

Columbia University
Graduate School of Arts & Sciences
Human Rights Studies Master of Arts Program

“Is not peace . . . a matter of human rights?”¹ Establishing the Human Right to Positive Peace
within the International Legal Regime

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Submitted in partial fulfillment of the
requirements for the degree of
Master of Arts

February 2023

¹ President John F. Kennedy, “Commencement Address at American University,” June 10, 1963,
<https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/american-university-19630610>.

ABSTRACT

“Is not peace . . . a matter of human rights?”² Establishing the Human Right to Positive Peace within the International Legal Regime

Susanne J. Prochazka

Peace is a multidimensional concept, composed of positive and negative aspects. Negative peace is defined as the absence of violence or armed conflict or the threat of violence or armed conflict, whereas positive peace is more comprehensive, addressing the roots of conflict by focusing on the elimination of indirect forms of structural violence and the construction of just social institutions that guarantee equal opportunity, non-discrimination, equal protection, and equal access to resources. To its detriment, modern international human rights law has directed its efforts almost exclusively at promoting negative peace. Codification of the human right to positive peace, based within the soft law of non-binding human rights instruments, would allow an integrated approach to peacebuilding and conflict-prevention that addresses the structural causes of injustice and violence within a society.

Keywords: peace, positive peace, negative peace, soft law, conflict-prevention, human rights law

² Kennedy, “Commencement Address.”

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³ “Treaty of Westphalia,” Yale Law School, accessed November 28, 2022, http://avalon.law.yale.edu/17th_century/westphal.asp. The motto of the Peace of Westphalia of 1648 is “peace is the highest good,” or “*pax optima rerum*” in the original Latin.

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*“The work for peace is essentially working for the most elementary human right.”*⁴

*“Peace has for centuries been cited as the preeminent goal of international law . . . Nevertheless, the large number of international armed conflicts, and the extensive incidence of death, destruction, and misery they have wrought . . . attest to the failure of endeavors to achieve and maintain any form durable and just peace. Yet, either in spite of, or perhaps because of this enormous gap between objectives and reality, the international community has . . . solemnly proclaimed that there exists a human right to peace.”*⁵

INTRODUCTION

Peace, as a universal value, is the ultimate purpose behind modern international law.⁶ Since the development of modern international law in the aftermath of the Second World War, the achievement, maintenance, and promotion of international peace and security has been the focus of the United Nations (UN) and its corresponding legal regime.⁷ From its foundation, the UN has affirmed its commitment to attaining and securing peace as the “preeminent goal of international law,”⁸ developing rules and guidelines to govern inter-State relations so as to avoid war and enable conditions of peace and lack of conflict.⁹

Expanding beyond its original status as the preeminent yet nebulous goal of international law, the concept of peace has evolved into being considered a human right in its own stead. The right to peace, long discussed but not definitively established within international legal scholarship, has only recently in the last few years attained a position within the international human rights regime to support its development into a standalone right. Specifically, on December 19th, 2016, recognizing the need to promote peace as a vital requirement for the full enjoyment of all human rights, the UN General Assembly (UNGA) adopted the Declaration on

⁴ Dag Hammarskjöld, *Servant of Peace: A Selection of the Speeches and Statements of Dag Hammarskjöld, Secretary General of the United Nations, 1953-1961*, (New York: Harper & Row, 1962), 337.

⁵ Philip Alston, “Peace as a Human Right,” *Bulletin of Peace Proposals* 11, no. 4 (October 1980): 319.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Morton A. Kaplan and Nicholas Katzenbach, *The Political Foundations of International Law* (New York: John Wiley & Sons, Inc., 1961), 60.

the Right to Peace (Resolution A/71/189) (Declaration on the Right to Peace) in a majority vote by UN Member States. Article 1 of the Declaration on the Right to Peace states that, “[e]veryone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.”¹⁰

Regardless of this milestone acknowledgement by the UN of the existence of a right to peace and its repeated affirmation of its commitment to maintaining a state of peace within the international community, there have been, at any point in time in the decades following the formation of the UN, at least several dozen armed conflicts occurring simultaneously around the world, in direct contradiction with the UN’s stated goal of peace. Many of these armed conflicts are forgotten and have unfortunately faded from mainstream public awareness.¹¹ While some of these cases of armed conflict have very recently erupted into violence, some have lasted more than 50 years and no longer make the headlines. As of late 2022, there are currently more than 110 active armed conflicts around the world, with the majority being non-international in nature.¹² Out of these 100+ active armed conflicts, two current conflicts highlight the manner in which armed conflict and violence interferes with the fulfillment of the human right to peace: the Russo-Ukrainian War and the 8-year civil war in Yemen.

The Russo-Ukrainian war has grievously violated the right to peace. The most recent international armed conflict on the world stage, the Russo-Ukrainian war began in the early morning hours of February 24th, 2022. Following weeks of tension at the borders and stalled diplomatic talks, Russia launched a full-scale invasion of Ukraine from the north, east and

¹⁰ United Nations General Assembly (UNGA), “Declaration on the Right to Peace,” adopted by the UNGA on February 2, 2017, (Resolution A/71/189), Art. 1, <https://digitallibrary.un.org/record/855187?ln=en>.

¹¹ “Today’s Armed Conflicts,” Geneva Academy of International Humanitarian Law and Human Rights, last modified November 1, 2022, <https://geneva-academy.ch/galleries/today-s-armed-conflicts>.

¹² *Ibid.*

south.¹³ In the initial hours, shelling and missile strikes were reported in cities across Ukraine, with reports of an intense cyberattack being carried out at the same time.¹⁴ Since the invasion, Ukraine has seen intense fighting, with several major cities, including the capital of Kyiv, enduring daily bombardments by the Russian offense, leading to a grave humanitarian crisis, with many Ukrainian citizens in dire need of humanitarian aid and millions fleeing across borders into neighboring countries.¹⁵

Since February 2022, the Russian army gained ground throughout southern Ukraine, but were in retreat in northern Kyiv by late March 2022, with Putin failing to take Kyiv. The battlelines stabilized in August, with Russia making little progress in occupying its target regions of Luhansk and Donetsk. Shortly afterwards, the Ukrainian army launched two counter-offenses, expelling Russian forces from the northeastern region of Kharkiv while simultaneously driving Russian forces out of the Russian-occupied eastern region of Kherson. Despite these heavy losses of territory, Russia has shown little interest in any meaningful negotiations to bring an end to the war. Instead, the Russian military sought to compensate for such losses by escalating missile attacks on Ukrainian cities, focusing on disrupting electric power and central heating as the cold winter months approached.

The Russo-Ukrainian War has been calamitous for the Ukrainian people. Calculating the precise number of casualties has proven difficult, but estimates range from 6,500 Ukrainian civilians dead and 10,000 injured¹⁶ to 40,000 civilian deaths, with 100,000 Ukrainian military

¹³ “‘Truly Appalling’: Russia Attacks Ukraine as Putin Ignores Diplomatic Pleas and Launches Invasion,” *Democracy Now*, February 24, 2022, https://www.democracynow.org/2022/2/24/russia_invasion_ukraine_anatol_lieven.

¹⁴ *Ibid.*

¹⁵ “Ukraine: Highlights,” United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), accessed December 1, 2022, <https://www.unocha.org/ukraine>.

¹⁶ “Ukraine Refugee Situation,” United Nations High Commissioner for Refugees (UNHCR), accessed December 1, 2022, <https://data.unhcr.org/en/situations/ukraine>.

casualties.¹⁷ Further, the UN High Commissioner for Refugees (UNHCR) has placed the number of Ukrainian refugees seeking aid outside the borders of Ukraine at more than 7.8 million, with an additional 6.5 million considered internally displaced persons (IDPs) requiring humanitarian assistance and protection within Ukraine.¹⁸

Russia's invasion of Ukraine has been characterized by widespread war crimes and human rights violations, including indiscriminate Russian missile attacks on Ukrainian civilian structures, and violent attacks on civilians, including "summary executions, enforced disappearances, torture, sexual violence, and arbitrary detention."¹⁹ On the ground in Bucha, a Ukrainian town northwest of Kyiv, Human Rights Watch documented multiple instances of apparent war crimes that "show unspeakable, deliberate cruelty and violence on the part of Russian soldiers."²⁰

Russia's invasion of Ukraine has been condemned²¹ as a blatant violation of Article 2(4) of the UN Charter, a central tenet that requires UN Member States to refrain from the "use of force against the territorial integrity or political independence of any state."²² Despite Russian President Putin's claims that Russia's use of force is justified under Article 51 of the UN Charter, which provides for the right to self-defense, there is no evidence that Ukraine committed or threatened to commit an armed attack against Russia or any other UN Member

¹⁷ Steven Pifer, "The Russia-Ukraine war and its ramifications for Russia," *The Brookings Institution*, December 8, 2022, <https://www.brookings.edu/articles/the-russia-ukraine-war-and-its-ramifications-for-russia/>.

¹⁸ UNHCR, "Ukraine Refugee Situation."

¹⁹ "Six Months of Russian War Crimes and Devastation in Ukraine," Human Rights Watch, last modified August 22, 2022, <https://www.hrw.org/video-photos/video/2022/08/22/six-months-russian-war-crimes-and-devastation-ukraine>.

²⁰ Hugh Williamson, "Racing to Document War Crimes in Ukraine," *The Telegraph*, April 5, 2022, <https://www.telegraph.co.uk/news/2022/04/05/racing-document-war-crimes-ukraine/>.

²¹ John Bellinger, "How Russia's Invasion of Ukraine Violates International Law," *Council on Foreign Relations*, February 28, 2022, <https://www.cfr.org/article/how-russias-invasion-ukraine-violates-international-law>.

²² United Nations, Charter of the United Nations (UN Charter), October 24, 1945, 1 UNTS XVI, Art. 2(4).

State.²³ Similarly, there is no evidence to support Putin's allegation that Ukraine was committing genocide against Russians in the Ukrainian regions of Donetsk and Luhansk, with Putin also failing to demonstrate that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide²⁴ (Genocide Convention), which he cited, provided the authorization for such an armed intervention.²⁵ Thus, in violating the cornerstone principle of the prohibition on the use of force, enshrined in Article 2(4) of the UN Charter, Russia has violated the *jus ad bellum* regime, or the international legal regime dictating under which limited conditions nations may resort to the use of armed force in international relations, and has thus initiated an illegal war.²⁶ As consequential as Russia's violation of *jus ad bellum* is, however, it is equally impactful to recognize that Russia's illegal and violent invasion of Ukraine has violated Ukrainian citizens' right to peace.

