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Asociación Española  
para el Derecho Internacional  
de los Derechos Humanos

Spanish Society for the International Human Rights Law  
Société Espagnole pour le Droit International des Droits Humains

## Parallel event

# International Observatory on the Human Right to Peace: a Japanese perspective



## Report

### United Nations Human Rights Council

16<sup>th</sup> session  
Geneva, 22 March 2011

#### Rapporteur

**David Fernández Puyana**, Representative in Geneva of the Spanish Society for International Human Rights Law, the International Observatory on the Human Right to peace and the International Association of Peace Messenger Cities.



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## Summary

### 1. Introduction; 2. Expert meeting. 3. Presentations

#### 1. Introduction

The Human Rights Council (HRC) is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights around the globe. The Council was created by the UN General Assembly on 15 March 2006 with the main purpose of addressing situations of human rights violations and make recommendations on them.

The 16<sup>th</sup> regular session of the HRC took place at the Regional Office of the United Nations in Geneva from 28 February to 25 March 2011.

#### 2. Expert meeting.

The expert meeting on the “International Observatory of the Human Right to Peace: the Japanese contribution”, was a parallel event which took place at the Palais des Nations (Geneva) on 22 March 2011. It was co-organized by the International Association of Democratic Lawyers (IADL), the Spanish Society for the International Human Rights Law (SSIHRL) and the International Association of Peace Messenger Cities (IAPMC), which provided both logistical and practical support.

The main objectives of the meeting were:

1. To share the *Santiago Declaration on the Human Right to Peace* with civil society, international organisations, and academics attending the HRC.
2. To introduce the Statutes of the International Observatory of the Human Right to Peace (IOHRP) to the civil society organizations and to invite them to join the General Assembly of this new civil society organization.
3. To examine the current codification process of the right to peace at the Human Rights Council and its Advisory Committee, and in particular the HRC resolution 14/3, adopted on 17 June 2010, and the Advisory Committee’s recommendations 5/2, of 6 August 2010 and 6/3, of 21 January 2011.
4. To study the role of the Japanese peace movements in the development and promotion of the human right to peace in Japan.



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The Panel's working language was English. It was held from 1:00 p.m. to 2:30 p.m, at the Palais des Nations (Conference Room XXVII).

Under the sound moderation of Ms. Vita de Waal (PACE), chairperson of the Conference of NGO (CONGO) Committee on Spirituality, Values, Global Concerns, the guest speakers specially invited to analyse the Japanese approach to the IOHRP, were as follows:

1. Mr Yorio Shiokawa (IADL), Topic: Movements for the Peoples' Right to Peace in Japan
2. Mr Jun Sasamoto (JALISA), Topic: Peace Constitutions in the World and the International Campaign on the Human Right to Peace
3. Mr David Fernandez Puyana (SSIHRL and IOHRP) Topic: The International Observatory for the Human Right to Peace

### **3. Presentations**

Ms. **Vita de Waal** invited the participants to observe a minute of silence for the victims of the Japanese earthquake and tsunami which has recently rocked Japan.

Mr **Yorio Shiokawa** started his presentation by indicating that the Preamble of the Japanese Constitution says that “we recognize that all peoples of the world have the right to live in peace, free from fear and want”. He added that Article 9 states that the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. In order to accomplish the aim of the preceding paragraph, land, sea and air forces, as well as other potential war, will never be maintained. The right of belligerency of the State will not recognised.

He also informed that in the late 1960s, Chubu Electric Power Company decided that its primary labour management goal was to foster labour-management reconciliation to prevent labour resistance against their “rationalization” plan. They first brought the employees' union to their side and then applied discriminatory and oppressive treatment to those employees who attempted to foster union activities. The disputes over the human rights violation and discrimination based on thought at the Chubu Electric Co. Ltd. ended in the victory of plaintiffs and with the conclusion of a reconciliation agreement at the Nagoya High Court on 12 November 1997, after 22 years and 6 month of struggle. The Company has just one nuclear power station with a capacity of around 5 GW.



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He ended his statement by stating that there is a long and wide history of fight against nuclear power plants in Japan and now we have had bad experiences. One of the characteristics of the current crisis was the failure of the Emergency Core Cooling System, which didn't work because of the earthquake and Tsunami.

Mr **Jun Sasamoto** indicated that Japan's Constitution was promulgated in 1947. At that time, however, there was little thought of clearly recognizing the right to live in peace as a legal right because it appeared in the Preamble and not among the Articles. But the District Court decision in the Naganuma lawsuit (1973) recognized that the right to live in peace is a legal right. In this case, people living near a flood-prevention forest reserve filed suit to stop the revocation of forest reserve status to build a Self-Defence Force base. The plaintiffs claimed this could not be done because the Self-Defence Forces violate Article 9 of the Constitution. The District Court decision recognized that the very right to live in peace written in the Preamble of the Constitution is a basic human right common to all peoples of the world. This was the first time that the right to live in peace was officially recognized as a legal right.

