PEACE AS A LEGAL CONCEPT IN INTERNATIONAL LAW

Candidate Number: 150

Word Count: 13310

JUS399 Master's Thesis
Faculty of Law

UNIVERSITY OF BERGEN

11th December 2023

Contents

1. INTRODUCTION

1.1. BACKGROUND

On the 11th of May 2023, the Human Rights Council (HRC) held a special session on the conflict unfolding in Sudan. The purpose of this session was to discuss the conflict's impact on the human rights situation; the specific issue at hand for member- and observer States concerning a draft resolution proposing an extension of the mandate of the designated Expert of the High Commissioner on human rights in the Sudan to include the monitoring of the human rights situation in light of the conflict.[1]

During the debate, the Sudanese representative H.E. Hassan Hamid Hassan expressed disagreement with both the holding of this special session and the proposed draft resolution. He argued that the special session was "rushing" the situation, and that human rights considerations at the Human Rights Council would need to yield priority to ceasefire negotiations at the Security Council.[2]

The American representative, H.E. Michèle Taylor argued that prioritising ceasefire negotiations to the detriment of human rights would not benefit the situation on the ground, and insisted that the two processes needed to be pursued simultaneously.[3] Though her statement did not explicitly reference the Security Council, it was understood as a response to the Sudanese representative's concerns.

As the United Nations (UN) organ responsible for "maintenance of international peace and security",[4] and with the authority to enforce decisions in line with this purpose,[5] the Security

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[1] UN Human Rights Council Res S-36/1 (15 May 2023) UN Doc A/HRC/RES/S-36/1.

[2] 'High Commissioner for Human Rights Strongly Condemns Wanton Violence in Sudan as Human Rights Council Opens Special Session on the Human Rights Impact of the Ongoing Conflict in Sudan' (*United Nations Human Rights Office of the High Commissioner*, 11 May 2023) <https://www.ohchr.org/en/news/2023/05/high-commissioner-human-rights-strongly-condemns-wanton-violence-sudan-human-rights> accessed 30 August 2023.

[3] 'Statement by Ambassador Michèle Taylor at the General Debate on the Human Rights Situation in the Sudan' (*U.S. Mission to International Organizations in Geneva*, 11 May 2023) <https://geneva.usmission.gov/2023/05/11/hrc-special-session-on-the-sudan/?_ga=2.153752056.1935700701.1694699528-69257458.1694699528> accessed 30 August 2023.

[4] Charter of the United Nations (UN Charter), (adopted 26 June 1945, entered into force 24 October 1945) Vol 1 UNTS XVI, Art. 24 (1).

[5] UN Charter Art. 25; See also *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) not withstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16*, 53 [114] in which the Court states: "The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect." The statement holds clear implications that certain Security Council resolutions have a binding effect; See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 148* [26]: "[…] the construction of the wall and its associated regime, […] contravene […] the Security Council

Council's role in the conflict became a topic of discussion at the Human Rights Council. The scene of this discussion being a UN body responsible for promoting and protecting human rights underlines the inherent relevancy of peace on any global platform.[6]

The UN's purposes, pillars and practices illustrate the fact of peace being a guiding principle in the organisation's work. Already in the Preamble of the Charter of the United Nations, a collective determination of States to move forward from two devastating world wars and towards a future of peace is declared. The birth of the organisation and its overarching objective of collaboration between States for the purpose of international peace are facts which in and of themselves become a tribute to the fundamental role which peace plays on a global scale.[7]

This emphasis on peace as a global standard which States are expected to adhere to compels the question of the legal role peace plays in international law. [8] Peace as a legal concept in international law constitutes the primary topic of this study. In the following, the scope, objective and legal frameworks as well as the methodology of this thesis will be elaborated upon.

1.2. SCOPE & METHODOLOGY

Characterising peace as a global standard holds specific connotations to this thesis. Various fields of academia have devoted both time, resources and energy into dissecting the phenomena of wars. Considering it a natural antithesis to war, peace has also been susceptible to equally extensive research by a variety of academics, spanning cultures, generations, ideologies and disciplinary backgrounds.[9]

In this day and age, peace is considered a standard which the international community at large actively seeks to establish in the face of disputes. This is illustrated by the continuous efforts

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resolutions cited in paragraph 120 […]". The use of "contravene" implies the existence of a legally binding and enforceable duty.

[6] 'Human Rights Council' *(United Nations Human Rights Council)* <https://www.ohchr.org/en/hrbodies/hrc/home> accessed 30 August 2023.

[7] Henry F Carey and Rebecca Sims, 'The International Law of Peace' in Henry F Carey (ed) *Peacebuilding Paradigms* (Cambridge University Press 2020) 167.

[8] The various references made to peace and the absence of armed conflict in the Preamble of the Charter of the UN demonstrates the global significance of peace: "[…] to save succeeding generations from the scourge of war", "[…] to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure […] that armed force shall not be used […]".

[9] The various secondary sources used in this thesis demonstrate the diversity of academics studying peace as part of their disciplinary fields.

towards peace talks and -negotiations in any given conflict,[10] and the fact that the participation in these processes involving peace negotiations are not limited to certain regions or countries, but rather a process which several States have demonstrated their interest in engaging in.[11]

These circumstances demonstrate that peace exists as a global standard in political and diplomatic circles. For assessing peace as a global *legal* standard, the UN Charter constitutes the point of departure. Article 1 of the Charter lists various purposes of the UN as an intergovernmental organisation, including the maintenance of international peace and security,[12] development of friendly relations among Member States,[13] respect for and promotion of human rights and fundamental freedoms.[14]

The sequence in which these purposes are listed is noteworthy, with the maintenance of international peace being first.[15] In *Certain Expenses of the United Nations*, the International Court of Justice states: The primary place ascribed to international peace and security is natural, since the fulfilment of the other purposes will be dependent upon the attainment of that basic condition."[16]

For the purpose of better understanding the significance of peace as a global legal standard and how this dictates the ways in which the global community conducts itself, this thesis will assess peace as a legal concept in international law. As the issue is of a legal nature, the relevant sources for this study are derived from the Statute of the International Court of

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[10] UN Charter Chapter VI *Pacific Settlement of Disputes*, particularly Art. 33 (1) demonstrates the priority given to peaceful negotiation: "The parties to any dispute […] likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration […]".

[11] For the conflict in Sudan, mediation efforts have included the presence of The United States, Saudi Arabia as well as representatives of the African Union: 'Sudan Warring Sides Resume Peace Talks in Saudi Arabia' (*Al Jazeera*, 26 October 2023) <https://www.aljazeera.com/news/2023/10/26/sudan-warring-sides-resume-peace-talks-in-saudi-arabia> accessed 8 December 2023; For the Ukraine war, China has expressed interest in adopting a position as a peacemaker: 'China Reiterates Ceasefire, Peace Talks 'Only Way' to end Ukraine War' (*Al Jazeera,* 22 September 2023) <https://www.aljazeera.com/news/2023/9/22/china-reiterates-ceasefire-peace-talks-only-way-to-end-ukraine-war> accessed 8 December 2023.

[12] UN Charter Art. 1 (1).

[13] UN Charter Art. 1 (2).

[14] UN Charter Art. 1 (3).

[15] The trend of activities conducted by the UN also demonstrate the importance given to peace as a fundamental pillar: "[…] the following can be noted: in the years immediately following the birth of the Organization problems concerning maintenance of peace were considered the most important; […]" See B Conforti *The Law and Practice of the United Nations: Third Revised Edition* (3rd edn, Brill 2004) 8.

[16] *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962: I.C.J. Reports 1962, p. 151*, 168.

Justice (ICJ) Art. 38 (1) which lists *inter alia* "international conventions" as a source of international law.

International conventions include treaties, which express a formal agreement between States. The relevance of these agreements to international law arises from the principle of sovereignty;[17] States are equally and exclusively sovereign over their territories and their peoples. As a result, only States possess the jurisdiction to limit their own sovereignty, which can be done *inter alia* through treaties.[18]

The UN Charter is one such treaty which enjoys a wide scope of endorsement: as of December 2023, there are 193 Member States.[19] Due to the quantity of its ratification, the Charter's norms and purposes can be considered representative of fundamental values of the international community.[20] For this reason, the thesis will primarily focus on the contents of the UN Charter for the purpose of assessing peace as a legal concept in international law.