Similarly, the right of the people of Yemen to peace has been consistently violated since 2014. Far from dominating international headlines in the manner of the Russia-Ukraine war, Yemen's internal civil war, constantly stoked by a Saudi-led military intervention, has quietly evolved over the past 8 years into a sprawling military and humanitarian crisis.²⁷ Backed by Iran, which provided military support and weaponry, Houthi rebels overthrew the Yemeni government in late 2014 but were quickly targeted by air strikes from a Saudi-led military coalition which sought to restore the previous government.²⁸ Coalition forces imposed a brutal blockade on the

²³ Ibid, Art. 51, "[N]othing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations."

²⁴ UNGA, Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, UNTS vol. 78, p. 277.

²⁵ Bellinger, "How Russia's Invasion of Ukraine Violates International Law."

²⁶ "How has Russia violated international law?," King's College London, last modified February 28, 2022, <https://www.kcl.ac.uk/how-has-russia-violated-international-law>.

²⁷ Kali Robinson, "Yemen's Tragedy: War, Stalemate, and Suffering," *Council on Foreign Relations*, October 21, 2022, <https://www.cfr.org/backgrounder/yemen-crisis>.

²⁸ Ibid.

import of essential goods,²⁹ with the subsequent economic crisis leading to the largest food security emergency in the world.³⁰ Unfortunately, the recent Russia-Ukraine war has only exacerbated food scarcity in Yemen, as Yemen obtains the majority of its wheat imports from those two agricultural-powerhouse countries.³¹

In a nation where three-fourths of the country's population live in dire poverty³², this protracted civil war has led to "grievous civilian suffering,"³³ with three out of four Yemenis requiring humanitarian aid and protection and over 4 million Yemenis registered as IDPs.³⁴ Bouts of famine are chronic, diseases such as cholera and diphtheria run rampant,³⁵ and by late 2022, more than 17.8 million Yemenis lacked access to safe water, sanitation, and hygiene services.³⁶ The UN estimates that over 370,000 civilians have died as a result of the civil war, whether through direct causes such as Saudi-coalition airstrikes illegally targeting civilian sites, or indirect causes such as the lack of food, water, and vital medicines.³⁷

Over the years, UN-backed peace negotiations have made little headway. However, in April 2022, a UN-brokered ceasefire was signed into effect for a period of six months. While tensions eased and humanitarian conditions improved during this brief truce, the parties failed to renew the ceasefire once it expired, and the conflict has since steadily escalated to former levels, putting Yemen at risk of plunging back into a humanitarian crisis.

²⁹ Robinson, "Yemen's Tragedy."

³⁰ "War in Yemen," International Committee of the Red Cross (ICRC), last accessed December 1, 2022, <https://www.icrc.org/en/war-yemen>.

³¹ ICRC, "War in Yemen."

³² Robinson, "Yemen's Tragedy."

³³ Ibid.

³⁴ "Yemen Crisis," the UN Children's Fund (UNICEF), last accessed December 1, 2022, <https://www.unicef.org/emergencies/yemen-crisis>.

³⁵ Ibid.

³⁶ ICRC, "War in Yemen."

³⁷ Robinson, "Yemen's Tragedy."

By disrupting daily life and imposing the looming threat of military violence over civilians, both the Russia-Ukraine war and the Yemeni civil war have undoubtedly violated the human right to peace of the citizens of Ukraine and Yemen, respectively. However, the discourse surrounding these armed conflicts and their human toll spotlights the international legal regime's failure to incorporate the dual nature of peace when determining whether violations of the right to peace have occurred, with efforts focused on deescalating the violence. Thus, in keeping with the international legal regime's focus on conflict management and disarmament, the UN's 2016 Declaration on the Right to Peace is limited to a negative peace, defined as the absence of violence or the threat or fear of violence,³⁸ with the language of the resolution emphasizing the maintenance of international harmony and security. In contrast to negative peace, which focuses on regulating international affairs and conflicts to control and reduce actual and potential violence, positive peace consists of the economic and societal institutions and structures that constitute the bedrock of peaceful societies.³⁹ With regards to ongoing armed conflicts, positive peace would entail efforts beyond a mere cessation of violence, focusing instead on more holistic solutions, such as the promotion of friendly relations between neighbors with respect to the Russo-Ukrainian War or ensuring equal access to vital resources such as food and medicines in Yemen.

Rooted in the fundamental distinction between negative peace and positive, this thesis addresses the gap in international human rights law, advancing an argument in support of the recognition of the fundamental human right to positive peace within the international human rights legal regime. In exploring the possible grounds, scope, and implications of this right, this thesis poses the following research question:

³⁸ Herath, "A Critical Analysis of Positive and Negative Peace," 106.

³⁹ *Ibid.*

Is there a standalone human right to positive peace within the international human rights legal regime, considering established jurisprudence and practice?

To answer this research question, this thesis advances arguments for the recognition of the human right to positive peace, while focusing on the necessity for and plausibility of this development in international law. Part I of this thesis defines peace, highlighting the important distinction between negative peace and positive peace and then establishes the vital relationship linking peace and human rights. Part II provides a succinct history of international law's over-emphasis of negative peace and then analyzes the insufficiency of international law's preoccupation with negative peace. Part III details the research methodology used to address the gaps in international human rights law uncovered in the analysis of the international legal regime's negligence of positive peace. Part IV provides legal arguments upholding the formation of a standalone human right to positive peace, summarizing the data collected during the research process and presenting a legal analysis of whether the data supports the codification of the human right to positive peace. Finally, the thesis concludes on an advocacy note, asserting the need for the development of the human right to positive peace in achieving the fulfillment of fundamental human rights.

I. "PEACE IS THE HIGHEST GOOD"⁴⁰: DEFINING PEACE AND MAPPING ITS EVOLUTION WITHIN THE HUMAN RIGHTS REGIME

The definition of peace has evolved over time. At its minimum, peace is defined as the absence of aggression or armed conflict, the condition of "being without war or aggression or use or threat of force."⁴¹ Historically, peace was not considered a central purpose of either

⁴⁰ Yale Law School, "Treaty of Westphalia."

⁴¹ Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: Alfred A. Knopf, 1948), 39-40.

international relations or international law.⁴² Prior to the development of modern international law under the auspices of the UN, international relations aligned with the theory of the “just war,” where justice, rather than peace, is considered to be the leading value. Under the just war theory, the morality of a war was assessed by whether it was supported by a “just cause,”⁴³ such as “threats to peace and order or the lives of a significant number of the populace, and right intention aimed at the defeat of those who had unjustly started war or insurrection and the restoration of peaceful order.”⁴⁴ Thus, war could be justified, even “morally required,”⁴⁵ with war often being used as a tool of international diplomacy and for conducting international relations.

While peace does have a limited role in just war theory, the focus is on war’s “retributive”⁴⁶ nature and role as a just punishment for wrongdoing.⁴⁷ The just war theory influenced the development of the Hague Conventions, considered the first codified laws of warfare, and led to the establishment of *jus in bello* and *jus ad bellum*, the bodies of law governing the manner in which warfare is conducted and the reasons or justifications permitting warfare, respectively.⁴⁸ While unjustified warfare was frowned upon under the just war theory, armed conflict in general was not prohibited or considered illegal.

Following the devastation of the First and Second World Wars, however, the international community “turned away from this notion of war as justice, choosing instead to adopt a paradigm that allows defensive wars only, emphasizing peace and stability.”⁴⁹ Even with

⁴² Shelly Aviv Yeini, “Promoting Peace in International Law: Bringing States to the Mediation Table,” *Columbia Journal of Transnational Law*, 58 (2019): 629.

⁴³ *Ibid.*

⁴⁴ *Ibid.*, 630.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*, 631.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, 636

⁴⁹ *Ibid.*

this fresh attention to peace within the international legal regime, peace remained defined as the absence of armed conflict. This limited understanding of peace fails to take into account its multidimensional nature and effectively circumscribes the international community's ability and efforts to fully realize a state of peace.

A. Developing a Multidimensional Definition of Peace

Departing starkly from the traditional view of peace as merely a lack of violence, peace theorists in the 1960s began to reconceive of peace as a “much more” intricate concept.⁵⁰ Johan Galtung, a Norwegian sociologist considered the principal founder of the discipline of peace and conflict studies, proposed the idea of a dual-natured peace in his groundbreaking 1969 article in the *Journal of Peace Research*, “Violence, Peace, and Peace Research.”⁵¹ According to Galtung's now widely accepted theory,⁵² a holistic definition of peace incorporates both a negative aspect and a positive aspect of peace.⁵³

Under the negative / positive theory of peace, negative peace is defined as the “absence of organized, collective violence between large groups of people such as nations and even between classes, races, and ethnic groups.”⁵⁴ As the absence of violence or the fear of violence, negative peace is the definition utilized by the Global Peace Index (GPI).⁵⁵ Positive peace, in contrast, goes “beyond the state of negative peace”⁵⁶ and is defined as “cooperation and integration between human societies.”⁵⁷ Galtung structures this definition of positive peace around the understanding that violence also has two sides: personal violence and structural

⁵⁰ Herath, “A Critical Analysis of Positive and Negative Peace,” 106.

⁵¹ See generally, Johan Galtung, “Violence, Peace, and Peace Research,” *Journal of Peace Research* 6, no. 3 (1969): 167–91.

⁵² Burak Ercoşkun, “On Galtung's Approach to Peace Studies,” *Lectio Socialis*, Vol. 5 (January 2021): 2.

⁵³ *Ibid.*, 3.

⁵⁴ *Ibid.*, 3.

⁵⁵ Herath, “A Critical Analysis of Positive and Negative Peace,” 106.

⁵⁶ Ercoşkun, “On Galtung's Approach to Peace Studies,” 3.

