

# INTERNATIONAL GOVERNANCE BETWEEN PARTICIPATION AND LEGALITY \*

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## 1. The tension between collective security and human rights at international level

In current practices in international relations two basic needs compete: collective security and the full respect and promotion of human rights or, more in general, the rule of law. Indeed, human rights and international legality have come under attack because of the increasing priority given to collective security, even when it might cause a breach of relevant international rules.

This tension is evident in diplomatic Statements which take into consideration, on the one hand, the legality in the use of armed force in the recent international events and on the other hand, the impact which that use has had on the individual's statute. With regard to the first point, suffice it to mention the critical assessment expressed by some organizations, such as Amnesty International, on the assumed humanitarian character of the intervention in Yugoslavian territory. As to the second point, we refer, in particular, to the report prepared by Mr Bassiouni "on the situation of human rights in Afghanistan". It points out how the socio-political and juridical-institutional context of that country negatively affects the individual statute and the observance of the rule of law, in such a way as to entail «gross violations of fundamental rights» caused by «problems of security in a country that is still dominated by the military power».

This tension - and the relevant breach of the law - comes out mainly of the domestic and international judicial case law, which registers widespread violations of human rights in

connection with the use of international armed force. What is indicative in this jurisprudence is the fact that the same assessment on the matter at issue has been expressed by the domestic courts of the States engaged in military operations, by the international courts, set up by these States to check the fulfilment of the duties derived from the conventions in defence of human rights, and by the international courts set up to settle disputes between States which deal with questions about the legality of the use of force.

It should be noted that this tension is not exclusively a result of the present situation: rather, it represents a constant factor of the political and legal debate at international level.

It is a debate, which even in past times, has characterised the events marked by the use of armed force, in such a way as to affect the insertion in the international documents in defence of human rights of clauses which impose as unbreakable some rights and freedoms of a person, and single out a minimum standard of guarantees, under which the compression or the denial, tout court, of those rights and freedoms cannot be justified, not even to protect the national and international security of a State. However, nowadays this tension has become more and more intense due to transnational terrorism and to the threats relating to weapons of mass destruction.

## 2. This paper's task

We want to avoid a theological approach to the subject in question, neither do we want to present it from the viewpoint of a national or international operator.

It will rather focus on legal questions. In particular, it has three aims:

first of all, to point out the international legal regime established in order to maintain peace and security and applied to those situations which cause or may give rise to the use of force; to highlight the evolution of the legal regime in order to secure a minimum standard of treatment for all individuals involved in an international or non-international conflict. Therefore, our starting point is the *ius ad bellum* and *ius in bello*;

second, to compare the legal regime with the Social Doctrine of the Church, in order to analyse how the latter faces these crucial problems. This will be done in two ways: by re-reading “Gaudium and Spes” and the Pope’s Statements and addresses on this subject and by analysing the Church’s attitude in practice;

third, to verify if there is a dialogue between the two levels (i.e. the legal regime and the Social doctrine) in domestic and international environment. In other terms: how the Church can shed light on the legal challenges the world is currently facing at international level.

# I. INTERNATIONAL DOCTRINE AND PRAXIS

## 3. Legal issues about international governance

The normative and institutional international legal regime established to define and promote international peace and security is organised around two pillars: the duty of each subject of the international community to find a peaceful settlement of international disputes; the parallel duty of each actor of the international arena to respect human dignity.

Both these duties are guaranteed by international rules of *ius cogens*, which may not be derogated.

The link between these two distinct (but strictly related) rules derives from the current attitude of the international collective security system, oriented towards a positive notion of peace. Therefore peace is no longer defined as the lack of conflict, but rather as a number of situations which together contribute to the building of those conditions that should secure harmony among the Nations.

This perspective is very different from the original United Nations approach and is becoming more and more evident through recent Security Council practice. This body now considers grave and massive breaches of human rights as situations able to undermine international peace and security (in the same way that the Security Council regarded the «human tragedy» in Somalia, the «humanitarian crisis» in Rwanda, the «ethnic minorities repression» in Iraq, to quote some examples).