As the thesis' issue concerns law, the analyses will adhere to legal methods of study. A traditional Norwegian legal method will not be applicable, as the focal point of this thesis is international law. The appropriate legal method of procedure for this thesis is found in The Vienna Convention on the Law of Treaties. According to Art. 31 (1) of the Vienna Convention, all interpretations of international treaties shall be conducted "in good faith and in accordance with the ordinary meaning" of the terms. Furthermore, importance shall be given to the context of treaties as well as "its object and purpose".[21]

Though the Vienna Convention was formally enforced in 1980, several decades after the UN Charter, it is widely established practice to retroactively apply the Convention's rules of interpretation on the Charter. In *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* the ICJ affirms that the rules of the Vienna Convention "may in many respects be considered as a codification of existing customary law

[17] Morten Ruud and Geir Ulfstein, *Innføring i folkerett* [Introduction to International Law] (4th edn, Universitetsforlaget 2011) 81; See UN Charter Art. 2 (1) for a codification of this principle.
[18] 'Sovereignty' (*Medecins Sans Frontieres*) <https://guide-humanitarian-law.org/content/article/3/sovereignty/> accessed 27 November 2023.
[19] 'About Us' (*United Nations*) <https://www.un.org/en/about-us#:~:text=The%20UN's%20Membership%20has%20grown,recommendation%20of%20the%20Security%20Council> accessed November 2023.
[20] B Conforti [n 15] 10.
[21] Vienna Convention on the Law of Treaties (Vienna Convention), (adopted 23 May 1969, entered into force 27 January 1980) Vol 1115 UNTS 331, Art. 31 (1).

on the subject".[22] Therefore, the UN Charter will be interpreted in accordance with the Vienna Convention.

In order to understand the various aspects of peace as a global legal standard, this thesis will explore the legal basis for the global ambition of peace, as well as the legal basis for international obligations towards peace. These analyses will be conducted by assessing peace as an aim, a duty and a right in *2. Defining Peace in International Law*.

Following this outline of the facets of peace, *3. Applying Peace in International Law* will study the legal ramifications of this concept. Due to the Security Council's exclusive mandate regarding maintenance of the peace, the organ's decisions and their application of peace as an aim and as a duty will be assessed.

Lastly, the thesis seeks to contextualise the term further by narrowing the scope of the legal framework. In *4. Asserting Peace in International Law* the legal concept of peace will be studied with international human rights law as a backdrop, and for the purpose of assessing whether peace can and does exist as a legal human rights concept in international law. Through this assessment, better insight into the function of peace as a legal concept in international law will be provided.

Due to the judicial nature of this thesis, it is appropriate to delineate against socio-political considerations and establish that only legally derived arguments will hold weight. However, it is worth pointing out that the field of international law in and of itself is largely influenced by political developments,[23] which will inevitably affect discussions concerning this field.

[22] *South West Africa* [n 5] 46 [94].
[23] As explained by legal scholar Wolfgang Friedmann: "Most states have passed through different phases of political, economic and social development, modifying their attitudes toward various rules of international law not as a matter of basic values but according to the national interest prevailing at a particular period." Wolfgang Friedmann 'The Changing Dimensions of International Law' (1962) Vol 62 No 7 *Columbia Law Review* 1147-1165, 1152.

2. DEFINING PEACE IN INTERNATIONAL LAW

The following study of peace as a legal concept in international law will be commenced with a preliminary outline of the term "peace". Traditionally, the term is understood as describing a state of existence in which armed conflict is absent.[24] A more convoluted understanding might presume the lack of other forms of hostility as well, such as *inter alia* economic sanctions or breach in diplomatic relations.

A natural point of departure for determining the contents assigned to "peace" by the global community is the UN Charter, as the treaty represents a broad international consensual agreement between States.

In the following, the term "peace" and its components as they appear in the Charter will be outlined using the terms aim, duty and right, through which peace as a global legal standard will be engaged with as an objective, as an obligation and as a legal entitlement. The negative and positive aspects of peace as an aim and duty will also be deliberated upon in accordance with Johan Galtung's theories on peace;

When sociologist Johan Galtung published the article *"Violence, Peace and Peace Research"* in 1969, he defined peace in terms of positive and negative peace.[25] The essence of this analysis was devoted to defining peace in relation to the "absence of violence".[26] Negative peace was explained as an absence of "personal violence", and is reminiscent of the traditional definition of peace as the absence of armed conflict.

Positive peace was explained by Galtung as the absence of "structural violence", which would include the presence of social justice. Regarding the contents of "social justice", Galtung states: "[…] whereas the absence of structural violence is what we have referred to as social justice, which is a positively defined condition (egalitarian distribution of power and resources)."[27]

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[24] Paul F Diehl 'Peace: A Conceptual Survey' (2019) Oxford Research Encyclopedia of International Studies <https://oxfordre.com/internationalstudies/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-515> accessed 8 December 2023.

[25] Galtung explains the reason behind distinguishing between the positive and negative aspects of peace: "The reason for the use of the terms 'negative' and 'positive' is easily seen: the absence of personal violence does not lead to a positively defined condition […]". Johan Galtung, 'Violence, Peace and Peace Research' (1969) Vol 6 No 3 *Journal of Peace Research* 167-191, 183.

[26] Ibid.

[27] Ibid.

Galtung's outline of peace in its negative sense relates to the traditional definition of peace, and can be found explicitly applied in international law.[28] For positive peace, certain provisions of the UN Charter imply a development in international law regarding the elements breeding armed conflict:

Art. 1 (2) regarding improvement in the relations between nations and the subsequent strengthening of peace, and Art. 1 (3) relating to international cooperation to solve "international problems of an economic, social, cultural, or humanitarian character" must be read as implying that peace is not only achieved through the absence of armed conflict.[29] In other words, the international legal framework provides a foundation for understanding peace in a broader sense than the absence of war, though it remains ambiguous to claim social justice as a necessity to peace based on the Charter.

The following deliberations of peace as an aim, duty and right, in both a negative and positive sense, seek to demonstrate the various facets of peace as a legal concept in international law.

2.1. PEACE AS AN AIM

The formulation "[t]o maintain international peace […]" reveals one of the facets of peace as it appears in international law; Art. 1 (1) of the Charter expresses peace as an aim. As the very first purpose laid down in the UN Charter, the placement of this provision establishes "peace" as an objective which the intergovernmental organisation and its Members as subjects of international law strive to achieve.

An isolated interpretation of this phrase in accordance with the ordinary meaning does not reveal the specific contents which the signatories of the Charter assign to "peace" as a legal concept, other than its function as an aim for the work of the UN as well as a guiding principle for intergovernmental relations between States. However, the Charter supplies the aim of "maintain[ing] international peace" with specific measures which agents of the Charter

[28] An early example of this is The International Military Tribunals which criminalised "Crimes against peace", which included: "Planning, preparation, initiation or waging of a war of aggression […]" See the United Nations, *Charter of the International Military Tribunal – Annex to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis ("London Agreement")*, 8 August 1945, Art. 6 (a).
[29] Rüdiger Wolfrum, 'Ch.I Purposes and Principles, Article 1' in B Simma, DE Khan, G Nolte, A Paulus, N Wessendorf (eds), *The Charter of the United Nations: A Commentary* (3rd edn, Oxford University Press 2015) 110.

are obligated to for the purpose of preventing "threats to the peace",[30] which can be understood as a negative description of the aim of peace.

The term "threat" is commonly used to describe a statement or action with an intention of causing damage. In the context of Art 1 (1) a "threat" refers to any action which represents a danger to "international peace". The wording of the provision is broad enough to encompass passive acts, as well as failures to act which may exhibit a threat. An assessment an action or inaction and whether it can be classified as representing a "threat" must consider first of all, whether it is qualified to cause legitimate damage to the object ("peace"). Second of all, it must consider the character, probability and imminency of a "threat" which the specific action represents.

In the same provision, the wording "for the suppression of acts of aggression or other breaches of the peace" outlines specific measures for the aim of peace. An interpretation of "aggression" in line with the ordinary meaning of the word assumes a hostile violation of another party's integrity, which then relates back to the traditional understanding of peace as non-aggression.

In the UN General Assembly Resolution XXIX Art. 1 the contents of "aggression" have been captured as " the use of force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations".[31] Though the resolution is *posterior* to the adoption of the Charter, Art 31 (3) (a) of the Vienna Convention states that "[…] subsequent agreement between the parties regarding the interpretation" of a treaty must also be taken into consideration. Subsequently, States are urged to avoid, actively subdue and put an end to acts which may qualify as "aggression".

By adding "or other breaches of the peace", the Charter allows for acts aside from "aggression" to be viewed as a hinder to the objective of "peace". This acknowledgement indicates that the UN – and, in extension, its Member States – do not limit "peace" to its traditional connotations as the absence of war and aggression. It opens for interpreting other actions as conflicting with the aim of peace.[32] Such actions may include economic sanctions

[30] UN Charter Art. 1 (1).
[31] UN General Assembly Res 3314 'Definition of Aggression' (14 December 1974) UN Doc A/RES/3314(XXIX).
[32] R Wolfrum in B Simma [n 29] 110.

or breach of diplomatic relations. By using the word "or", the provision implies that "acts of aggression" must be equally detrimental to the aim of peace as "other breaches of the peace".

