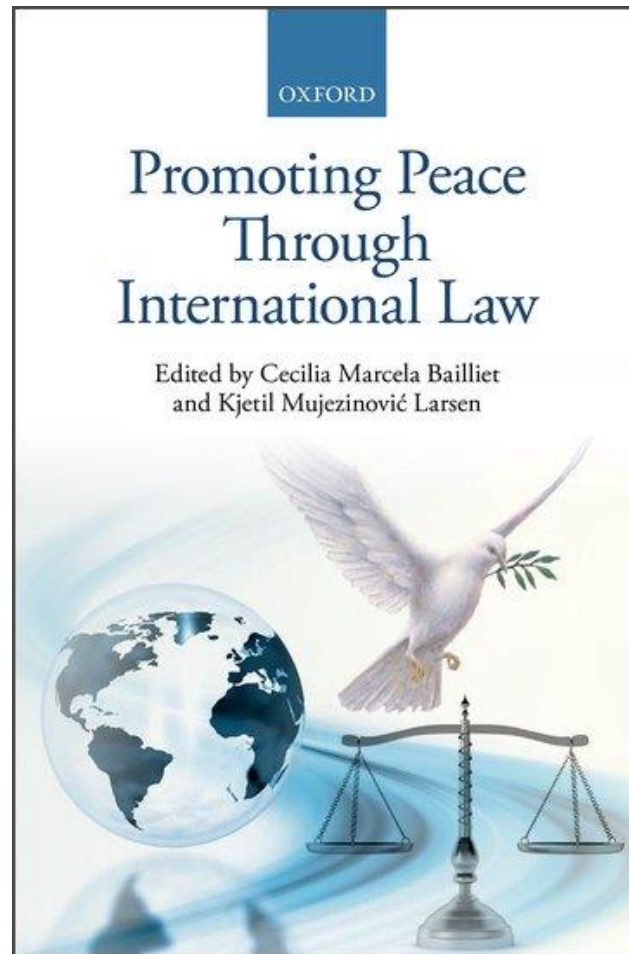


Normative Foundation of the Right to Peace

Cecilia M. Bailliet

Textbook



Term Paper

- Submit choice of topic, thesis statement, and outline by October 17th on Fronter
- Paper to be submitted by December 1st
- 6000 words including footnotes

The Philosophical Origins of Peace

- **Negative Peace** (Absence of violence, prohibition on the unlawful use of force)
- **Positive Peace** (social justice, human rights, elimination of structural violence causing poverty and exclusion) (Galtung)
- **Just War v. Kant's Perpetual Peace** (triad of mutual democracy, economic interdependence & international cooperation)

Degrees of Pacifism

- **Principled Pacifism**- absolute belief in non-aggression and non-violence
- **Realistic pacifism**- accepts exceptions in UN Charter
- **Selective pacifism**- evaluates jus ad bellum and jus in bello and or jus post bellum
- **Prudential Pacifism**- pragmatic concern for cost and waste of war

Peace of Westphalia 1648

- *Pax optima rerum*
- Peace is the highest good
- Establishes state sovereignty and principle of non-intervention in domestic affairs
- Basis for self-determination
- Concluded the Thirty Years' War (1618–1648) in the Holy Roman Empire, and the Eighty Years' War (1568–1648) between Spain and the Dutch Republic. Spain formally recognizing the independence of the Dutch Republic.
- Triumph of sovereignty, end of Empire (but see Hardt & Negri)



1928 Briand-Kellog Pact- General Treaty for the Renunciation of War

- Condemning “recourse to war for the solution of international controversies.”
- Settlement should be sought only by pacific means and that war was to be renounced as an instrument of national policy.
- 62 nations ratified, but failed due to lack of enforcement mechanisms
- Created notion of crime against peace, and established norms that the threat or use of military force in contravention of international law, as well as the territorial acquisitions resulting from it, are unlawful.

Peaceful Coexistence

- **Grotius, Pufendorf & Vattel- Natural Right to Peaceful Coexistence**
- **Sino-Indian Agreement of 29 April 1954**
 - **1) Mutual Respect for Territorial Integrity and Sovereignty**
 - **2) Non-Aggression**
 - **3) Non-Interference in Internal Affairs**
 - **4) Equality and Mutual Benefit**
 - **5) Peaceful Coexistence**
- **Bandung Declaration on Promotion of World Peace and Cooperation (1955) adds respect for human rights and UN Charter, settlement of disputes by peaceful means, etc.**
- **Non-Aligned Movement, China, and Soviet Union**
- **UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States 1970**

UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States (1970)

- Preamble on Peace, Tolerance and Good Neighbours
- Refrain from threat of use of force against territorial integrity
- Peaceful settlement of disputes
- Equal Rights, Self-Determination, Sovereign Equality, Good Faith, Representation of all people

Other instruments

- Declaration on the Strengthening of International Security (1970)
- 1974 UN Charter of Economic Rights and Duties of States
- Declaration on Definition of Aggression (1974)

Hersch Lauterpacht

- International Law should be functionally oriented towards both the establishment of peace between nations and the protection of fundamental human rights.