⁵⁷ Herath, “A Critical Analysis of Positive and Negative Peace,” 107.

violence, which consists of structure and culture. Personal violence, or direct violence, relates to armed conflict that harms or affects individuals, while structural violence pertains to the violence rooted in discriminatory structures as well as harmful cultural practices or beliefs, as encompassed under the term “cultural violence.”⁵⁸

Here, positive peace relates to the structural aspect of violence, meaning that it addresses the inequality and harms intrinsic within existing societal structures, institutions, and cultural practices.⁵⁹ Thus, positive peace expands upon the focus on an absence, namely the absence of violence or fear of violence, and instead focuses on the creation and presence of “attitudes, institutions and structures, that when strengthened, lead to peaceful societies.”⁶⁰

Where negative peace can be viewed as a sort of “Band-Aid” solution, addressing the immediate symptoms of armed conflict or violence through measures such as conflict mediation, negotiation, strategic deterrence, disarmament, and arms control,⁶¹ positive peace seeks to address the root causes of conflict.⁶² Thus, positive peace “involves the elimination of the root causes of war, violence, and injustice and the conscious attempt to build a society that reflects these commitments.”⁶³ The attainment of a positive peace represents a more comprehensive approach to building a peaceful society, as it not only indicates the absence of the direct violence of war or armed conflict, but also “denotes the elimination of indirect forms of violence and the construction of just social institutions that guarantee equal opportunity, a fair distribution of power and resources, equal protection, and impartial enforcement of law.”⁶⁴

⁵⁸ Ercoşkun, “On Galtung’s Approach to Peace Studies,” 3.

⁵⁹ Herath, “A Critical Analysis of Positive and Negative Peace,” 105.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid., 106.

⁶³ Ibid.

⁶⁴ Patrick Hayden, “Constraining War: Human Security and the Human Right to Peace,” *Human Rights Review*, 6 (2004): 43.

Expanding upon the concept of positive peace, the Institute for Economics and Peace, a global thinktank utilizing data-driven research to create a “paradigm shift in the way the world thinks about peace,” emphasizes the central role positive peace plays in creating the “conditions for a society to flourish.”⁶⁵ Due to its “systemic nature,”⁶⁶ the “transformational concept”⁶⁷ of positive peace not only leads to a lack of actual violence or the threat of violence, but is associated with highly “desirable”⁶⁸ outcomes for society, such as higher GDP growth [and] better measures of wellbeing.”⁶⁹ Thus, positive peace represents “true, lasting, and sustainable peace.”⁷⁰

B. The “Three Generations Theory” of Human Rights and the Human Right to Peace

In addition to an analysis of the evolving definition of “peace,” it is useful to examine the generational theory of the progression of human rights, or the “Three Generations Theory.”⁷¹ The concept of generations of human rights emerged in the 1970s, with a framework of three generations of human rights: the first generation consisting of civil and political rights, the second generation comprised of economic, social and cultural rights, and the third generation composed of collective or solidarity rights.⁷² Under this progressive framework, the third generation of solidarity rights take shape as the collective rights of society or peoples; notably, this progressive evolution of human rights has given rise to the right to development, the right to

⁶⁵ “Positive Peace Report 2020: Analysing the factors that sustain peace,” Institute for Economics and Peace, April 23, 2021, 2, <https://www.economicsandpeace.org/wp-content/uploads/2021/04/PPR-2020web.pdf>.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Herath, “A Critical Analysis of Positive and Negative Peace,” 105.

⁷¹ Karel Vasak, “A 30-year struggle: the sustained efforts to give force of law to the Universal Declaration of Human Rights,” *The UNESCO Courier*(1977): 29, <https://unesdoc.unesco.org/ark:/48223/pf0000074816.nameddest=48063>.

⁷² “The evolution of human rights,” *Manual for Human Rights Education*, Council of Europe, last modified 2020, <https://www.coe.int/en/web/compass/the-evolution-of-human-rights>.

a healthy environment, and the right to peace.⁷³ Here, the concept of human rights is, “an evolving one and its essentially dynamic character must be acknowledged . . . the concept of generations of human rights is a useful analytical tool since it helps to trace the manner and direction in which the human rights tradition has evolved.”⁷⁴ Thus, under this generational lens of analysis, the right to peace may be considered simply a natural result of the evolution of human rights law.⁷⁵

However, this generational understanding of human rights has fallen into disuse since the end of the Cold War. Over time, dividing human rights into three separate generations based on their ideological content was seen as outdated and problematic.⁷⁶ Critiqued as an ideological product of its time, upholding an overly hierarchal portrayal of the human experience and rooted in the colonial era politics of the Global North, the Three Generations Theory privileges certain civil and political rights over others, with social and economic rights “side-lined”⁷⁷ to the detriment of the development of human rights law. In addition, categorizing human rights into generations fails to acknowledge the innate universality of human rights within international law,⁷⁸ causing “significant conceptual damage” to the scholarship and practice of human rights along the way.⁷⁹ As it no longer represents a relevant analytical framework for the study of the evolution of human rights, the Three Generations Theory does not provide a reliable foundation upon which to root support for the human right to positive peace. Instead, an analysis of the

⁷³ Ibid.; Alston, “Peace as a Human Right,” 319-320.

⁷⁴ Alston, “Peace as a Human Right,” 321.

⁷⁵ Ibid.; Spasimir Domaradzki and Margaryta Khvostova, “Karel Vasak’s Generations of Rights and the Contemporary Human Rights Discourse,” *Human Rights Review*, 20 (2019): 427.

⁷⁶ Steven Jensen, “Putting to rest the Three Generations Theory of human rights,” *Open Global Rights*, November 15, 2017, <https://www.openglobalrights.org/putting-to-rest-the-three-generations-theory-of-human-rights/>.

⁷⁷ Ibid.

⁷⁸ Patrick Macklem, *The Sovereignty of Human Rights* (New York: Oxford University Press, 2015): 37.

⁷⁹ Jensen, “Putting to rest the Three Generations Theory of human rights.”

intertwined and interdependent dynamic between the achievement of peace and the fulfillment of human rights presents ample basis for the development of a human right to positive peace.

C. The Symbiotic Relationship Between Peace and Human Rights

Since the dawn of the modern human rights movement following the Second World War, the links between peace and human rights have been recognized as being of fundamental importance to the achievement of the ambitions of human rights law.⁸⁰ The Preamble of the Universal Declaration of Human Rights (UDHR), a milestone document considered the foundation of modern international human rights law, affirms that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”⁸¹ With this statement, the UDHR confirmed the crucial connection between two of the human right’s movements fundamental objectives: human rights and peace. Indeed, the idea that peace is a condition “conducive to the realization of fundamental human rights”⁸² has been recognized since the founding of the UN in 1945, where the UN’s founding document, the Charter of the UN (UN Charter) explicitly stated that the purpose of the UN is “to maintain international peace and security.”⁸³ This relationship between peace and human rights has been explored further by subsequent instruments of human rights law. Notably, paragraph 4 of the Preamble to the European Convention on Human Rights, adopted in 1950, established a strong link between peace and respect of human rights, reaffirming each Member State’s “profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an

⁸⁰ Hayden, “Constraining War: Human Security and the Human Right to Peace,” 42.

⁸¹ United Nations, Universal Declaration of Human Rights (UDHR), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), December 10, 1948, Preamble.

⁸² Hayden, “Constraining War: Human Security and the Human Right to Peace,” 42.

⁸³ *Ibid.*

effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend.”⁸⁴

This vital relationship between peace and human rights is key to the successful achievement of the modern human rights movement’s goals. Because “human rights exist along the peace and conflict continuum – violations of which can simultaneously be a cause, trigger and consequence of violence and conflict,” then the “promotion and protection of human rights are also the basis for creating or rebuilding resilient, inclusive, just and peaceful societies.”⁸⁵ In sum: without human rights, there can be no sustained peace; without peace, there can be no fulfillment of human rights,⁸⁶ as “human rights abuses can spur violent conflict, or vice-versa.”⁸⁷

Expanding upon this understanding of peace as a necessary condition for the realization of human rights (and “vice-versa”⁸⁸), is the basic rights theory of human rights. In asking, “[w]hich human rights ought to be the first honored and the last sacrificed?”, philosopher Henry Shue proposed a system of three “basic rights,” the universal rights to liberty, subsistence, and security, primary rights upon which all other human rights are built.⁸⁹ The implementation of these basic rights supports the “enjoyment of other human rights by making the violations of those other rights less likely.”⁹⁰ Under this theory, Shue especially prioritizes security rights, as

⁸⁴ Catalina Mititelu, “The European Convention on Human Rights,” *European Integration: Realities and Perspectives Proceedings*, 10, (2015): 249.

⁸⁵ “The Contribution of Human Rights to Peacebuilding and Peace,” Office of the United Nations High Commissioner for Human Rights (OHCHR), last modified 2020, https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/1._ohchr_thematic_paper_on_the_contribution_of_hr_to_sp_and_recommendations.pdf.

⁸⁶ “Can you imagine a world without human rights?” United Nations Mission in Kosovo (UNMIK), February 28, 2022, <https://unmik.unmissions.org/can-you-imagine-world-without-human-rights>.

⁸⁷ “Human Rights,” United States Institute of Peace, last modified December 8, 2022, <https://www.usip.org/issue-areas/human-rights>.

⁸⁸ *Ibid.*

⁸⁹ Henry Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy*, sec. ed. (Princeton: Princeton University Press, 1996), 19.

⁹⁰ Hayden, “Constraining War: Human Security and the Human Right to Peace,” 41.

security rights must be “implemented effectively in order for the exercise of other rights to be possible.”⁹¹

Continuing along this line of thinking, the right to peace may be equated to the basic right to security. Since “threats to physical security are among the most serious, and – in much of the world – the most widespread hindrances to the enjoyment”⁹² of other human rights, fulfillment of the right to peace is vital to ensure the fulfillment of all other human rights. With this approach, “everyone is entitled to the removal of the most serious and general conditions that would prevent or severely interfere with the exercise of [the human] . . . rights the person has.”⁹³ Where, for example, in a state where there is violent abuse of political authority, there cannot be a genuine fulfillment of the right to expression. In such a situation, guaranteeing the right to peace helps to prevent the violation of one’s other fundamental human rights.

Incorporating Galtung’s theory of structural and systemic violence necessitating a structural and systemic, or positive, peace, it is “possible to expose some of the structural practices that are the source”⁹⁴ of the greatest violations or threats of violations of human rights.⁹⁵ Under this approach, a state may not be engaged in a war or in an active armed conflict, yet its social, cultural, and economic institutions are structured according to discriminatory and harmful policies that deny access to basic human rights, such as housing, education, or the opportunity to gain employment, to certain citizens. According to John Rawls, a legal and political philosopher famous for his theory of justice as fairness, “unjust social arrangements are themselves a kind of extortion, even violence.”⁹⁶ Thus, where a society’s social, cultural, or

⁹¹ Ibid.