The wording "for the suppression of acts of aggression or other breaches of the peace" embodies negative peace as an aim; by adhering to these means, the desired end ("international peace") is achievable. For this purpose, "peace" as it appears in Art. 1 (1) of the UN Charter must be considered a guideline for the interpretation of following provisions in the Charter – the actions and inactions of States and UN organs must be assessed based on whether these contribute to maintaining international peace by suppressing "acts of aggression" or "other breaches of the peace".

Positive peace as an aim does not appear explicitly in the Charter's provisions, but can be derived from Art. 2 (4) which prohibits "the threat or use of force". This provision will be studied more in depth in *2.2 Peace as a Duty*, particularly the term "force". For peace as an aim the points of interest are the limitations placed upon States' employment of "force", specifically the prohibition against force in a manner "inconsistent with the Purposes of the United Nations".

By citing the purposes of the UN, Art. 2 (4) refers back to Art. 1, which codifies not only maintenance of "international peace" as a purpose of the Charter, but also the purpose of cooperation regarding promotion and respect for "human rights and fundamental freedoms for all without distinction […]".[33] Consequently, the obligation of States to abstain from the "threat or use of force" must be interpreted and applied such so that it avoids the disregard of human rights or fundamental freedoms.

Such an interpretation of the prohibition against force establishes a connection between peace and human rights reminiscent of Galtung's definition of positive peace as the absence of structural violence and safeguarding of social justice. The subsequent implication for peace as a legal concept in international law is that the objective of international peace cannot be achieved without the absence of the use of force violating human rights, as well as the absence of aggression or equivalent breaches of peace.

[33] UN Charter Art. 1 (3).

2.2. PEACE AS A DUTY

As a measure towards the purpose of "maintain[ing] international peace", Art. 1 (1) advocates for settling international disputes "by peaceful means". A similar formulation can be found in Art. 2 (3) which affirms that all Member States "shall settle their international disputes by peaceful means […]". Though the provisions are identical in wording, a difference in function can be argued from their placement:

Art. 1 lays down the overarching purposes of the Charter, and primarily influences the conduct of the UN as an organisation, while Art. 2 contains principles steering States' conduct.[34] The relationship between Art. 1 and 2 can be described as such: "Accordingly, the principles serve the purposes; and, in turn, they are limited by them."[35]

In other words, Art. 2 (3) establishes a standard by which the actions of States must be assessed, namely "peaceful". In accordance with earlier clarifications in this thesis, "peaceful means" presumes the absence of force as well as coercion towards another States' integrity.[36] Furthermore, the use of "shall" expresses a commitment, as opposed to the term "should" which would express a suggestion.[37] This gives weight to the judicial significance of States' obligation towards "peaceful" methods of dispute settlement.

Another parallel between Art. 1 (1) and Art. 2 (3) of the Charter is the references made to "justice": In Art. 1 (1) it is established that "peaceful means" refers to measures "in conformity with the principles of justice and international law", in Art. 2 (3) it is clarified that "peaceful" methods refer to those in accordance with "international peace and security, and justice". Thus, the principle of justice is essential for both the aim of peace as well as the duty towards peace.

Generally, "justice" is understood as a state in which principles of impartiality, equity, proportionality and accountability, among others, are ensured. Consequently, these elements become decisive for the assessment of whether an approach towards dispute settlement is "peaceful". This emphasis on justice can be connected to Galtung's outline of positive peace

[34] R Wolfrum in B Simma [n 29] 108.
[35] Andreas Paulus, 'Ch.I Purposes and Principles, Article 2' in B Simma [n 29] 127.
[36] The presumption of an absence of force is based on UN Charter Art. 2 (4); The presumption of an absence of coercion can be derived from the principle of sovereignty in Art. 2 (1).
[37] Germana D'Acquisto and Stefania D'Avanzo, 'The Role of Shall and Should in Two International Treaties' (2009) Vol 3 *CADAAD Journal* 36, 39-44 <https://www.lancaster.ac.uk/fass/journals/cadaad/wp-content/uploads/2015/01/Volume-3_DAcquisto-DAvanzo.pdf> accessed 20 November 2023, 39-44; For "should", see UN Charter Art. 36.

as the existence of social justice, specifically in the form of the equal protection and promotion of the rights of every individual.[38] The obligation of States to apply "peaceful means" therefore demonstrates positive peace as a duty.

Following the provision in (3), Art. 2 (4) asserts that "[…] Members shall refrain in their international relations from the threat or use of force". The use of "shall" expresses a duty for "Members" to abstain from "force" and thus establishes negative peace as a duty, [39] codifying the customary prohibition against the "threat or use of force".[40]

An initial interpretation of the term "force" might indicate that the scope is not limited to armed force, but also includes force expressed through political or economic measures. As asserted in *2.1 Peace as an Aim*, Art. 1 (1) of the UN Charter encourages measures against "threats to the peace", both in the form of "acts of aggression" as well as "other breaches of the peace". The latter alternative is not worded as narrowly as to exclude, for example, economic sanctions. An interpretation of "force" in Art. 2 (4) in accordance with "other breaches of the peace" might therefore indicate that violations of peace include political or economic force.

However, an interpretation in good faith and in line with the context is necessary. In the Charter's Preamble, an intention of ensuring that "armed force shall not be used" is affirmed, which implies an inclination towards interpreting "force" as referring to specifically "armed force". Furthermore, Art. 44 contains several references to the use of "force", majority of which specify "armed force", implying that the provision's use of "force" as a standalone should also be read as "armed force". For the sake of consistency, a similar approach should be applied to Art. 2 (4).[41]

To counter this approach, considerations of effective enforcement of peace might presume a wider application of "force". This point is particularly relevant for economic sanctions, as a prohibition against economic force may better align with the safeguarding of positive peace as social justice, because the absence of economic sanctions can be argued to reduce inequality on a global scale.

[38] "[E]galitarian distribution of power and resources", J Galtung [n 25] 183.
[39] G D'Acquisto and S D'Avanzo [n 37].
[40] Oliver Dörr and Albrecht Randelzhofer, 'Ch.I Purposes and Principles, Article 2 (4)' in B Simma [n 29] 203.
[41] Ibid 209.

Yet, it is important to note that Galtung's outline of negative and positive peace, including the absence of structural violence, represents a sociological interpretation of the concept of peace. Though the terms and associated connotations are contemplated in this thesis, it is for the purpose of establishing a starting point indicating the sheer potential which the concept of "peace" represents. In other words, considerations of Galtung's positive peace cannot outweigh the judicial weight of interpreting the Charter's use of "force" in accordance with its context, purpose and, chiefly, good faith.

Therefore, "force" in Art. 2 (4) must be interpreted as armed force. This will ensure the possibility for States to exert pressure towards parties that do violate international law; any other interpretation of "force" would effectively reduce these possibilities to none.[42]

The provision requires that the "force" is used against "the territorial integrity or political independence" of another State, and can be read as a negative codification of the principle of sovereignty. Furthermore, the use of force must misalign "with the Purposes of the United Nations" to be prohibited, which includes references to *inter alia* "human rights and […] fundamental freedoms", as well as "equal rights and self-determination", and "principles of justice and international law".[43]

2.3. PEACE AS A RIGHT

In this study of peace as a legal concept in international law, the facets of peace which relate to its functions as an aim and a duty in accordance with international law have already been established. This affirms the legal concept of "peace" as both an overarching guideline as well as an obligation. In order to determine the extent to which these functions can be contended, it becomes a point of consideration whether there exists an entitlement to peace. In the following, peace as a right will be assessed.

With the UN Charter as the legal basis for this discussion, the legal subject and duty holders for such a right would be States as these are the legal agents addressed in the document.[44] In other words, establishing peace as a right must be distinguished from peace as a *human* right. The latter presupposes peace – in its capacity as both an aim and a duty, in both the negative

[42] O Dörr and A Randelzhofer, [n 29] 209.
[43] UN Charter Art. (1), (2), and (3).
[44] UN Charter references to "All Members", see *inter alia* Art. 2 (2), (3), (4) and (5).

and positive sense – as assertable by individuals (right holders) against States (duty holders). The discussions in this part can be delineated against deliberations of peace as a human right.

