can be prosecuted as crimes against humanity;[80] however, we must examine whether it can be addressed under the right to peace regime, and whether it can be claimed by right-holders of the right to peace, as it is a violation of peace.

The other avenue for further study is the insistence on the continuation of the war by a state which has been attacked by another state. It should also be noted that no jurisprudence has been considered over this condition. Further research should examine whether refusing to reconcile can be assumed to be a form of aggression. In this regard, the case of the Iran-Iraq War (1980-1988), one of the longest and bloodiest of the 20th century, can be considered. There is scope to investigate whether the victim state can insist on continuing self-defence when the aggressor[81] is willing to reconcile.

Furthermore, whether the state which has been attacked can be recognised as the aggressor in this scenario could be explored. In fact, further studies are required to show how the two nations were refused the right to live in peace for eight years due to the lack of an international legal system to control the situation. A case study can be conducted to examine the potential

[80] e.g. See HRC, Report of the Independent International Fact-Finding Mission on Myanmar (August 24, 2018) UN Doc. A/HRC/39/64 , p.16 and p.19, para 103 (a).
[81] UNSC 'Resolution 598' (1987) ;UN Secretary-General, Report on the Implementation of Security Council Resolution 598 (1987)' (December 09, 1991) UN Doc. S/23273, §§ 5–7.

impacts of the right to peace on peoples' destinies in such circumstances. Considering the fact that such a catastrophe is probable and likely to happen in international relations, it seems that the legal-conceptual framework for self-defence as an exception to aggression should be precisely determined to avoid any potential abuse of it.

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