⁹² Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy*, 21-2.

⁹³ Ibid.

⁹⁴ Hayden, “Constraining War: Human Security and the Human Right to Peace,” 43.

⁹⁵ Ibid.

⁹⁶ John Rawls, *A Theory of Justice*, rev. ed. (Cambridge: Harvard University Press, 1999) 302.

economic institutions deny such rights, “great psychological, social, and economic harm is being done to human beings, even if bombs and bullets are not being used.”⁹⁷

Therefore, in its simplest terms, protection of the basic right to positive peace equates to a protection of all other human rights. Despite this clear connection between the basic right to positive peace bolstering the fulfillment of other fundamental human rights, the UN and its accompanying legal regime have centered their focus, and the majority of their legal instruments, such as UN Resolutions or Declarations, around the concept of negative peace, to the eventual detriment of the human rights movement.

II. THE PRIORITIZATION OF THE RIGHT TO NEGATIVE PEACE IN INTERNATIONAL LAW

With one of its primary objectives being the maintenance of international peace and security, the UN established the importance of peace within its founding document, the UN Charter, thereby “providing the foundation for the right to peace”⁹⁸ within the UN legal regime. However, the UN has focused its intentions towards the practical goal of prohibiting the use of force, rather than the positive promotion of peace, meaning that the UN almost exclusively utilizes the concept of negative peace. This is heavily due in part to the geopolitical context of its foundation: founded in the aftermath of the Second World War, a far-reaching global conflict startling in its vastness, sheer brutality, and staggering death toll, the UN sought to prevent future conflicts of a similar terrible scale and to ensure international peace and security. The UN’s preoccupation with securing and maintaining an absence of armed conflict or threat of armed conflict, or achieving a state of negative peace, while understandable in the aftermath of two of

⁹⁷ Hayden, “Constraining War: Human Security and the Human Right to Peace,” 43.

⁹⁸ Alston, “Peace as a Human Right,” 323.

the greatest armed conflicts in world history, is insufficient and has led to inadequate attempts to successfully realize a state of true peace in international relations.

A. A Brief History of the UN's Predilection for Negative Peace

Throughout the UN Charter, great emphasis is placed on the necessity of the maintenance of a state of international peace and guaranteeing an overall lack of armed conflict to promote international security and ensure harmonious international relations, leading to the UN Charter being viewed as the bedrock basis of peace within modern international law.⁹⁹ Article 1(2) proclaims that the purpose of the UN is to “. . . take . . . appropriate measures to strengthen universal peace,” with Articles 55 and 56 affirming that this peace shall be secured by economic and social welfare, and through the realization of human rights.”¹⁰⁰

Subsequent UN instruments have incorporated this mandate to achieve peace within international relations. In the decades since the founding of the UN, building upon the UN Charter's emphasis on peace, “a whole range of international institutions ranging from the Security Council to a wide variety of specialized agencies and other bodies charged with the promotion of peace,”¹⁰¹ all make explicit references to peace, whether as a founding goal or as a prerequisite to meet their mandated missions, in their founding documents. While the UDHR, considered the preeminently foundational document of international human rights law, enshrining the basic rights and freedoms to which all human beings are entitled, makes scant reference to peace, with its Preamble noting that “. . . recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of

⁹⁹ Ibid.

¹⁰⁰ David Fernández Puyana, “Analysis of the international debate on the right to peace in the context of the human rights and intergovernmental bodies of the United Nations” (PhD diss., University of Pompeu Fabra, 2014), 19.

¹⁰¹ Ibid.

freedom, justice and peace in the world,”¹⁰² it is famously a human rights document that was “inspired by a sincere desire for peace.”¹⁰³ While the UDHR is non-binding, it is considered a milestone in the development of human rights law and laying the foundations for later, binding international covenants.¹⁰⁴ Drafters of the UDHR celebrated the groundbreaking document, and especially the Preamble, as establishing “a strong bond between peace and justice and the rights of the human being.”¹⁰⁵

Following the founding of the UN and the drafting of the aspirational UDHR, the UDHR’s 30 articles were incorporated into two pivotal instruments of international human rights law, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Combined with the UDHR, the ICCPR and the ICESCR comprise the International Bill of Rights. Both the ICCPR and the ICESCR adopted variations of the language of the UDHR Preamble, simultaneously noting the connections between the UN Charter and the relationship between peace and human rights.¹⁰⁶

Of the seven remaining core international human rights instruments, three make direct reference to the links between peace and human rights. Building upon the groundwork for peace laid by the International Bill of Rights, the preamble of the 1969 International Convention on the Elimination of All Forms of Racial Discrimination affirmed that, “discrimination between human beings on the grounds of race, color or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the

¹⁰² UDHR, Preamble.

¹⁰³ Puyana, “Analysis of the international debate on the right to peace in the context of the human rights and intergovernmental bodies of the United Nations,” 32, quoting Eleanor Roosevelt in the midst of the UDHR negotiating process.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.* 33.

¹⁰⁶ *Ibid.* 36.

harmony of persons living side by side even within one and the same State.”¹⁰⁷ Here, this is the first direct recognition in a human rights instrument that peace is vital to local communities and is necessary for harmonious relationships outside of the international geopolitical sphere.¹⁰⁸

In addition to the documents in the International Bill of Rights and other formal UN conventions, other UN bodies, including the UNGA and the UN Commission on Human Rights, focused on achieving a state of peace within the international community. In its 1976 Resolution, the UN Commission on Human Rights observed that “[e]veryone has the right to live in conditions of international peace and security and to fully enjoy economic, social, and cultural rights, and civil and political rights” and that the promotion of human rights mandates the existence of international peace.¹⁰⁹ In 1978, the UNGA adopted the Declaration on the Preparation of Societies for Life in Peace, with the preamble highlighting that peace is “mankind’s paramount value,” and affirming that “every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace.”¹¹⁰

A few years after the 1976 Resolution, while riding the momentum of the final years of the Cold War in 1984, the UNGA adopted “The People’s Right to Peace,” resolution.¹¹¹ In this resolution, the UNGA affirmed the solemn proclamation that “the peoples of our planet have a sacred right to peace,” followed by the statement that “the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State.”¹¹² While later considered a groundbreaking development in the evolution of the human

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Alston, “Peace as a Human Right,” 324.

¹¹⁰ Alston, “Peace as a Human Right,” 324; UNGA, “Declaration on the Preparation of Societies for Life in Peace,” adopted by the General Assembly on December 15, 1978, (GAOR, 33rd sess., Suppl. no. 45).

¹¹¹ William Schabas, “The Human Right to Peace,” in *Essays on Human Rights in Honour of Gudmundur Alfredsson*, ed. Gudmundur Alfredsson (Brill, Nijhoff, 2011), 44.

¹¹² Ibid.

right to peace, the 1984 Declaration lacked a sufficient consensus of support due to Cold War politics at the time.¹¹³ Further hampering official recognition of the human right to peace, UNGA resolutions are non-binding in international law; however, resolutions possess persuasive authority and act as foundations to building international consensus and support around certain issues.¹¹⁴ Thus, while not legally enforceable, UNGA resolutions such as “The People’s Right to Peace” serve as strong evidence of the direction that the UN, and subsequently international law, may be taking in the future.¹¹⁵

A regional legal covenant, the African Charter of Human and Peoples’ Rights (African Charter) was the first binding legal instrument that explicitly recognized the human right to peace at the time of its adoption in 1981. Article 23(1) of the African Charter affirms that, “[a]ll peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States.”¹¹⁶ Here, it is important to note that the language used in the African Charter is limited to that of negative peace, focusing on security within inter-State relations.

While the majority of international and regional legal instruments emphasize the negative aspect of peace, utilizing language centering around concepts of harmonious international relations, human security, and disarmament, certain regional human rights instruments reveal a more comprehensive portrayal of peace. These covenants shift the focus from the traditional perspective of peace as an absence of violence and present a more nuanced understanding of

¹¹³ Ibid.

¹¹⁴ Roland Rich, “Solidarity Rights Give Way to Solidifying Rights,” *Dialogue - Journal of the Academy of the Social Sciences in Australia*, 21, No. 3 (2020): 26.

¹¹⁵ Ibid.

¹¹⁶ Alston, “Peace as a Human Right,” 324; Organization of African Unity (OAU), “African Charter on Human and Peoples’ Rights” (“Banjul Charter”), adopted by the OAU on June 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L. M 58, Article 23.

peace as more rooted in justice and societal changes. Notably, the 2012 Association of Southeast Asian Nations (ASEAN) Human Rights Declaration (ASEAN Human Rights Declaration) expounds upon the right to negative peace recognized in the African Charter, detailing the purpose and necessity behind the explicit right to peace. This declaration proclaims that, “[e]very person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realized [sic]. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.”¹¹⁷ This right to peace is expanded upon in Article 31(3), which states that, “[e]ducation shall be directed to the full development of the human personality and the sense of his or her dignity. Education shall strengthen the respect for human rights and fundamental freedoms . . . education shall enable all persons to participate effectively in their respective societies, promote understanding, tolerance and friendship among all nations, racial and religious groups, and enhance the activities of ASEAN for the maintenance of peace.”¹¹⁸ With this provision, the ASEAN Human Rights Declaration recognizes the connection between fundamental economic social rights such as the right to education and the maintenance of peace, implying a more comprehensive view of peace, expanding the understanding of peace beyond the almost-exclusively negative peace as presented within UN instruments of human rights law.

B. How Overlooking Positive Peace is to the Detriment of the Human Rights Movement

By focusing exclusively on achieving negative peace and neglecting to include positive peace in its objectives, the UN fails to ensure the attainment of true peace. This is because, upon

¹¹⁷ Catherine Shanahan Renshaw, “The ASEAN Human Rights Declaration 2012,” *Human Rights Law Review* 13, no. 3 (September 2013): 561.

¹¹⁸ Association of Southeast Asian Nations (ASEAN), “ASEAN Human Rights Declaration,” November 18, 2012, §31.3, <https://asean.org/asean-human-rights-declaration/>.

surveying the far-reaching societal effects that positive peace may achieve, it becomes clear that a singular focus on achieving and maintaining negative peace, without incorporating the more holistic aspects of positive peace, is misplaced, certainly shortsighted and does not represent the most effective means of attaining peace.