A claim of an entitlement to peace would be least unambiguous if the Charter explicitly referenced a "right to/of". However, the Charter contains few provisions with such phrasings,[45] rather it shows a preference towards phrases such as "shall" or "should" which may establish obligations or encouragement towards an action, but do not directly indicate an entitlement. Thus, the focus of the Charter is mostly on the obliged parties rather than those entitled.

A right to peace can be argued; the prohibition against "threat or use of force" relates to "the territorial integrity or political independence of another State",[46] which – as mentioned – codifies the principle of sovereignty in a negative sense. States are obliged to refrain from applying their jurisdiction ("force") to another State's internal affairs, which implies a corresponding entitlement of each State to apply their own jurisdiction.

States' obligations to apply measures "for the suppression of acts of aggression or other breaches of the peace" in Art. 1 (1) can similarly be understood as implying a corresponding entitlement of States to not be subjected to acts of aggression. In other words, a right of States to be approached with measures of non-aggression can be argued.

However, such an interpretation of the Charter warrants some critique. An interpretation in good faith with the Charter and, consequently, its deliberate choice of words demands acknowledgement of the use of "shall", as a good faith-interpretation requires respect for the scope of the choice of words. Forgoing "right to" must be considered intentional. For this reason, interpreting isolated provisions of the Charter as implying a right to peace is not an interpretation made in good faith.

Instead, a right to peace may be derived from the overarching intentions of the Charter. Certain academics argue that the Charter's emphasis on peace must be considered alongside its historical context, with the World Wars as a backdrop. Such an interpretation suggests that the UN as a whole seeks to uphold a "goal of realising the right to peace".[47]

[45] UN Charter Art. 50 and 51 are the only instances of this.
[46] UN Charter Art. 2 (4).
[47] Philip Alston, 'Peace as a Human Right' (1980) Vol 11 No 4 *Bulletin of Peace* 319, 323.

Accordingly, the objectives and obligations codified in the Charter must be considered steps towards the realisation of a general right to peace. Several provisions can be mentioned in support of such an interpretation: the prohibition against "the threat or use of force" (Art. 2 (4)), the obligation to refrain from "acts of aggression" (Art. 1 (1)), and the obligation to employ "peaceful measures" (Art. 2 (3)). Thus, the Charter as a whole represents a general right for States to peace in international law.

2.4. RECAPITULATION

By assessing introductory provisions of the UN Charter, various facets of peace have been outlined. Specifically Art. 1 and 2 have illustrated the role as well as standard which peace represents in international law, as an aim, duty and a right.

There are, however, some shortcomings to outlining the legal concept of peace in this way. Though the facets of peace provide an indicative framework for what may be expected of a peaceful state, the contours of peace are not self-sufficient in the same way that other legal standards are. Negative peace requires the absence of aggression, which exists independently as an expectation in international law.[48] Positive peace presumes *inter alia* fulfilment of obligations of human rights, which also exist as their own standards in international law.[49]

While the legal obligations derived from terms such as "force", "armed conflict", "aggression", "fundamental freedoms" and "human rights" can be pursued independently, the same cannot be said about "peace". This complicates the position of peace as a legal concept in international law, and raises the question of whether the law – *lex lata* – ensures a predictable, clear and effective enforcement of the legal concept, and whether an universally recognised, explicit definition would better safeguard peace in international law.

[48] UN Charter Art. 1 (1)
[49] International Covenant on Civil and Political Rights (ICCPR), (adopted 16 December 1966, entered into force 23 March 1976) Vol 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) Vol 993 UNTS 3.

3. APPLYING PEACE IN INTERNATIONAL LAW

With the established assessment of peace in international law as an aim, duty and right, the following part of the thesis will study the application of peace as a legal concept, and how its facets manifest in both a negative and positive sense.

Forthcoming discussions will keep the Charter as the legal basis, in which the Security Council is assigned the primary responsibility regarding "maintenance of international peace".[50] This responsibility entails *inter alia* determining the contents of "peace" as the term appears in the UN Charter.

The Security Council is a political organ,[51] and therefore the judicial weight of its decisions is limited. This particularly affects how the Council's resolutions should be read, as the process is dependent on the political interests of and initiative taken by Member States, with no procedural requirement of input by a legal counsel.[52]

Still, the organ's deliberations of the contents of "peace" are relevant to this study, as they are indicative of how an authority in the field – empowered by its Member States – regards the term. [53] According to the Vienna Convention Art. 31 (3) (b) "subsequent practice" applying a treaty is contextually relevant for its interpretation.[54] For this reason, the organ's work will be studied for the purpose of assessing peace as a legal concept in international law.

3.1. "THREAT TO THE PEACE", ART. 31

As established, the general legal basis for the Security Council's mandate is Art. 24 (1) of the UN Charter. Analysis of Chapter VII of the Charter *"Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression"* is necessary to understand the Council's tasks.

Determining "the existence of any threat to the peace" is the preliminary task of the Security Council.[55] Only when a "threat" to peace is established does the responsibility to decide measures in accordance with Art. 41 and 42 become relevant. In isolation, the phrase "threat

[50] UN Charter Art. 24 (1).
[51] Thomas Giegerich, 'Ch.VI Pacific Settlement of Disputes, Article 36' in B Simma [n 29] 1123; See also Michael C Wood, 'The Interpretation of Security Council Resolutions' (1998) Vol 73 *Max Planck Yearbook of United Nations Law* 73-95, 77-78.
[52] MC Wood [n 51] 80-82.
[53] UN Charter Art. 24 (1).
[54] Irina Buga 'The Impact of Subsequent Customary International Law on Treaties: Pushing the Boundaries of Interpretation?' (2022) Vol 69 *Netherlands International Law Review* 242-270, 242.
[55] UN Charter Art. 39.

to the peace" does not in and of itself indicate the scope of application for this provision. Furthermore, the use of "or" in the continuation ("threat to the peace, breach of the peace, *or* act of aggression") implies that an aggressive action may impede the objective of "international peace" regardless of whether it qualifies as a "threat to the peace".

For the Security Council, the aim "to maintain or restore international peace and security" in Art. 39 must be seen in relation to "threat to the peace", and becomes a modifier for the scope of this provision and subsequent Council activities. The wording is reminiscent of the aim of peace as codified in Art. 1 (1) of the Charter, and the contents of "peace" – specifically as "threat to the peace" – as understood by the Security Council will be deliberated upon through an assessment of specific resolutions.

In resolution 794 regarding Somalia, the circumstances concerned a military regime governing the State. The resolution was passed due to uprisings, clan-based violence and ineffective international aid efforts. [56] The Security Council decided that "the magnitude of the human tragedy" which was "further exacerbated" by the "distribution of humanitarian assistance" constituted a threat to international peace.[57]

For Haiti, the case concerned a military coup and the forced removal of a democratically elected president. In resolution 940, the Security Council highlighted the "systematic violations of civil liberties" and reiterated its commitment to support the "economic, social and institutional development" as well as "the restoration of democracy" in Haiti. In relation to these concerns, the situation in Haiti was characterised as constituting "a threat to peace and security in the region".[58]

Resolution 955, one among several concerning Rwanda, cited violations of international humanitarian law, particularly the crime of "genocide", when arguing that the situation in Rwanda constituted a "threat to international peace and security".[59]

In resolution 1264, concerning East-Timor and its independence from Indonesia, the Security Council claimed a "threat to peace" due to "systematic, widespread and flagrant violations of international humanitarian and human rights law".

[56] Lidwien Kapteijns, 'Test-firing the 'New World Order' in Somalia: the US/UN Military Humanitarian Intervention of 1992-1995' (2013) Vol 15 No 4 *Journal of Genocide Research* 421-442, 423-424.
[57] UN Security Council Res 794 (3 December 1992) UN Doc S/RES/794, 1.
[58] UNSC Res 940 (31 July 1994) UN Doc S/RES/940, 1.
[59] UNSC Res 955 (8 November 1994) UN Doc S/RES/955, 1.

These resolutions illustrate that the scope of "peace" as practiced by the Security Council is broad, and involves elements of humanitarian concerns, democratic considerations, crimes against humanity,[60] as well as human rights. While considerations of humanitarian principles and crimes against humanity relate to peace in the negative sense as personal violence,[61] principles of democracy and deliberations of human rights pertain to Galtung's peace in its positive sense as structural violence.[62]

3.2. "MEASURES", ART. 41 & 42

Following the task of determining a "threat to the peace", the Security Council is required to decide upon measures which will "maintain or restore international peace and security". Art. 39 states that these measures shall be "in accordance with Articles 41 and 42".