Next, a lawsuit challenging Self-Defence Force troop deployment to Iraq claimed that the deployment violated Article 9 of the Constitution. A Nagoya Appeals Court decision (2008) stated that “The right to live in peace does not merely state the basic spirit and principle of the Constitution,” and recognized it “as a legal constitutional right.” The decision also recognized that there is a specific right for which people can seek redress in the Courts, and it held that this right is violated not only when (1) the Government violates Article 9, when individual freedoms have been violated, and when people suffer fear and harm from war or other causes, but also (2) in situations in which people are forced to support a war effort that violates Article 9. In such situations people can seek redress in the Courts.

He added that thanks in part to the achievements of the movement which uses lawsuit support to question Article 9 violations and contend that the right to live in peace has been violated, the right to live in peace that is set forth in the Preamble of Japan's Constitution has, over a period of 60 years, gained concrete substance and strengthened legal validity. This means also that the right to live in peace is not actually given life by just being written in the Constitution, and that to have the right actually show its strength, it is important to have people movements such as those using the Courts to support it.

In Costa Rica, a court decision which ruled that the 2008 Government order on nuclear fuel fabrication was unconstitutional, recognized the right to peace even though the Constitution does not specifically provide for it. Likewise in South Korea, a 2006 Court decision recognized the right to live in peace. Although South Korea's Constitution has no specific provisions, the Court recognized the existence of the right to live in peace “as a



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right enabling people to demand that the State allow them to live in peace without being forced into a war of aggression” on the assumption that being free of war, terrorism, and the force of arms is the consequence of human dignity and worth, and the pursuit of happiness. The South Korean Court decision likewise showed that it is possible to adopt the right to peace even if it has no written constitutional provisions. If the right to peace is codified in international law, it will enable such initiatives to be raised in other countries as well.

Mr. **David Fernandez Puyana** pointed out that SSIHRL welcomed the International Congress on the Human Right to Peace, which took place in Santiago de Compostela (Spain) in the context of the World Social Forum on Education for Peace. It approved on 10 December 2010 by consensus two important documents: Firstly, the *Santiago Declaration on the Human Right to Peace*, which represented the aspirations of the international civil society aiming at the codification of the human right to peace. Secondly, the Santiago Congress approved the Statutes of the International Observatory of the Human Right to Peace, which is operative since 10 March 2011 as a part of the SSIHRL, thus benefiting from the wide experience accumulated by the SSIHRL throughout its four-year World Campaign on the human right to peace, which has received the support of more than 900 civil society organizations world-wide, as well as numerous public institutions.

He added that the Observatory will network with local CSO interested in the promotion and defence of the human right to peace. The CSO that are part of the World Alliance on the Human Right to Peace will be especially invited to formalize their incorporation into the Observatory. The main purpose of the Observatory would be the promotion and implementation of the *Santiago Declaration* and to monitor the codification process of the human right to peace within the UN, ensuring that the General Assembly would adopt a Universal Declaration taking into account the *Santiago Declaration* and its preparatory work.

Furthermore, the Observatory will prepare field reports; develop reliable indicators to measure the States and other international actors’ compliance with the human right to peace in accordance with the normative content of the *Santiago Declaration*; and publish reports on situations of serious, massive and systematic violations of the human right to peace.

The Observatory is expected to assist States and international Organizations to focus on the development of the three pillars on which the Charter of the United Nations is based, namely: the system of collective security which prohibits the threat or use of force, and promote the peaceful settlement of disputes in accordance with international law; the economic and social development of all peoples; and respect of human rights and fundamental freedoms for all without discrimination. Under these three pillars the human right to peace will be built.



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He indicated that the Human Rights Council has been working since 2008 on the “Promotion of the right of peoples to peace”. On 17 June 2010 it adopted resolution 14/3 on the right of peoples to peace, which explicitly recognized “... the important work being carried out by civil society organizations for the promotion of the right of peoples to peace and the codification of that right”; and “supported the need to further promote the realization of the right of peoples to peace”. In that regard it requested “the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace, and to report on the progress thereon to the Council at its 17<sup>th</sup> session”. Therefore, the Advisory Committee (recommendation 5/2, of 6 August 2010) established a drafting group of four members who submitted its progress report to the Advisory Committee in January 2011. By recommendation 6/3, of 21 January 2011, the Advisory Committee took note of the progress report; increased to six the members the drafting group; and requested it to prepare a questionnaire to be distributed to all the stakeholders to ask for their inputs on the right to peace. In the light of the comments to be received, the drafting group will submit in January 2012 a draft declaration on the right to peace to the Advisory Committee. The progress report will also be submitted to the HR Council at its 17<sup>th</sup> session.

Finally, Ms. **Vita de Waal** thanked all the participants, and in particular to the speakers, for participating in the parallel event and took the opportunity to invite them to have belief and to support the struggle for the human right to peace.