The UN legal regime's failure to place the same weight upon positive peace as it does upon negative peace has contributed to the proliferation of three types of violence around the world: direct violence, structural violence, and cultural violence.

With regards to direct violence, this begets the staggering amount of active armed conflicts around the world at any given point.¹¹⁹ In 2022, there were more than 110 active armed conflicts, with many of them non-international in nature. These conflicts, many forgotten by the public media, have a shocking toll upon civilians. Causing further harm is the structural violence, rooted in discriminatory structures and taking on the form of extreme poverty and hunger, lack of employment and educational opportunities, which ravages much of the world.¹²⁰ Lastly, cultural violence, manifesting in the form of gender-based violence and domestic violence, showcases the "culture of violence"¹²¹ that has only escalated due to the UN's preoccupation with predominantly addressing only direct violence through negative peace.

Thus, codification of the human right to positive peace would reallocate the UN legal regime's focus and resources into addressing the root causes of these three types of violence.

¹¹⁹ Carlos Villán Durán, "Civil Society Organizations' Contribution to the Universal Declaration on the Human Right to Peace," *International Journal on World Peace*, Vol. 28 (2011): 84.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

III. BRIDGING THE GAP: COLLECTING DATA REBUTTING THE ABSENCE OF POSITIVE PEACE

In order to resolve the research question posed and to simultaneously expand the legal discourse surrounding the human right to positive peace, this thesis employs a mixed-method approach, utilizing elements of both quantitative and qualitative research methods, with the objective of establishing sufficient data to support a legal argument for the recognition of a human right to positive peace.

A. *The Qualitative Method*

First, the qualitative method provides an in-depth legal analysis, addressing the question: “*How may the right to peace be established within the existing human rights regime?*” In providing an answer to this question, this section shall examine sources of international law, including binding international law, non-binding international law, and customary international law. Each of those sources shall be reviewed as a possible source of legal support for the human right to positive peace, with a succinct analysis as to why or why not that source of international law can act in support of the human right to positive peace.

B. *The Quantitative Method and Research Matrix*

Next, the quantitative research section shall build upon the conclusions of the qualitative research. Although quantitative data sometimes carries a troubled reputation within human rights research, where “bad statistics is worse than no statistics,”¹²² and collecting and analyzing “quantitative information on a particular human right requires careful examination of all its ramifications, in various ethnic and cultural settings,”¹²³ this thesis shall collect the quantitative

¹²² Reed, Kristin and Ausra Pads kocimaite, “The Right Toolkit: Applying Research Methods in the Service of Human Rights,” Human Rights Center, Berkley School of Law, 23, <https://www.law.berkeley.edu/wp-content/uploads/2015/04/The-Right-Toolkit.pdf>.

¹²³ Ibid.

data necessary to provide support for a human right to positive peace. Here, the quantitative method of research seeks to answer the question:

“How many human rights actors, whether state governments, intergovernmental organizations, international non-governmental organizations (INGOs) and non-governmental organizations (NGOs) advocate for, rely upon, or otherwise support or make reference, whether directly or indirectly, to the human right to positive peace?”

In sourcing this data, this thesis shall analyze a wide variety of human rights documents, whether binding conventions and treaties or non-binding resolutions or reports, including UN declarations, UN resolutions, and UN reports, including reports from UN bodies such as the UN High Commissioner for Refugees, the UN Children’s Fund (UNICEF), the UN Development Programme, the UN Office for the Coordination of Humanitarian Affairs, the Office of the United Nations High Commissioner for Human Rights, and the UN Security Council, as well as national constitutions, the commissions of governmental and civil society organizations, the mandates and mission statements of INGOs and NGOs, nonprofit groups, and human rights advocacy groups. The goal of this document analysis is to collect sufficient data to act as evidence in support of the standalone human right to positive peace within international human rights law.

While there does not exist a hardline or definitive amount of data to qualify as “sufficient” evidence, the estimate was that there will be a total of 10-15 human rights documents that make explicit or implicit reference to the human right to positive peace. As “positive peace” is broadly defined as denoting “the elimination of indirect forms of violence and the construction of just social institutions that guarantee equal opportunity, a fair distribution of

power and resources, equal protection, and impartial enforcement of law,”¹²⁴ the research process shall focus on keywords related to equal opportunity and protection within economic and societal institutions. Keywords used to search within human rights documents include: anti-corruption, education, fair employment, good governance, gender equality, literacy, non-discrimination, poverty, tolerance, transparency, etc.¹²⁵

The data shall be organized within a research matrix, delineating the following information to identify the source of support for the right to positive peace:

- **Document Number**
- **Document Title**
- **Relevant Excerpt:** the portion of the human rights document that makes either direct or indirect reference to the human right to positive peace or its elements;
- **Source of Excerpt** (i.e., specific article, paragraph, or page number);
- **Applicable Analytical Framework:** the Culture of Peace framework and the Eight Pillars of Positive Peace are explained in detail below;
- **Discussion of Relevance:** a brief analysis of the excerpt’s pertinency in the context of establishing the human right to positive peace;
- **Hard Law or Soft Law** (i.e., specifying whether the human rights document in question is binding or non-binding within international law).

Thus, with the data gathered from a close perusal of a wide variety of human rights documents, this thesis shall address the one-dimensional and insufficient concept of peace produced by the UN legal regime’s hyperfocus on negative peace and subsequent negligence of positive peace.

C. Analytical Frameworks and Definitions

In conducting this analysis in determining whether a human rights document supports the establishment of a human right to positive peace, two human-rights based analytical frameworks shall be applied. The first analytical framework is based on the UN’s Educational, Scientific and

¹²⁴ Hayden, “Constraining War: Human Security and the Human Right to Peace,” 43.

¹²⁵ Please note that the relevant keywords were compiled through the development of the Culture of Peace Framework and the Eight Pillars of Peace Framework applied in the qualitative research process.

Cultural Organization (UNESCO) concept of the “culture of peace,” an initiative adopted by UNESCO in the early 2000s in its role as a primary promoter of peace.¹²⁶ The second analytical framework derives its structure from the concept of the “Eight Pillars of Positive Peace” utilized by the Institute for Economics and Peace in its annual Positive Peace Report.¹²⁷

1. Analytical Framework #1: UNESCO’s “Culture of Peace”

Following the creation of UNESCO’s Culture of Peace program in 1992, which UNESCO then promptly utilized in its contributions to UN peacekeeping efforts in fostering a culture of peace, non-violence, and tolerance, the UNGA adopted the concept in its 1999 “Declaration on a Culture of Peace.”¹²⁸ This declaration, rooted in UNESCO’s Culture of Peace program, defines a “culture of peace” as “a set of values, attitudes, traditions and modes of behavior and ways of life based on: respect for life, ending of violence and promotion and practice of non-violence through education, dialogue and cooperation . . . based on the principles of freedom, justice and democracy, all human rights, tolerance and solidarity.”¹²⁹ Articles 3 and 4 elaborate upon the types of “values, attitudes, modes of behavior and ways of life”¹³⁰ that actively promote the development of a culture of peace (in addition to encouraging the peaceful settlement of conflicts, compliance with international legal obligations, and skill-building in negotiation and mediation processes), including:

1. *Promoting democracy*, development and universal respect for and observance of all human rights and fundamental freedoms;
2. *Strengthening democratic institutions* and ensuring full participation in the development process;
3. *Eradicating poverty* and illiteracy and reducing inequalities within and among nations;

¹²⁶ Roberta Lynn Wodenscheck, “The Human Right to Peace: Why Such a Right Should be Recognized,” (MA Thesis, American University, 2004), 86.

¹²⁷ “Positive Peace Report 2022: Analysing the factors that build, predict, and sustain peace,” Institute for Economics and Peace, January 2022, <https://www.economicsandpeace.org/wp-content/uploads/2022/01/PPR-2022-web.pdf>.

¹²⁸ UNGA, “Resolution on a Culture of Peace,” adopted by the UNGA on September 13, 1999, A/RES/53/243 A.

¹²⁹ *Ibid.*, Art. 1.

¹³⁰ *Ibid.*, Arts. 3-4.

4. *Promoting sustainable economic and social development;*
5. Eliminating all forms of discrimination against women through their empowerment and equal representation at all levels of decision-making;
6. *Ensuring respect for and promotion and protection of the rights of children;*
7. *Ensuring free flow of information* at all levels and enhancing access thereto;
8. *Increasing transparency and accountability in governance;*
9. *Eliminating all forms of racism, racial discrimination, xenophobia and related intolerance;*
10. *Advancing understanding, tolerance and solidarity* among all civilizations, peoples and cultures, including towards ethnic, religious and linguistic minorities;
11. *Promoting education.* Education at all levels is one of the principal means to build a culture of peace. In this context, human rights education is of particular importance.¹³¹

By linking these values, attitudes, and actions to the promotion of a culture of peace, the Declaration on a Culture of Peace demonstrates that the concept of a culture of peace utilizes the comprehensive view of peace, acknowledging both its negative and positive aspects. Thus, in applying the Culture of Peace analytical framework, if a human rights document or instrument contains provisions or requirements that would, if enacted, facilitate the transformation to the desired culture of peace, then it may be inferred that the human rights instrument in question is sufficiently relevant to support the codification of the human right to positive peace.

2. Analytical Framework #2: The Eight Pillars of Positive Peace

In its annual analysis of the “factors that build, predict, and sustain peace,”¹³² the Institute for Economics and Peace (IEP) has identified eight interconnected and dynamic factors comprising positive peace, the “Eight Pillars of Positive Peace:”

1. *Well-functioning Government:* a well-functioning government delivers high-quality public and civil services, engenders trust and participation, demonstrates political stability and upholds the rule of law;
2. *Sound Business Environment:* the strength of economic conditions as well as the formal institutions that support the operation of the private sector. Business competitiveness and economic productivity are both associated with the most peaceful countries and are key to a robust business environment;
3. *Equitable Distribution of Resources:* peaceful countries tend to ensure equity in access to resources such as education, health and, to a lesser extent, equity in income distribution;

¹³¹ Ibid., Art. 4.

¹³² “Positive Peace Report 2022,” 9-10.