Art. 41 regulates Security Council measures excluding "the use of armed force". The phrase "armed force" implies the occurrence of hostile acts involving military violence. Regarding measures not involving armed force, the provision mentions *inter alia* "interruption of economic relations" and "the severance of diplomatic relations". As "armed force" is excluded, Art. 41 is not an exception to the prohibition against "force", meaning that economic and political sanctions can be invoked by the Council without violating the sovereignty of a State.[63]

On the other hand, Art. 42 does represent an exception to the prohibition against force. The provision authorises the Security Council to "take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security", the latter part of which is another codification of peace as an aim. It is important to note that the Council's use of force does not violate the prohibition in Art. 2 (4), as the Council's authority in this regard is an exception to this rule.[64] However, the Council is not allowed free reigns to apply force – several precautions appear in the provision.

First, the provision requires that the use of "action by air, sea or land forces" only be contemplated if measures in accordance with Art. 41 are considered or proven "inadequate". This precaution safeguards peace as a duty by presuming an assessment of a (hypothetical)

[60] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) Vol 78 UNTS 277, Preamble.
[61] J Galtung [n 25].
[62] Ibid.
[63] UN Charter Art. 2 (4).
[64] UN Charter Art. 24 and 25.

scenario where measures aligning with obligations towards peace in the negative sense, i.e. the lack of force, have been applied and deemed insufficient.

Secondly, the provision demands that the use of force is "necessary" for the aim of peace. This presupposes an assessment of proportionality in two parts; the decision of using force must be seen as proportional to the gravity of the situation, and the amount of force decided upon must be proportional to the scope of the situation.

Lastly, the provision states that the Council "may" apply force. The deliberate word choice of "may" indicates that even if aforementioned requirements are cleared, the choice of taking action by force relies on an overall assessment of the situation at hand. For Somalia, Haiti, Rwanda and East-Timor, the Security Council decided this was the case, and adopted measures under Chapter VII of the Charter.

Regarding Somalia, the Security Council first and foremost demanded "a cease-fire", and to this end, invoked *The United Nations Operation in Somalia* (UNOSOM), which was authorised under Chapter VII of the Charter to "use all necessary means".[65]

For Haiti, and the intention of *inter alia* supporting "economic, social and institutional development" and "restoration of democracy", the Council decided to form a "multinational force" which was authorised to "use all necessary means" with the purpose of removing the military leadership in Haiti.[66]

Similar to Somalia and Haiti, the measure in resolution 955 concerning Rwanda was also invoked under Chapter VII. However, the resolution did not authorise the use of force, rather it established an international tribunal with the purpose of "prosecuting persons responsible for genocide and other serious violations of international humanitarian law […]".[67]

The case of East-Timor also resulted in the establishment of "a multinational force", comparable to Somalia and Haiti. This multinational force was assigned to ensure a "peaceful and orderly transfer of authority",[68] which is reminiscent of the democratic concerns expressed in the case of Haiti.

[65] UNSC Res 794 [n 57], [1], [6], [10].
[66] UNSC Res 940 [n 58], 2.
[67] UNSC Res 955 [n 59], 2.
[68] UNSC Res 1264 (15 September 1999) UN Doc S/RES/1264, [6]-[8].

These accounts of the cases concerning Somalia, Haiti, Rwanda and East-Timor reveal the difference in measures applied to each case in terms of invasiveness, even though they all qualified as "threat to (the) peace". Particularly, the case of Rwanda stands out, seeing as a genocide by all means must be considered equal in severity to concerns of humanitarian aid, democracy and human rights. Due to this, while Security Council resolutions can contribute to determining the contents of peace, they are less constructive when determining the appropriate reactions to violations of "threat to the peace".

3.3. RECAPITULATION

Security Council resolutions reveal relevant elements of consideration in regards to the application and practice of peace as a legal concept in international law. However, it is necessary to repeat the point that the Council is a political organ, and though the resolutions concern the application of the UN Charter, the independent decisions of Member States are likely affected more by their own political interests rather than an interest in developing "peace" as a legal term.

Illustrative of this fact is the voting pattern of the five permanent Members of the Council. While they may agree on the existence of a "threat to the peace", their reasoning varies and reveals the political values which they prioritise the safeguarding of by invoking measures under Chapter VII.[69]

At the same time, it can be argued that the emphasis on humanitarian concerns, crimes against humanity, democratic and human rights considerations, which the Security Council as a holistic entity stated in the resolutions' texts indicate that the notion of "peace" is expanding.[70]

Both of these points can be true at the same time: while the decision process is undeniably influenced by political interests, an evolutionary development in custom may also explain the

[69] For the case of Haiti, The United Kingdom (UK), The United States (USA) and France found a "threat to the peace" due to considerations of democracy, while Russia also considered self-determination and China emphasised the State's consent: TP Paige, 'Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of 'Threat to the Peace' Under Article 39 of the UN Charter' (Brill 2019) 123; For the case of East-Timor, Russia, China and France highlighted self-determination, the UK mentioned protection of human rights and USA argued for "threat to the peace" due to the rule of law: Ibid, 152.
[70] Nico Krisch 'Informal Reform in the Security Council', in R Wilde (ed) 'United Nations Reform Through Practice: Report of the International Law Association Study Group on the United Nations Reform' (2011) *SSRN Electronic Journal* <http://dx.doi.org/10.2139/ssrn.1971008> accessed 5 December 2023, 43.

employment of the legal concept of "peace" in a broader manner than what it traditionally entails.

4. ASSERTING PEACE IN INTERNATIONAL LAW

The assessment of peace as a legal concept in international law has revealed certain ties to human rights. Various academics have also emphasised this connection between peace and human rights, such as Immanuel Kant ascertaining the right to a secure and predictable peace as "*human* rights that individuals hold qua individuals".[71] This raises questions regarding the legal relationship between peace and human rights in international law.

In more recent times, Human Rights Professor Philip Alston published an article on this topic, concluding that any claim of a human right to peace "requires further elaboration, clarification and endorsement before it can be considered a norm" in international law.[72] The following part of this thesis will narrow the assessment of peace as a legal concept to consider whether it is endorsed as a human right in international law.

While international law primarily relates to the relations between States, it increasingly concerns itself with the legal positions of individuals, and their rights and obligations. The emphasis on human rights law illustrates this trend, among other examples.[73]

Traditionally, human rights law has regulated the relationship between States and their citizens, obliging the former to protect inherent rights of the latter. Human rights are rights which individuals are entitled to by virtue of their existence as human beings, and are derived

[71] Kristoffer Lidén and Henrik Syse, 'The Politics of Peace and Law: Realism, Internationalism, and the Cosmopolitan Challenge' in CM Bailliet (ed) *Research Handbook on International Law and Peace*, (Edward Elgar Publishing Limited 2019), 40-41.
[72] P Alston [n 47] 328.
[73] The Nuremberg Trials pioneer individuals' obligations under international criminal law: "To assert that it is unjust to punish those who in defiance of treaties and assurance have attacked neighboring states without warning is obviously untrue, for in such circumstances the attacker must know that he is doing wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished." *Trial of The Major War Criminals before The International Military Tribunal* (14 November 1945 – 1 October 1946), 462; See also *Trial of The Major War Criminals before the International Military Tribunal,* 465; Individuals' rights under international law is ascertained by the ICJ: "The Court notes that Article 36, paragraph 1 (b), spells out the obligations the receiving State has towards the detained person and the sending State. […] Based on the text of these provisions, the Court concludes that Article 36, paragraph 1, creates individual rights, […] These rights were violated in the present case." *LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001, p. 466*, [77]; See also W Friedmann [n 23], 1149.

from moral principles or social values.[74] These rights are considered vested in individuals, and States have a negative obligation to respect, and the positive obligations to protect and fulfil these rights.[75]

For further contextualisation of human rights, a doctrine from 1979 categorising human rights into separate but interlinked generations of rights based on the historical and cultural manner in which these developed will be elaborated upon.[76]

Civil and political rights are considered the first generation of human rights, understood as having risen from a need to regulate the relationship between government and its people, ensuring personal liberty and protection against violations conducted by the State.[77] In international law, these are now codified in the International Covenant on Civil and Political Rights (ICCPR) adopted by the UN General Assembly in 1966, with currently 74 signatories and 173 parties in total.[78]

The industrial revolution, and the increasing urgency to protect individuals' participation in society through improved labour conditions and equal opportunities constitute the backdrop of the second generation of human rights.[79] Similar to the first generation, these also enjoy codification in a multilateral treaty adopted by the UN General Assembly in 1966; the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has 71 signatories and 171 parties in total.[80]

A third generation of human rights titled 'solidarity rights' have been proposed, in which peace as a human right is included, along with *inter alia* a right to development and a right to a healthy environment.[81] Whether these rights are new, or fusions of existing rights "given an