Hans Kelsen

- He who wishes to approach the aim of world peace in a realistic way must take this problem quite soberly, as one of a slow and steady perfection of the international order.



Mary Ellen O'Connell

- Law is valued for providing an alternative to the use of force in the ordering of human affairs. In this sense, all of international law is law of peace . . .



UN Charter Art. 1

- 1.To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
- 2.To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
- 3.To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
- 4.To be a centre for harmonizing the actions of nations in the attainment of these common ends.

UN Charter Peaceful Coexistence

- Art. 2 Mutual respect for each other's territorial integrity and sovereignty
- Art 2.4 Mutual Non-Aggression
- Art. 2 (7) Non-Interference in each other's internal affairs
- Preamble, Equality

Membership in UN open to Peace Loving States

- Compliance with UN resolutions,
- Guarantee of innocent passage in territorial waters,
- Peaceful settlement of border disputes
- Respect principle of non-intervention
- Level of Democracy to a lesser extent

Exceptions to Peace in UN Charter

- Chapter VII
- UN Security Council can decide upon non-forcible or forcible measures to restore peace and security
- Article 51
- The inherent right of individual or collective self-defence if an armed attack occurs . . .

UN Charter Art. 55-Positive Peace

- Links Inter and Intra-State dimensions of Peace
- Recognition of Economic and Social Welfare, Development, & Protection of Human Rights as preconditions for peace
- Specialized agencies: FAO, IFAD, UNESCO, WHO, ILO, World Bank, IMF

Nsongurua J. Udombana

- What are the components of a right to peace and how to implement it?
- Is peace linked to human rights? If so, which ones?
- Is it justiciable? Is the right to peace soft law?
- How do we protect this right?
- Who are the beneficiaries of this right and who are the duty-bearers?
- Which agencies have responsibilities and capacities to ensure compliance with obligations entailed therein or to sanction non-compliance?
- Specifically, what is the role of the UN Secretary-General, Security Council, General Assembly, ICJ, regional organizations, national governments, and civil society?

Scope of Right to Peace

- Is it an Individual or Collective Right?
- Is it a Meta Right enabling enjoyment of human rights?

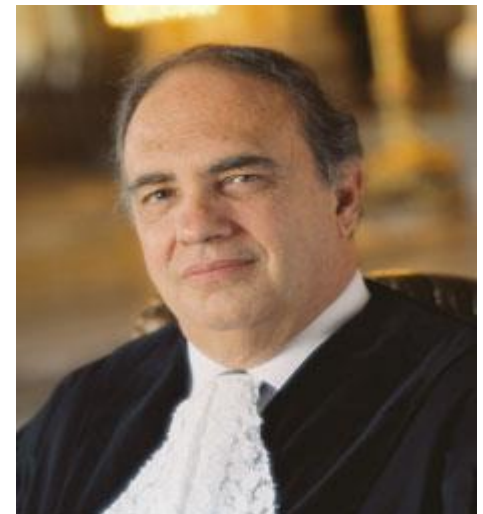
Philip Alston

- The Right to Peace is both an individual and collective right and implies duties and obligations from individuals to collectivities, including States and the international community as a whole.

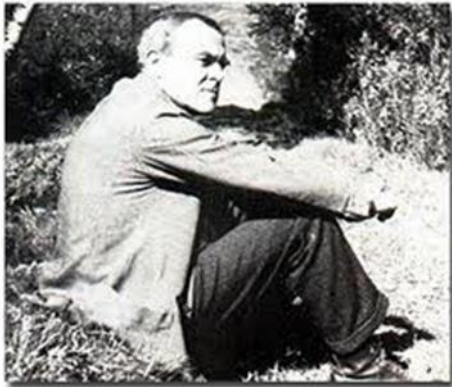


Cançado Trindade

- Past peace projects have failed because of the focus on abolishing war between states.
- Consider the basis for peace within each State
- Role of Non-State Actors
- Search for social justice within and between nations as the road to peace



World Peace through World Law- Grenville Clark & Louis B. Sohn



List of problems for conciliation/equity in 1960

- Division of Korea and Vietnam
- Formosa (Taiwan), Quemoy and Matsu
- The Kashmir problem
- The question of assured access to the oil of the Middle East
- The problem of international control of vital passages between seas and oceans, such as Turkish Straits, Suez and Panama
- The problem of fair apportionment of the waters of various international rivers
- The questions of a less controversial regime for Berlin
- The division of Germany
- The problem of the repression in certain parts of Africa of nonwhite majorities by white minorities (Clark & Sohn characterize as domestic jurisdiction, not endangering world peace)
- Israeli-Arab hostility (consider resettlement of Arab refugees, use of Jordan River water, access to the Gulf of Aquaba, Israel's right of transit through the Suez Canal, and boundary disputes- between Israel and neighbours)