4. *Acceptance of the Rights of Others*: peaceful nations enforce formal laws that guarantee basic human rights and freedoms and the informal social and cultural norms that relate to behaviors of citizens;
5. *Good Relations with Neighbors*: harmonious relations with other countries or between ethnic, religious, and cultural groups within a country are vital for peace. Countries with positive internal and external relations are more peaceful and tend to be more politically stable, have better functioning governments, are regionally integrated and have lower levels of organized internal conflict;
6. *Free Flow of Information*: free and independent media disseminates information in a way that leads to greater knowledge and helps individuals, business and civil society make better decisions. This leads to better outcomes and more rational responses in times of crisis;
7. *High Levels of Human Capital*: a skilled human capital base reflects the extent to which societies educate citizens and promote the development of knowledge, thereby improving economic productivity, care for the young and socially vulnerable, political participation and social capital;
8. *Low Levels of Corruption*: in societies with high levels of corruption, resources are inefficiently allocated, often leading to a lack of funding for essential services, which in turn can lead to dissatisfaction and civil unrest. Low corruption can enhance confidence and trust in institutions as well as improve the efficiency of business and the competitiveness of the country.¹³³

Thus, in applying these factors of the Eight Pillars analytical framework, the “major factors that govern change within a society,”¹³⁴ it is possible to determine whether a particular human rights document sufficiently incorporates enough factors to be considered as indicative of the presence of the human right to positive peace within existing instruments and documents of international human rights law.

3. Distinguishing Between Hard Law and Soft Law

Additionally, the distinction between hard law and soft law within the international legal regime must be drawn. The term “hard law” refers to legally binding obligations that are both precise and that can delegate authority for interpreting and implementing the law.¹³⁵ Examples of hard law are self-executing treaties, international covenants, and customary international law.

¹³³ Ibid.

¹³⁴ Ibid., 16

¹³⁵ Kenneth Abbott and Duncan Snidal, “Hard and Soft Law in International Governance,” *International Organization, Legalization and World Politics*, Vol. 54, no. 3 (Summer 2000): 421.

In contrast, the term “soft law” is used to describe quasi-legal policy instruments or agreements where the aspects of obligation, precision, or delegation have broken down or did not exist in the first place.¹³⁶ Examples of soft law include most UNGA Resolutions and Declarations, UN action plans, guiding principles, or codes of practice.

However, international human rights law is a mutable phenomenon, with the “soft” or “hard” status of a law, or the binding or non-binding status, being subject to change. There is a trend within international human rights law of soft law evolving into hard law, as evidenced by the “promulgation in recent years of a wide variety of quasi-legal instruments, from industry codes of conduct to guidelines issued by international organizations to achieve multiple and varied purposes”¹³⁷ within the international legal regime. This “heavy reliance on soft law”¹³⁸ as a “strategy of legalization”¹³⁹ is crucial in establishing legal support for the human right to positive peace through the examination of various human rights documents.

Lastly, while this thesis does contain elements of both qualitative and quantitative research, it is important to note that, at its crux, this thesis presents a legal analysis of the viability of a human right to positive peace and thus relies heavily on sources of law rather than other sources of research. Through this mixed method approach, however, this thesis shall advance the discourse surrounding the human right to positive peace and ground it firmly within international human rights law.

¹³⁶ Ibid.

¹³⁷ Jeffrey Dunoff et al., *International Law Norms, Actors, Process: A Problem-Oriented Approach*, (New York: Aspen Publishers, 2010), 74.

¹³⁸ Kenneth Abbott and Duncan Snidal, “Law, Legalization and Politics: An Agenda for the Next Generation of International Relation – International Law,” in *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, ed. Jeffrey Dunnoff (New York: Cambridge University Press, 2013), 77.

¹³⁹ Ibid.

IV. RESEARCH DATA MATRIX AND ANALYSIS: ESTABLISHING SUPPORT FOR THE RIGHT TO POSITIVE PEACE WITHIN HUMAN RIGHTS LAW

Before presenting the data collected through the qualitative research process conducted on a wide swathe of human rights documents, it is necessary to introduce the three sources of international human rights law that shall be applied to the data results to determine if they provide a suitable foundation for the codification of the human right to positive peace.

A. Possible Sources of Support within the International Legal Regime

When seeking a source of legal support in which to root the human right to positive peace, it is necessary to define the three primary types of international law: binding international law (or “hard law”), non-binding international law (or “soft law”), and customary international law.

1. Binding International Law (Hard Law)

Governing the rights and obligations of States, international law derives from centuries of State practice and is organized into two separate categories of binding and non-binding international law. Sources of binding international law are ranked in order of precedence in Article 38(1) of the Statute of the International Court of Justice (ICJ): international conventions, international custom, and general principles of law.¹⁴⁰ A convention is any legally binding agreement between States, and may take the form of a treaty, a protocol, a pact, or an accord.¹⁴¹

The nine core international human rights treaties are considered binding international human rights law, with each treaty having established a monitoring body to oversee implementation by State parties and enacted supplemental protocols clarifying specific issues.

¹⁴⁰ United Nations, Statute of the International Court of Justice, April 18, 1946, Art. 38(1).

¹⁴¹ “The Core International Human Rights Instruments and their monitoring bodies,” OHCHR, accessed December 1, 2022, <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>.

These core international human rights instruments, organized by the year each entered into force, are: International Convention on the Elimination of All Forms of Racial Discrimination (1965), the ICCPR (1966), the ICESCR (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the International Convention for the Protection of All Persons from Enforced Disappearance (2006), and the Convention on the Rights of Persons with Disabilities (2006).¹⁴²

Other sources of binding international law include UN Resolutions that are adopted by the UN Security Council under Chapter VII of the UN Charter, which are considered binding upon all UN Member States.¹⁴³ In addition, there are three principal regional human rights instruments: the African Charter, the American Convention on Human Rights, and the European Convention on Human Rights.¹⁴⁴

2. Non-Binding International Law (Soft Law)

Broadly speaking, any written instrument that contains principles, norms, standards, or declarations of expected behavior, that does not establish legal rights and obligations for the States which consent to be bound by that instrument, is considered “non-binding” in nature, meaning that it does not impose rights or duties upon State signatories. Soft law expresses a

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ “The Major Regional Human Rights Instruments and the Mechanisms for their Implementation,” in *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, OHCHR (2003), 71, <https://www.ohchr.org/sites/default/files/Documents/Publications/training9chapter3en.pdf>.

“preference and not an obligation that a state should act, or should refrain from acting, in a specified manner.”¹⁴⁵

Thus, non-binding instruments can take on a variety of forms, ranging from resolutions, declarations, recorded policy statements, guidelines, rules of professional conduct, and multilateral compacts.¹⁴⁶ Over time, the use of soft law has proliferated and “is playing an increasing role on the international plane . . . [these] non-legally binding instruments that nevertheless contain some degree of normative character . . . offer advantages. They may contribute to facilitating the development of a consensus and rules-based international order.”¹⁴⁷

Because soft law may carry significant moral or political weight, it is often used to establish political commitments without the potential burden of legal obligation.¹⁴⁸ An example of a non-binding instrument that has been adopted by State parties to indicate their commitment to its mandate due to its expertise and moral heft is the International Labour Organization’s “Declaration on Fundamental Principles and Rights at Work.”¹⁴⁹

In addition to the expanded use of soft law in international relations, so too has the identity of the “law-maker” expanded.¹⁵⁰ Though States remain the primary actors, non-State actors such as NGOs and transnational corporations are influencing the development of international law.¹⁵¹ Indeed, there is “a growing practice towards, and expectation of NGO

¹⁴⁵ Joseph Gold, *Interpretation: The IMF and International Law*, (The Hague: Springer Press, 1996), 301.

¹⁴⁶ “Non-Binding Agreements,” Oxford Encyclopedia of Public International Law, accessed on December 1, 2022, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1444?prd=EPIL>.

¹⁴⁷ “Non-Legally Binding Agreements and Instruments in International Law,” Permanent Missions of the Republic of Brazil, Mozambique, and Switzerland to the United Nations, New York, October 26, 2022, https://www.un.org/en/ga/sixth/77/pdfs/events/26_october_2022_3.pdf.

¹⁴⁸ “Guidance on Non-Binding Documents,” U.S. Department of State, accessed December 7, 2022, <https://2009-2017.state.gov/s/l/treaty/guidance/index.htm>.

¹⁴⁹ Gold, *Interpretation: The IMF and International Law*, 301.

¹⁵⁰ Rebecca Sims, “How Do We Understand International Law and Peace?” (MA Thesis, Georgia State University, 2018), 41.

¹⁵¹ *Ibid.*

participation at the UN” as the roles of international actors continue to evolve.¹⁵² As a result of this evolution, “NGOs have taken part in panel discussions, round table meetings, lobbying, monitoring treaty processes, insisting on state accountability, naming and shaming for non-compliance, and encouraging states to become parties to treaties and soft law instruments.”¹⁵³ Thus, while soft law remains non-obligatory in nature, it is possible for instruments of soft law to act as a strong foundation for the human right to positive peace due to soft law’s prevalence and its “moral and political weight”¹⁵⁴ within the international human rights legal regime.

3. Customary International Law

Considered the third primary source of international law, customary international law refers to the international legal obligations arising from established practice, as opposed to formal obligations in the form of signed conventions and treaties.¹⁵⁵ Customary international law requires two elements to be satisfied: (1) general and consistent practice of States, and (2) *opinion juris*, or a subjective sense of obligation on the behalf of a State that it is bound to act in a certain way.¹⁵⁶ Again, Article 38(1) of the Statute of the ICJ reinforces this standard of customary international law by affirming that, in addition to referring to international conventions, the ICJ shall also decide in accordance with “international custom, as evidence of a general practice accepted as law.”¹⁵⁷ Two common examples of customary international laws are the doctrine of non-refoulement, the prohibition against a State sending an asylum claimant back

¹⁵² Alan Boyle and Christine Chinkin, *The Making of International Law* (New York: Oxford University Press, 2007), 52.

¹⁵³ *Ibid.*, 81.

¹⁵⁴ U.S. Department of State, “Guidance on Non-Binding Documents.”

¹⁵⁵ “Opinio juris (international law),” Cornell Law School Legal Information Institute, accessed December 7, 2022, https://www.law.cornell.edu/wex/opinio_juris_%28international_law%29.