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[74] UN General Assembly, *Universal Declaration of Human Rights* (UDHR), (adopted on 10 December 1948), 217 A (III), Preamble, see also Art. 1.
[75] Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (2nd edn, Oxford University Press 2019) 87.
[76] Spasimir Domaradzki, Margaryta Khvostova and David Pupovac 'Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse' (2019) Vol 20 No 4 *Human Rights Review* 423-443.
[77] Ibid 424-425; See also 'The Evolution of Human Rights' (*Council of Europe*) <https://www.coe.int/en/web/compass/the-evolution-of-human-rights> accessed 21 September 2023).
[78] '4. International Covenant on Civil and Political Rights' (*United Nations Treaty Collection*) <https://treaties.un.org/pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&clang=_en> accessed 20 November 2023.
[79] S Domaradzki, M Khvostova and D Pupovac [n 76] 424-425; 'The Evolution of Human Rights' [n 70]
[80] '3. International Covenant on Economic, Social and Cultural Rights' (*United Nations Treaty Collection*) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en> accessed 20 November 2023.
[81] 'The Evolution of Human Rights' [n 77]

extra dimension by the emergence of a growing international consensus on a variety of relevant issues" remains debated,[82] though the latter alternative appears favoured.[83] Solidarity rights – as opposed to the first and second generation of rights – do not enjoy explicit codification in international treaties.

The following discussions will analyse what can be derived from positive law, including international human rights treaties ICCPR and ICESCR, or from customary international law regarding peace as a human right.

4.1. POSITIVE INTERNATIONAL LAW

Art. 23 (1) of the African Charter on Human and Peoples Rights (Banjul Charter) states: "[a]ll peoples shall have the right to national and international peace and security". This codification of a human right to peace is unique among both regional and international counterparts to the Banjul Charter – neither the European Convention on Human Rights (ECHR) nor the American Convention on Human Rights (ACHR) contain a comparable provision. As mentioned, an explicit human right to peace is also absent from international treaties and conventions of the UN, including the ICCPR and ICESCR.

Earlier in the thesis, a right to peace was concluded from an interpretation of the Charter based on its contextual and historical background; various codifications of the facets of peace ("to maintain international peace", "by peaceful means") justified such an interpretation. Whether this can substantiate a claim of a human right to peace derived from the Charter is less likely.

The UN Charter does include certain references to individuals' rights, such as Art. 1 (3) which encourages "respect for human rights and for fundamental freedoms". However, the language differs from that of human rights' legal frameworks: the ECHR continuously refers to "everyone"/ "no one", while the Banjul Charter speaks of the rights of "[a]ll peoples". Contrarily, the addressees of the UN Charter are States and UN organs ("All Members", "The Organization").[84]

It can be argued that the UN Charter's codification of peace as an aim and duty – obligating subjects of international law to "maintain international peace", and to this end remove "threats

[82] 'Colloquium on the New Human Rights: The Right to Peace' (Mexico City, 12-15 August 1980, UNESCO) <https://unesdoc.unesco.org/ark:/48223/pf0000045394.locale=en> accessed 23 November 2023.
[83] Ibid.
[84] UN Charter Art. 2 demonstrates the addressees relevant for the Charter.

to the peace" and apply "peaceful means"[85] – culminates into a state in which a peaceful existence is secured for the peoples. Yet, a secondary occurrence resulting from States' fulfilment of their obligations cannot be likened to a human right which are characterised as inherent to individuals. Subsequently, the Charter cannot be claimed to provide a legal basis for a *human* right to peace.

Relevant positive law to consider for the issue of peace as a legal human rights concept in international law are the treaties ICCPR and ICESCR. The Preambles to both treaties recognise that "equal and inalienable rights" of all humans is the "foundation of freedom, justice and peace". Certain provisions of these treaties can be argued to uphold the negative and positive sides to peace.

Negative peace as the absence of armed conflict can be ensured through human rights safeguarding civil liberties such as freedom of expression and association,[86] as well as the right of peaceful assembly,[87] as these rights contribute to the safeguarding of democratic principles and allow for civil participation in State decisions. In his philosophical essay titled *"Project for a Perpetual Peace"*, Immanuel Kant outlined certain solutions fulfilling his idea of eternal peace, whereas affording every member of society the opportunity to partake in decisions of "[w]hether war shall be declared or not" were among these. [88]

Human rights concerning labour, more specifically the right to work and "the right of everyone to the opportunity to gain his living by work"[89] arguably hold equally strong implications for the emergence of armed conflict, as inequalities can become "a source of grievance which is used by leaders to mobilise followers and to legitimate violent actions".[90]

Positive peace as the absence of violent structures and the presence of social justice can be demonstrated by *inter alia* principles of fair trial ("[…] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law"),[91]

[85] UN Charter Art. 1 (1).
[86] ICCPR Art. 19 (2); Ibid, Art. 22 (1).
[87] Ibid, Art. 21.
[88] Immanuel Kant, 'Project for a Perpetual Peace: A Philosophical Essay' (1796), Printed By S Couchman, for Vernor and Hood, Birchin-Lane, Cornhill) 16.
[89] ICESCR Art. 6 (1).
[90] Jonathan Goodhand, 'Violent Conflict, Poverty and Chronic Poverty' (2001) No 6 *Chronic Poverty Research Centre*, 24.
[91] ICCPR Art. 14 (1).

which includes the right to a trial "within a reasonable time",[92] and the equality of all persons "before the courts and tribunals".[93]

The human right to "an adequate standard of living", which includes "adequate food, clothing and housing, and […] the continuous improvement of living conditions",[94] contributes to greater equality in society and subsequently reduces unjust social structures. Thus, contributing to positive peace.

As illustrated by these provisions, the fulfilment of human rights has the potential to ensure peace in both negative and positive regards. This confirms that human rights and peace are interlinked, as stated in *Colloquium on the New Human Rights*: "From a human rights perspective, the struggle to achieve peace is very closely associated with the struggle against all forms of massive and flagrant violations of human rights."[95]

Though a sum of these rights can lead to the fulfilment of peace, the same argument of peace being a secondary result and not a human right can be made here. Certain elements of negative and positive peace being ensured indirectly is not equivalent to individuals being entitled to assert an inherent right to peace.

Peace as a legal human rights concept in international law can therefore not be concluded from the frameworks of the UN Charter, ICCPR or ICESCR.

4.2. CUSTOMARY INTERNATIONAL LAW

In addition to international conventions, Art. 38 (1) (b) of the Statutes of the ICJ also establishes "international custom" as a source of international law. This provision defines customary international law as "general practice accepted as law". Two qualifications can be derived from this: first of all, the conduct must stem from widespread practice exercised by subjects of international law, second of all the practice must be applied due to a sense of legal obligation.[96]

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[92] ICCPR Art. 9 (3).
[93] ICCPR Art. 14 (1).
[94] ICESCR Art. 11 (1).
[95] Colloquium on the New Human Rights [n 82] 21.
[96] Second Report on Identification of Customary International Law by Michael Wood, Special Rapporteur (22 May 2014, UN International Law Commission) UN Doc A/CN.4/672 [1]-[3]; Third Report on Identification of Customary International Law by Michael Wood, Special Rapporteur (27 March 2015, UN International Law Commission) UN Doc A/CN.4/682 [70]; *North Sea Continental Shelf, Judgement, I.C.J. Reports 1969, p. 3*, 44 [77]: "[…] the acts concerned [must] amount to a settled practice, […] The States concerned must therefore feel that they are conforming to what amounts to a legal obligation."

It is generally agreed upon that the practice of States and the practice of international courts are the primary source of customary international law.[97] The practice of international organisations and their subsidiary organs can only be considered a source of customary international law as far as these "can be attributed to States themselves."[98] In other words, it is the centrality of States which is vital to the customary process.[99]

The following study will focus on the practice of international courts, as well as consider the practice of UN organs to assess whether peace as a legal human rights concept can be derived from customary international law.