Principles

- 1. Complete disarmament, under effective controls, of each and every nation (no indefinite balance of terror)
- 2. World law against international violence (only self-defence ok) applicable to all individuals and all nations, use of mediation and conciliation
- 3. A permanent world police force (UN Police Force)
- Law against violence, courts and police
- 4. Effective world machinery must be created to mitigate the vast disparities in the economic condition of various regions of the world, the continuance of which tends to instability and conflict.
- 5. Equitable management of mankind's common resources- especially outer space and the oceans- and for the preservation and protection of the human environment

Proposal

- UN GA restricted to matters directly related to the maintenance of peace. All other powers should be reserved to the nations and their peoples.
- Single task of preventing international violence or the threat of it. Later generations can enlarge powers as desired.
- Avoid opposition based on fear of interference with domestic affairs- focus on single task of preventing international violence.

Proposal

- ICJ compulsory jurisdiction
- UN Regional Courts- prosecution of individuals responsible for a violation of the disarmament provisions
- World Equity Tribunal
- World Conciliation Board

Proposal

- World Development Authority- grants in aid and interest-free loans (under direction of World Development Commission) remove danger to world stability and peace caused by the immense economic disparity between underdeveloped areas and industrialized regions.
- Nuclear Energy Authority
- Outer Space Agency
- Inspection Service
- UN Peace Force (general control of Executive Council, but only GA could order enforcement action to prevent or suppress violent aggression or serious defiance of UN) a permanent and effective supranational force must take the place of national armaments

James T. Ranney

- Do not need global legislature
- Use current international instruments, institutions, dispute resolution tribunals (WTO & Law of the Sea as examples)
- Strengthen economic regulations
- Improve human rights enforcement (esp. Gender equality)
- Pursue Global Rule of Law- expand ICC, give ICJ compulsory jurisdiction, create an international equity tribunal
- Create international police force
- Promote Arms reduction

Nordic Expert Consultation Recommendations on the Components of Peace

- Components of Peace
- 1. States should promote the maintenance of peace by seeking to resolve their internal and international disputes in a non-violent manner and refraining from the threat or use of force against the territorial integrity or political independence of any state, in accordance with the UN Charter.
- 2. Structural violence is incompatible with peace. States should seek to eliminate inequality, exclusion, and poverty among and within states.

Preconditions for Peace

- 3. Peace is strengthened by the recognition that everyone is entitled to a social and international order in which they are able to enjoy human rights and fundamental freedoms without discrimination.
- 4. The illegal arms trade is a threat to peace and requires suppression in the order to prevent the illegal use of force and violations of human rights and international humanitarian law. States should maintain strict and transparent control of the arms trade.

Preconditions for Peace

- 5. a. A safe, clean, and productive environment is conducive to peace and human security. States should preserve and protect the environment, based among others on the principle of sustainable and equitable use of natural resources, as well as other principles of international law.
- b. States should consider the creation and promotion of peace zones and nuclear weapon free zones. The use of weapons that cause widespread and severe damage to the environment, in particular radioactive and weapons of mass destruction, is contrary to international law. Such weapons must be urgently prohibited. States that utilise them have the obligation to prevent damage to the environment, in case of unavoidable damage, to restore the
- previous condition of the environment.

Individual Participation in the Promotion and Safeguarding of Peace

- 6. Individuals, groups, institutions, transnational corporations, and non-governmental organisations have an important role to play and a responsibility in safeguarding peace. Everyone has the right, individually and in association with others, to promote and to strive for the realisation of peace at the national and international levels. Individuals have the right to freely seek, obtain, receive, publish or disseminate information to/from others on peace, human rights, and fundamental freedoms without censorship.
- 7. States should promote increased representation and participation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict and peace processes.
- 8. a. Individuals have the right to conscientious objection and to be protected in the effective exercise of this right.
 - b. Conscientious objectors and peace or human rights activists subject to wellfounded fear of persecution on account of their actions or beliefs have the right to seek and to enjoy refugee status.

Protection of Victims of Breaches of Peace

- 9. All individuals share the same human dignity and have an equal right to protection. Nevertheless, there are certain groups in situations of specific vulnerability who deserve special protection from discrimination and effective remedies. Among them are children, victims of enforced disappearances or arbitrary detention, elderly persons, persons with disabilities, displaced persons, asylum seekers, migrants, refugees, indigenous peoples and minorities.
- 10. Breaches of the peace result in displacement of individuals and groups. Persons shall have the right to seek and enjoy refugee status if they have fled their
- country or place of origin on account of a well-founded fear of persecution
- by State or non-State agents, on grounds of race, sex, religion, nationality,
- sexual orientation, membership in a particular social group, or political opinion;
- or because of a risk to life, security or liberty on account of generalised
- violence, foreign aggression, internal conflict, massive violation of human
- rights, or natural or human-made disasters, or other circumstances that seriously
- disturb public order.

Education on the Components of Peace

- 11. All individuals should receive education on human rights, fundamental freedoms, non-violent dispute resolution, and protection of the environment as components of peace.