¹⁵⁶ *Ibid.*

¹⁵⁷ Statute of the International Court of Justice, Art. 38(1).

to their country of origin to face persecution, and the granting of immunity for visiting heads of state.

With regards to international human rights law, a widely accepted example of a previously non-binding human rights instrument transitioning into customary international law is that of the UDHR. At the time of its drafting, the UDHR was considered an unenforceable international bill of rights, declaratory and aspirational rather than binding in nature, intended only to reflect the international community's commitment to prevent a repetition of the atrocities of the Second World War and the Holocaust. The widespread consensus at that time was that it "would have been a rather daring statement to assert then . . . that the Declaration was a legally binding instrument."¹⁵⁸ However, it soon became apparent that the UDHR carried significantly more legal weight than originally thought: "[n]o sooner had the Declaration been adopted when it started to be used as a yardstick to measure the compliance by Governments with the international standards of human rights."¹⁵⁹ A hefty combination of State practice¹⁶⁰ and subsequent UN declarations and conventions¹⁶¹ treated the UDHR as binding in nature. Over time, it could no longer be claimed that the UDHR was composed of only a non-obligatory "moral force."¹⁶² As a result, it is widely accepted by legal scholars that the UDHR has long-since entered customary international law¹⁶³ and imposes binding human rights obligations upon its signatories.

¹⁵⁸ Egon Schwelb, *Human Rights and the International Community: The Roots and Growth of the Universal Declaration of Human Rights, 1948-1963* (New York: Quadrangle Books, 1964), 36-7.

¹⁵⁹ *Ibid.*, 38.

¹⁶⁰ *Ibid.*, 38-9.

¹⁶¹ See UNGA, "Declaration on the Granting of Independence to Colonial Countries and Peoples," G.A.Res.1514(XV), Art. 7, (December 14, 1960); see also ILO, "Convention Concerning the Abolition of Forced Labour," (ILO Convention 105), Preamble, ¶ 6, 320 U.N.T.S. 291 (January 17, 1959).

¹⁶² Schwelb, *Human Rights and the International Community*, 47 (stating that "it can no longer be maintained, whatever the position may have been in 1948, that the Declaration has 'only moral force.'").

¹⁶³ See Antonio Augusto Cancado Trindade, "Universal Declaration of Human Rights," UN Library of International Law, 2008, <http://legal.un.org/avl/ha/udhr/udhr.html>; J.P. Humphrey, "The Universal Declaration of Human Rights:

B. Research Results: Human Rights Documents Demonstrating the Existence of a Human Right to Positive Peace

An analysis of 100 human rights documents yielded 10 documents that, explicitly or implicitly, reference or rely upon the human right to a positive peace, indicating its viability under international human rights law. This data, mapped within the research matrix below, allowed for the development of a legal argument in support of the codification of this human right to positive peace. Each human rights document was analyzed according to both analytical frameworks, the Culture of Peace Framework (CP) and the Eight Pillars of Positive Peace Framework (EPP). In addition, it is noted whether the document in question constitutes hard or soft law in the international legal regime.

Document #	Document Title and Author	Relevant Excerpt	Source of Excerpt	Applicable Analytical Framework	Discussion of Relevance	Hard or Soft Law
1	Re-establishment of credible governance and public administration institutions and systems after conflict ¹⁶⁴ - <i>Economic and Social Council (ECOSOC)</i>	“Young people are frequently “othered” in post-conflict reconstruction. Alternating between demonization and infantilization, they rarely have their own voice, even though the ranks of rebel movements are full of young people, and others play multifaceted roles. Youth should be conceptualized as agents of positive peace in terms of more than the challenges of physical violence, incorporating structural and cultural violence and the social changes necessary for the transformation of violent, oppressive and hierarchical structures and public administration into participatory and inclusive institutions.”	Pg. 14	CP	Here, ECOSOC is acknowledging the important role that younger generations play in transforming discriminatory and harmful societal structures and encourages communities to (1) educate and empower the youth in implementing social change, and (2) promoting the rights of children, in accordance with Guidelines 2 and 6 of the CP Framework.	Soft law
2	Promoting effective governance and institutional reform to accelerate the delivery of the Sustainable Development	“Funding for technical equipment and support for managing vast amounts of data related to electoral processes, ranging from voter registration to counting and results, could enable big leaps forward in terms of accelerating the achievement of the	¶16	EPP	Here, the Committee recommends improving effective governance in fragile and conflict-affected contexts in order to promote the growth of a positive peace beyond the absence of short-term gains in the reduction of violence, in line	Soft law

Its History, Impact and Judicial Character,” in Human Rights, *Thirty Years After the Universal Declaration*, ed. B.G. Ramcharan, (The Hague: Nijhoff Books, 1979), 37.

¹⁶⁴ Economic and Social Council, “Re-establishment of credible governance and public administration institutions and systems after conflict,” January 7, 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/002/84/pdf/N2000284.pdf?OpenElement>.

	Goals ¹⁶⁵ - <i>UN Committee of Experts on Public Administration</i>	Sustainable Development Goals and setting the pathways for long-term transformation. Such incentives could also help to achieve peace and stability, which is a precondition for achieving all the Goals by 2030.”			with Guideline 1 of the EPP Framework.	
3	Recommendation No. 205 on Employment and Decent Work for Peace and Resilience ¹⁶⁶ – <i>International Labour Organization (ILO)</i>	“In taking measures on employment and decent work in response to crisis situations arising from conflicts and disasters, and with a view to prevention, Members should take into account the following: (a) the promotion of full, productive, freely chosen employment and decent work which are vital to promoting peace, preventing crises, enabling recovery and building resilience.”	Art. II	CP / EPP	Here, the ILO is promoting the value of employment and decent work ¹⁶⁷ in ensuring stable and peaceful societies, as there are proven links between high rates of unemployment and poverty and violent conflict, in consensus with Guidelines 3 and 4 of the CP Framework and Guideline 2 of the EPP Framework.	Soft law
4	UNSC Resolution 1325 (2000) ¹⁶⁸ – the first of the UNSC Resolutions known as the “Security Council Resolutions on Women, Peace and Security”	“Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.”	¶8	CP	In acknowledging the correlations between gender inequality and violent, armed conflict and calling for the promotion of gender equality as a means to ensure sustainable peacebuilding efforts, UNSC Resolution 1325 corresponds with Guideline 5 of the CP Framework.	Hard Law
5	UNESCO’s 2011 “Reading for Peace” Campaign ¹⁶⁹	“Literacy for Peace” is the theme for the celebrations this year. “Today I	¶3	CP	With its “Reading for Peace” campaign, UNESCO is	Soft law

¹⁶⁵ Economic and Social Council, Committee of Experts on Public Administration, “Promoting effective governance and institutional reform to accelerate the delivery of the Sustainable Development Goals,” March 18, 2020, https://sustainabledevelopment.un.org/content/documents/25956CEPA_contribution_to_2020_HLPF.pdf.

¹⁶⁶ International Labour Organization (ILO), “Resolution 205, R205 - Employment and Decent Work for Peace and Resilience Recommendation,” 2017, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3330503.

¹⁶⁷ The ILO defines “decent work” as summing up “the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for all, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.” “Decent Work,” ILO, accessed December 6, 2022, <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>.

¹⁶⁸ United Nations Security Council (UNSC), “Resolution 1325, S/RES/1325 (2000).”

¹⁶⁹ “Illiteracy: a real challenge for peace in Iraq,” UNESCO, September 9, 2011, accessed December 3, 2022, <https://reliefweb.int/report/iraq/illiteracy-real-challenge-peace-iraq>.

		urge governments, international organizations, civil society and the private sector to make literacy a policy priority, so that every individual can develop their potential, and actively participate in shaping more sustainable, just and peaceful societies.”			highlighting the links between low literacy rates and higher rates of armed conflict, in conjunction with Guideline 3 of the CP Framework.	
6	UNDP’s Governance for Peace: Strengthening Inclusive, Just and Peaceful Societies Resilient to Future Crises ¹⁷⁰ – the UN Secretary General’s (UNSG) 2020 Report on Sustaining Peace and Peacebuilding	“UN policy and programming coherence has grown on strengthening national and local governance capacities through joint analysis, planning and implementation, where possible, as a central element of the UN’s broader governance and peacebuilding efforts. Rooted in the Secretary-General’s sustaining peace agenda, UNDP and PBSO lead the UN Interagency Platform for Strengthening Core Government Functions in Fragile and Crisis-affected Settings . . . The Interagency Platform convenes all UN governance and fragility capacities to jointly assess, plan, and deliver assistance to restore and/or strengthen core governance institutions at the national and local levels across the spectrum of development contexts where institutional capacities to govern equitably, responsively and in a transparent manner are either dysfunctional, deteriorating, completely disrupted or are increasingly fragile.”	¶18	CP /EPP	Both Guidelines 8 of the CP Framework and Guideline 1 of the EPP Framework emphasize the importance of good governance, the rule of law, and especially government transparency and accountability in successfully transitioning into a society based in positive peace. With this report, UNDP and the UNSG are “[r]ecognizing that responsive, inclusive and accountable governance lies at the heart of achieving the [Sustainable Development Goals] and sustaining peace.” ¹⁷¹	Soft law
7	Towards shared prosperity and destiny in an integrated, peaceful and caring ASEAN Community ¹⁷² - <i>Vientiane Action Programme 2004-2010 (VAP)</i>	“In support of our commitment to enhance a political environment in which ASEAN Member Countries have strong adherence to peaceful ways of settling intra-regional differences and regard their individual security as fundamentally linked together and bound by geographic location, common vision and shared values, the strategies for political development are: i. Promote understanding and appreciation of political systems, culture and history of member	§ 1.1	CP/EPP	Both the CP and EPP Frameworks explicitly highlight the importance of the “free flow of information” in enabling the development of a society transformed by positive peace (Guidelines 7 and 6, respectively). Here, the Vientiane Action Programme prioritizes the facilitation of the free flow of information in encouraging “peaceful ways” amongst the ASEAN Member Countries. In addition, the Vientiane Action Programme also notes the necessity of “promoting understanding and appreciation of political systems,	Soft law

¹⁷⁰ “Governance for Peace: Strengthening Inclusive, Just and Peaceful Societies Resilient to Future Crises,” UN Development Programme (UNDP), 2020, accessed December 3, 2022, <https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/undp.pdf>.

¹⁷¹ *Ibid.*, 3.