4.2.1. INTERNATIONAL COURTS' PRACTICE

Art. 33 (1) of the UN Charter illustrates the importance of judicial settlement of disputes endangering "the maintenance of international peace", and can be considered an extension of the obligation in Art. 2 (3) ("by peaceful means").[100] The provision provides a general legal basis for international courts' role regarding the maintenance of peace,[101] and demonstrates the mandate of these courts regarding the peaceful resolution of international disputes.[102]

The Nuremberg Trials, as well as the Tokyo Trials, are examples of disputes in which peace as a legal concept in international law played a role. Through the International Military Tribunal (IMT) and the International Military Tribunal for the Far East (IMTFE), the international community prosecuted leaders in political, military, diplomatic and economic spheres for their war crimes, crimes against humanity and crimes against peace in the aftermath of the Second World War.[103]

In the Charter of the Nuremberg Tribunal Principle VI (a), crimes against peace are defined as acts contributing or participating in the "waging of a war of aggression". The use of "aggression" presumes the use of armed force. Such an interpretation is in accordance with

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[97] UNILC Second Report [n 96] 169 [3].
[98] UNILC Third Report [n 96] 48 [71].
[99] Ibid, [73].
[100] Christian Tomuschat 'Ch.VI Pacific Settlement of Disputes, Article 33' in B Simma [n 29] 1071.
[101] Gentian Zyberi, 'The Role and Contribution of International Courts in Furthering Peace as an Essential Community Interest' in CM Bailliet and KM Larsen (eds), *Promoting Peace Through International Law* (Oxford University Press 2015) 342-365, available at < https://ssrn.com/abstract=2563496> 5.
[102] Ibid.
[103] G Zyberi [n 101] 5; ICJ Registry 'Nuremberg Trial Archives, The International Court of Justice: Custodian of the Archives of the International Military Tribunal at Nuremberg' (2nd edn, 2018 ICJ) < https://www.icj-cij.org/sites/default/files/documents/library-of-the-court-en.pdf> accessed 11 October 2023; See also D Luban 'The Legacies of Nuremberg' (1987) Vol 54 No 4 Social Research 779-829, 791.

the purpose of the Nuremberg Charter as *ex post facto* law intending to prosecute the violent actions committed during World War II (WWII).

These tribunals demonstrate an early application of peace as a legal concept in international law. The Nuremberg Tribunals affirmed: "In the opinion of the Tribunal aggressive war is a crime under international law."[104] Aggressive war being considered a crime aligns with the considerations that States have a customary obligation to refrain from forceful measures of dispute settlement,[105] and a subsequent right to be approached by peaceful means.

For a human right to peace, it may be argued that the Tribunal's considerations towards individuals' rights to life and dignity are manifestations of such a legal obligation.[106] However, the acknowledgement of these rights and their contributions to a peaceful state does not equal an acknowledgement of a customary human right to peace.

The two *ad hoc* international criminal tribunals for the former Yugoslavia (ICTY)[107] and Rwanda (ICTR)[108] can also be mentioned here, the purposes of which was to ensure "individual criminal accountability for mass atrocity crimes".[109] Both tribunals were established through Security Council resolutions citing "a threat to international peace", and therefore contributed to the restoration and maintenance of peace. Yet, neither resolution references human rights among the concerns triggering "threat to international peace". In other words, the framework upon which these tribunals are established does not provide a basis for claiming a custom of considering peace as a human right in international law.

The International Court of Justice (ICJ) is considered one of the IMT's successors in advancing peace as a legal concept in international law. The establishment of the former, alongside the birth of the UN and adoption of its Charter, demonstrates the emphasis on the legal concept of peace in the aftermath of WWII.[110] The existence, legal basis,[111] and guiding

[104] *Trial of The Major War Criminals before The International Military Tribunal* [n 73], 467.
[105] Ibid, 464: "The law of war is to be found not only in treaties, but in the customs and practices of states […]".
[106] Considerations towards "[…] the ill-treatment of the civilian population, […] [exploitation of] the inhabitants of the occupied countries for slave labour […] the murder of prisoners of war […]" are particularly relevant here, Ibid, 470.
[107] UNSC Res 827 (25 May 1993) UN Doc S/RES/827, 1.
[108] UNSC Res 955 [n 59] 1.
[109] G Zyberi [n 101] 5.
[110] 'Nuremberg Trial Archives' [n 103] 19; HF Carey and R Sims [n 7] 172.
[111] See UN Charter Art. 92 in relation to Art. 1 (1) "[t]o maintain international peace"

principles of the ICJ demonstrates peace as a legal concept in international law. [112] Whether the legal concept of peace is practiced as a human right due to custom remains dubious.

In the case of *Democratic Republic of the Congo (DRC) v. Uganda*, one of the concerns related to the legal issue of the active military presence of, and the use of force by Ugandan troops in territories belonging to the DRC. Discussions related to the violation of sovereignty as well as breaches of international human rights law.

Regarding the use of force, the Court acknowledged that a general objective of peace existed for regional States, and that this aim guided the work of the Security Council as well as relevant human rights mechanisms. Furthermore, the Court affirmed that every State in the region bore a responsibility toward the realisation of this aim.[113]

Yet, the Court found that "this widespread responsibility of the States in the region cannot excuse the unlawful military action of Uganda".[114] In other words, the Court formulated the duty to sustainably ensure the aim of peace. Though violations of international human rights law was a point of concern for the Court and became a part of the Court's reasoning, the decision does not demonstrate an explicit acknowledgement of a custom of an individual and inherent right to peace in international law.

The case of *South West Africa* concerned the legal consequences which the continued presence of South Africa in Namibia represented. A secondary issue in which the Court's advisory opinion was requested concerned the policy of apartheid, and whether this was in conformity with South Africa's international obligations as inferred from the UN Charter.[115]

Regarding the latter issue, the Court stated that the establishment and enforcement of "distinctions, exclusions, restrictions and limitations exclusively based on the grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."[116]

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[112] See Preamble of the UN Charter, and the affirmation of "international peace and security" as one of four fundamental pillars of the UN; 'The 4 Pillars of the United Nations' (*United Nations, Model United Nations*) <https://www.un.org/en/model-united-nations/4-pillars-united-nations> accessed 24 November 2023.
[113] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgement, I.C.J. Reports 2005, p. 168*, 224, [150].
[114] Ibid, [150]-[151].
[115] *South West Africa* [n 5] 57 [129].
[116] Ibid, [131].

The statement emphasises how significantly political and social structures affect individual persons, and are reminiscent of peace in its positive capacity as the absence of structural violence. Yet, the Court does not explicitly recognise human rights violations in direct relation to the aim of maintaining international peace. While it can be argued that the Court to some degree regards human rights, equality and peace as interrelated, whether this is equivalent to acknowledging a custom of peace as a human right remains an ambiguous claim.

Consequently, the practice of international courts and their considerations of human rights in relation to peace cannot be claimed to stem from a perception of a human right to peace as a legal obligation.

4.2.2. INTERNATIONAL ORGANISATIONS' PRACTICE

As established, the practice of international organisations can influence customary international law to some degree, as long as these organisations are empowered by States.[117] UN organs, specifically the General Assembly (GA) and the Security Council are relevant in this regard; the former being a forum in which nearly every State in the international community is an equal participant,[118] the latter enjoying the participation of States and a mandate to exert its authority in this exact field, making it especially relevant when considering relevant customary international law.[119] For this reason, resolutions of these organs will be considered.

Security Council resolutions relating to certain cases concerning peace ("threat to international peace") have already been considered in *3.1* and *3.2.* Deliberations of these cases revealed an interconnection between peace and human rights. However, as far as the resolutions' texts reveal, the measures adopted under Chapter VII in these resolutions are not invoked out of a sense of legal obligation towards upholding peace as a human right. A custom of a human right to peace cannot be claimed based on these resolutions.

[117] UNILC Third Report [n 96] [70]-[71], [73]-[74].
[118] Ibid, [46].
[119] Regarding the Security Council's authority see [n 5] on the legally binding effect of its resolutions, particularly the cases of *South West Africa* and *Construction of a Wall*; Simultaneously, it is important to note that not every Security Council resolution is intended to function as precedence. See UNSC Res 2125 (18 November 2013) UN Doc S/RES/2125 7 [13]: "[…] and underscores in particular that this resolution shall not be considered as establishing customary international law […]".

A different Security Council resolution relevant to this discussion is resolution 2282 adopted unanimously in 2016,[120] recognising that "development, peace and security, and human rights are interlinked and mutually reinforcing".[121] In regards to achieving sustainable peace, the resolution mentions *inter alia* "poverty eradication, social development, […] access to justice […] and respect for, and protection of, human rights and fundamental freedoms."[122]

These points of emphasis are reminiscent of various aspects of peace as a legal concept, and while the explicit mention of human rights standards in relation to sustainable peace substantiates the themes of this thesis, this recognition does not prove a custom of a human right to peace.

The resolution contains minimal prescriptive language which affects the judicial and political weight of the resolution. [123] However, operational paragraph 11 is notable as it "encourages" Member States to "consider the human rights dimensions of peacebuilding". This incentive demonstrates a development in the international community's readiness to consider the existing concept of peace through a human rights-lens, and can be considered a step towards confirming the existence of peace as a human right in international law.[124]

Yet, though the resolution encourages a human rights-approach to peace and therefore implies a shift in the collective opinion, it does not explicitly confirm a custom of a human right to peace.

The General Assembly adopted a resolution comparable to the Security Council's resolution 2282, namely *The Declaration on the Right to Peace*.[125] Several elements of this resolution are of interest to this discussion. In the preambular paragraphs "peace" is acknowledged as not being limited to "the absence of conflict", but also requiring "socioeconomic development", which is reminiscent of peace in its positive capacity as social justice. This

[120] 'Security Council Unanimously Adopts Resolution 2282 (2016) on Review of United Nations Peacebuilding Architecture' (*United Nations Meetings Coverage and Press Release*, 27 April 2016) <https://press.un.org/en/2016/sc12340.doc.htm> accessed 6 December 2023.
[121] UNSC Res 2282 (27 April 2016) UN Doc S/RES/2282, 1.
[122] Ibid 2.
[123] The text in both preambular as well as operational paragraphs demonstrate a preference for passive words such as "encourages", "emphasises", and "underlines", as opposed to active words ("requests", "urges", and "decides") which are much more prevalent in for example UNSC Res 827 [n 107] and UNSC Res 955 [n 59].
[124] This development illustrates the point made in 'Colloquium on the New Human Rights' [n 82], 18: "[…] the quest for new formulas for world peace […] In the human rights sphere this quest has taken the form of a re-examination of existing rights concepts and the consideration of new or revamped formulations or rights."
[125] UNGA Res 71/189 (2 February 2017) UN Doc A/RES/71/189.

part of the declaration also recognises that "development, peace and security and human rights are interlinked and mutually reinforcing."[126]

In the operational part, Art. 1 states: "Everyone has the right to enjoy peace such that all human rights are promoted and protected […]".[127] Furthermore, Art. 2 of the Declaration concretises elements of peacebuilding as encompassing "equality and non-discrimination, justice and the rule of law […]". Though this draws several parallels to peace as a legal concept in international law as established in earlier parts of the thesis, the issue of peace as a legal human rights concept in international law requires further deliberations of the justiciability of this Declaration.

First, the language must be considered. The operational paragraphs are worded similarly to provisions in ICCPR and ICESCR ("everyone"), which implies that it is meant to be formulated similarly to human rights. However, the preliminary parts of the Declaration state that "peace is a vital requirement for the promotion and protection of all human rights for all".[128] In other words, peace is established as a necessary condition for the realisation of human rights implying a prioritisation, which contradicts with the characteristic of human rights being indivisible and interdependent.[129]

Furthermore, such an approach has the potential to realise concerning results, especially in the case of authoritative regimes which may prioritise peace in its capacity as non-aggression to the detriment of, for example, civil and political rights: conflating civil unrest in the form of peaceful protests with aggression can lead to these regimes suppressing freedom of expression and assembly.

Second, the consensus surrounding the Declaration warrants some deliberation. The GA Declaration's predecessor is a Human Rights Council resolution (32/28). The Human Rights Council (HRC) is a subsidiary body subordinate to the General Assembly and, as mentioned, its mission concerns the promotion and protection of human rights through multilateral cooperation.[130]

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[126] UNGA Res 71/189, 3.
[127] Ibid, 5.
[128] Ibid, 1.
[129] 'What are Human Rights?' (*United Nations Human Rights Office of the High Commissioner*) <https://www.ohchr.org/en/what-are-human-rights> accessed 23 November 2023.
[130] 'About HRC' (*United Nations Human Rights Council*) <https://www.ohchr.org/en/hr-bodies/hrc/about-council> accessed 23 November 2023.

Though the subsidiary body's mandate requires abstention from political considerations in decisions concerning human rights, HRC resolution 32/28 reveals a divide between States in favour and opposed to the resolution.[131] The distribution of States holds political and cultural implications: while Western States are opposed to the resolution, the rest of the international community are in favour of acknowledging a human right to peace.

Due to the lack of global consensus, a custom of a human right to peace on the basis of the General Assembly Declaration is not justifiable.

4.3. RECAPITULATION

Concluding this part of the thesis, it becomes clear that a human right to peace cannot be asserted on the basis of international law, whether it is codified or customary. Some clarification regarding the difference between peace as a right of States and a human right for individuals is necessary.

While a right to peace for States can be argued from positive international law, a similar strategy for a human right to peace is more ambiguous. For States, the relevant positive law (the UN Charter) holds clear and concrete references to obligations relating to peace, and for the maintenance of peace ("by peaceful means", "to maintain international peace").

On the other hand, while it may be argued that upholding the rights of ICCPR and ICESCR will lead to a peaceful state for individuals, this is not particularly emphasised. In fact, other than the Preambles, there are no other references to peace in these treaties. The difference in the emphasis of peace as an overarching objective, along with obligations relating directly to this objective reduces the basis for claiming a human right to peace, as opposed to a right to peace for States.

However, the question remains whether a human right to peace would be viable *lex ferenda,* and if it would be a sustainable solution to global crises such as military interventions or armed conflict.

A particularly problematic point in this regard is the lack of a clear, exhaustive definition of peace in positive international law, or universal consensus surrounding the term in customary international law. This complicates enforcement of such a human right. Even on a national level enforcement would be difficult, due to the cross-border implications and ramifications

[131] UNHRC Res 32/28 (18 July 2016) UN Doc A/HRC/RES/32/28, 1.

of peace. In theory, certain aspects of peace can to some degree be fulfilled with national mechanisms of judicial settlement, but instances of armed conflict between States make national enforcement undeniably troublesome.

The complications increase if a human right to peace is attempted enforced as outlined in this thesis, in its negative and positive sense. Specifically, the relationship between fulfilment of the positive aspect of peace and the fulfilment of peace as a human right: upholding the latter requires the fulfilment of the former, but the former necessitates that the latter is fulfilled. It becomes a question of whether the chicken or egg came first.

A possible solution would be to differentiate between a human right to peace and other human rights, so the fulfilment of positive peace would be possible. However, this contradicts the established understandings of human rights as indivisible.

Another point to be made is whether there is a *need* for an explicitly acknowledged human right to peace? This thesis has proven the significant role that peace plays in international law, functioning as an overarching ambition guiding the conduct of all States in relation to each other. The significance of peace must be understood as stemming from a moral understanding of the fundamental right of every individual and collective groups to live a life of peace. A codification of a human right to peace may have a mere symbolic function.

5. CONCLUDING REMARKS

This thesis has studied the different facets and functions of peace, and how these manifest in the application of peace as a global standard. As was stated in the introduction, the field of peace is broad, with points of contact to various disciplines. This is challenging for any attempts at assessing the concept, and the shortcomings of this thesis illustrate this fact;

In *3. Applying Peace in International Law*, the Security Council's application of the term "threat to the peace" was discussed without any considerations for potential political motivations behind the organ's decisions. The choice of staying loyal to a legal method ensued a less holistic depiction of the Council's decisions, even though the judicial-political interests dictating the choices of States could also have been a point of interest for better understanding the decisions.

In *4.2.2 International Organisations' Practice*, the voting pattern of States regarding the Human Rights Council resolution on the right to peace was described as divisive. The decision to vote in favour of or against this resolution can largely be attributed to each States' political interests. However, the voting pattern could also reveal something about each States' legal culture, and a comparative study of the differences due to legal cultures and the subsequent effect on a States' opinion regarding a human right to peace could also elevate the study.

In extension of this, *4. Asserting Peace in International Law* could have elaborated upon the implications of peace as a solidarity right, as opposed to the first and second generations of human rights which are individual rights. This would tie back to deliberations of legal cultures, and considerations could be made towards the difference between, for example, the Banjul Charter and the ECHR in codifying solidarity rights. However, for the sake of delineating the scope of this thesis, these considerations were forgone.

A different sort of shortcoming is the absence of a universally endorsed and enforced definition of peace. The gravity of legal definitions in any field of law cannot be understated; among the most foundational aspects of law are the principles of predictability and effectiveness, both of which presume *inter alia* transparency in language. Without clarity of terms and their assigned contents, a legal framework becomes less reliable and inadequate in ensuring the fairness it aims for.

Though the absence of a legal definition of peace is apparent throughout the deliberations of this thesis, it also becomes one of its strengths. An established, legal clarification would inevitably limit the scope of "peace" to some degree. Even as international law exists *lex lata*, it may be argued that peace primarily relates to the field of international humanitarian law, as the antithesis to war.

However, taking advantage of the absence of a legally defined "peace", the thesis uses this opportunity to outline the term in the context of international human rights law. By establishing the core elements of the legal concept of peace as they appear in international law, as an aim and a duty, contextualising the concept in a field of law different from what might be expected, the thesis provides a distinct take on peace.

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