¹⁷² “Vientiane Action Programme (VAP),” ASEAN, November 29, 2004, accessed December 3, 2022, <https://asean.org/wp-content/uploads/images/archive/VAP-10th%20ASEAN%20Summit.pdf>.

		countries through increasing people-to-people contacts and track-two activities; ii. Promote human rights and obligations; iii. Lay the groundwork to establish an institutional framework to facilitate the free flow of information among ASEAN Member Countries.”			culture and history of member countries,” directly corresponding with Guideline 5 of the EPP framework, “Good Relations with Neighbors,” which states that “harmonious relations with other countries or between ethnic, religious, and cultural groups within a country are vital for peace.”	
8	WHO Global Health for Peace Initiative (GHPI) ¹⁷³ – the World Health Organization (WHO)	‘Peace-responsive programming: from working in conflicts to working on conflicts. The Health and Peace approach is rooted in Article 1 of WHO’s Constitution, namely: the “attainment by all peoples of the highest possible level of health”. It is articulated by WHO’s Director-General as “a world in which everyone can live healthy, productive lives, regardless of who they are or where they live” and where the “right of every individual to basic health services” is realized. Peaceful, resilient and inclusive societies are indispensable to the attainment of health in FCV [fragile, conflict-affected and vulnerable] settings. Vision: To this end, WHO will build on its technical competencies, legitimacy, relationships and convening power in health to develop innovative ways to address conflict, strengthen resilience to violence and empower people to (re)build peaceful relations with each other. Harnessing its comparative advantages, WHO will contribute to generating peace dividends in settings where health, and/or the provision of health care, is hampered by violence and civil unrest.”	¶3	EPP	In advocating for equal access to health care and health services both in conflict zones and in peacebuilding efforts, WHO is drawing the same connections between health and positive peace as Guideline 3 of the EPP Framework, which states “peaceful countries tend to ensure equity in access to resources such as education, health.”	Soft law
9	Business for Peace ¹⁷⁴ – the UN Global Compact	“The Business Case for Advancing Peace Businesses need socially stable, healthy and economically viable markets to succeed. While the	¶¶1-2	EPP	As the largest voluntary (therefore non-binding) sustainability initiative, the UN Global Compact encourages businesses and	Soft law

¹⁷³ “WHO Global Health for Peace Initiative (GHPI),” World Health Organization (WHO), 2020, accessed December 1, 2022, <https://www.who.int/publications/i/item/9789240005792>.

¹⁷⁴ “Business for Peace,” UN Global Compact, (UNGC), accessed December 1, 2022, https://d306pr3pise04h.cloudfront.net/docs/networks_around_world_doc%2Fresources%2Fengagement_framework%2Fbusiness_case%2Fbusinesspeace_businesscase.pdf.

		<p>primary responsibility for peace, security and development rests with Governments, businesses have a critical role to play in contributing to the stability and security in conflict-affected and high-risk areas. . . Business for Peace (B4P) is a leadership platform dedicated to expanding, advancing and deepening private sector action in support of peace in high-risk and conflict-affected areas, which encompass areas affected by the following conditions: violent conflict, including war or insurrection; elevated political and social risk or instability; lack of social and economic opportunity; concerns about human rights abuses and systematic discrimination; and/or attempts to transition out of conflict. The B4P initiative aims to catalyze corporate action and partnerships to support peace in the workplace, marketplace, and local communities.”</p>			<p>corporations to adopt environmentally sustainable and socially responsible business practices.¹⁷⁵ With its B4P Project, the UN Global Compact applies the strong connection between business and peace in encouraging powerful corporations to utilize their influence for the public good, in accordance with Guideline 2 of the EPP Framework.</p>	
10	Poverty and Conflict ¹⁷⁶ - Governance and Social Development Resource Centre (GSDRC)	<p>“Poverty and conflict are widely understood to be closely interconnected; with poverty making countries more prone to civil war, and armed conflict weakening governance and economic performance, thus increasing the risk of conflict relapse . . . understanding of the effects of conflict over time is still nascent. Evidence from Burundi suggests that households exposed to violence at the local level are more likely to face long-term poverty and deprivation than those who were spared.”</p>	¶¶1-5	CP	<p>In focusing on the strong link between poverty and conflict, where the GSDRC notes that, “[a]t the state level, poverty can lower resilience to conflict by weakening government institutions, stripping capacity for public goods provision, and limiting the projection of power and authority, whether soft or coercive. Poverty also compounds vulnerability to insurgency at the individual and community level by lowering the opportunity cost of mobilizing for violence. High rates of unemployment and inequality, combined with low levels of education and development, are thought to soften the ground for recruitment and provide motives to fight,” the GSDRC is in alignment with Guideline 3 of the CP Framework, which affirms the need to eradicate extreme poverty in the development of positive peace.</p>	Soft law

¹⁷⁵ “The world’s largest corporate sustainability initiative,” UNGC, accessed December 1, 2022, <https://www.unglobalcompact.org/what-is-gc>.

¹⁷⁶ “Poverty and Conflict,” Governance and Social Development Resource Centre (GSDRC), last modified October 2016, <https://gsdrc.org/professional-dev/poverty-and-conflict/>.

C. Applying a Human Rights-Based Analytical Framework: Incorporating the Research Data into a Legal Analysis of the Viability of a Human Right to Positive Peace

As indicated by the data collected through analysis of 100 human rights documents through the application of the CP and EPP analytical frameworks, the resulting conclusions may be extrapolated:

1. Ten documents contain substantial, albeit often indirect, reference to elements comprising the human right to positive peace, meaning that 10% of the documents within this in-depth survey of human rights documents reinforce the viability of a standalone human right to positive peace;
2. Of the two analytical frameworks utilized in the research process, the Culture of Peace Framework (CP Framework) and the Eight Pillars of Peace Framework (EPP Framework), the CP Framework was applied a total of 7 times, and the EP Framework was applied a total of 6 times. Application of the two frameworks overlapped for 3 of the relevant human rights documents. The following Guidelines of the CP and EPP Frameworks were referenced:

- a. Guidelines 2, 3, 4, 5, 7, and 8 of the CP Framework;
 - a. Guideline 3 of the CP Framework, which calls for the eradication of poverty and illiteracy, with the goal of “reducing inequalities within and among nations,” was applied on three occasions, leading to the inference that the elimination of extreme inequality and poverty should be considered a priority in the establishment of a human right to positive peace.
- b. Guidelines 1, 2, 3, 5, and 6 of the EPP Framework;

3. The majority of the relevant human rights documents (9 out of 10) constitute soft, or non-binding law, with 1 out of 10 documents, specifically UNSC Resolution 1325, consisting of hard law;
4. 80% the relevant human rights documents (8 out of 10) were authored by a UN organ, programme, agency, or entity, with 2 documents originating from non-UN sources: the political and economic union of ASEAN and a human rights and rule of law research non-profit organization.
 - a. UN Organ
 - a. UN Security Council
 - b. UN Programmes:
 - a. UNDP
 - c. UN Agencies
 - a. ILO, WHO, UNESCO, World Bank
 - d. UN Entities
 - a. UN Global Compact
 - e. Non-UN entities:
 - a. ASEAN Community- *Vientiane Action Programme*
 - b. Governance and Social Development Resource Centre

Fundamentally, this collected data reveals the unmistakable presence of positive peace within international human rights law. Throughout these documents, the essential elements that contribute to a state of positive peace, where not only is there an absence of direct violence or armed conflict, but there exists an active “construction of just social institutions that guarantee equal opportunity, a fair distribution of power and resources, equal protection, and impartial

enforcement of law,”¹⁷⁷ are presented as either the end goals of the human rights document or as necessary components in achieving those targets. While only Document #1 explicitly contains the term “positive peace,” the remaining documents reference the basic building blocks that compose a state of positive peace, ranging from eradicating poverty, attaining gender equality, promoting literacy and equal access to education, and ensuring decent employment. Thus, while the term “positive peace” rarely expressly appears within the text of these human right documents, it is evident that conditions of positive peace are nevertheless vital to the fulfillment of the human rights promoted by these organizations.

Because the majority of the human rights documents analyzed constitute soft law and reference positive peace only implicitly, it is not possible to construct a foundation rooted in obligatory law, or hard law, for the human right to positive peace. Consequently, however, support for the codification of a human right to positive peace is established within the realm of non-binding human rights law, or soft law. As soft law is an expression of a “preference . . . that a state should act, or should refrain from acting, in a specified manner,”¹⁷⁸ it may be inferred that the analyzed human rights documents are expressing a strong preference for the conditions of positive peace.

While soft law does not impose the same obligatory duties as hard law, due to its “moral and political weight” and the increasing prevalence of soft law in establishing international political or moral commitments, it is possible for instruments of soft law, such as UNESCO’s “Reading for Peace” campaign or the ILO’s “Recommendation No. 205 on Employment and Decent Work for Peace and Resilience,” to constitute a robust foundation for the human right to positive peace within the international human rights legal regime.

¹⁷⁷ Hayden, “Constraining War: Human Security and the Human Right to Peace,” 43.

¹⁷⁸ Gold, *Interpretation: The IMF and International Law*, 301.

Furthermore, non-binding political commitments may evolve into binding international law over time through the process of transitioning into customary international law, where a general and consistent State practice, that States undertake due to a subjective sense of obligation, becomes binding customary international law. Thus, it is possible for the human rights commitments expressed by soft law human rights documents to eventually shift into binding international law, as demonstrated by the progressive legal status of the UDHR. Therefore, while support for the human right to positive peace is currently grounded within soft law instruments, eventually this support may be rooted within binding customary international law, instead.

Thus, as demonstrated by the data collected from an analysis of a wide range of human rights documents, positive peace is already present within international human rights law. Codifying a standalone human right to positive peace would reinforce the importance of fulfilling the human rights necessary to achieve a state of positive peace within a society.

V. CONCLUSION

By establishing a standalone human right to positive peace based within soft law instruments, it is possible to overcome the UN legal regime's decades' long preferential promotion of negative peace. In codifying the human right to positive peace and subsequently shifting the UN's focus to achieving the more holistic state of positive peace, the attainment of just and equal societies, where all fundamental human rights are respected, comes closer within reach, as "[i]s not peace . . . a matter of human rights?"¹⁷⁹

¹⁷⁹ Kennedy, "Commencement Address."

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