Finally, notwithstanding the fact that the maintenance of peace is the first concern of the UN Security Council (even when this implies choosing between the latter and the protection of human rights and freedoms), human rights are starting to be considered a benchmark for determining whether a threat to peace does exist or not. In other words, the idea of peace has to be seen today also in the light of the respect of human rights; violations of human rights might «determine the existence of any threat to the peace, breach to the peace or acts of aggression» (art. 39 of the UN Charter).

#### **4. Traditional and emerging (apparent and not apparent) dichotomies.**

Nowadays, more than ever, it is essential to reconsider the international juridical system established both to face situations which might lead to the use of force as a means of maintaining national and international security, and to guarantee the maintenance of the minimum standard of protection of those people involved in these conflicts. Such a reconsideration is extremely necessary to direct political decisions towards solutions which are observant of the international legality and to suggest reforms of those rules of the international regime which seem to be inadequate.

The tension we refer to between collective security on one side and human rights on the other emerges from some dichotomies.

##### **4.1. Prohibition of the use of force and each State's inherent right of self-defence.**

The first dichotomy derives from the complex collective security system set up by the San Francisco Charter, which has given shape to the UN organization, spiritual heir of the Covenant of the League of Nations and of the Kellogg- Briand Pact. In particular, article 2.3

and article 2.4 of the UN Charter call upon States to settle their international disputes by peaceful means, refraining in their international relations from the use of force. Hence the power has been conferred on the Security Council, under article 42, to take «such action by air, sea or land as may be necessary to maintain or restore international peace and security». However the prohibition of the use of force coexists with the parallel inherent right of self-defence of each State (article 51).

We will come back in the course of the discussion to the complex and much-criticised system set out in the Charter.

Henceforth, it should be noted how this system, ever since it first started operating, has been subjected to tension. Indeed, during the Cold War, States' attempt to compress the prohibition from the unilateral resort to the use of force and consequently to increase their margin of manoeuvre, turned into an effort to support a broad interpretation of the two elements which necessarily have to occur to give rise to an international responsibility: the objective one, consisting of a breach of an international obligation and the subjective one, referring to the attribution of this action or omission to the State under international law.

The acceptance of a broad interpretation of “armed attack” or “act of aggression”-which is the most serious form of the use of force - enables firstly to include a greater number of conducts within the scope of self-defence, for example, in response to an aggression which is only feared - but neither imminent nor underway - or already concluded; furthermore, such interpretation enables to ascribe to an international subject actions which are not formally referable to its sphere of activity for instance, terrorist acts committed by individuals or groups of people.

In those years the conventional regime “held” quite well, even if it operated just on rare occasions because of the rigidity of superpowers block entrenched in a regional defence system which prevented the Security Council from operating.

From a procedural point of view, the UN system has not been able to operate as originally envisaged in the Charter. The Security Council, in fact, rather than using the force itself (as provided by article 43 and subsequent articles), has authorised States to carry out military actions or has delegated it to regional arrangements ( in accordance with article 53).

The proof that the conventional regime “held” is indirectly provided by the fact that this juridical regime is considered as a reproduction of the general international law. Therefore, the principles which it implies bind even those few subjects of international law who are not part of the UN system yet; and give rise to a new rule of general international law which can help for the interpretation of the conventional rule even filling its gaps.

#### **4.2. Territorial integrity and treatment of the person:**

Another dichotomy emerges in relation to the right of each State to its territorial integrity and the treatment of the person (State's boundaries have to be intended not only in the physical sense of the term). The corollary of the principle of the territorial integrity is the duty on the part of States to refrain from intervention in the internal or external affairs of other States, for example to protect people, whether they are citizens of the territorial State or of a third State. So matters within the competence of States under general international

law are said to be within the reserved domain, the domestic jurisdiction, of States. This is tautology, especially in the light of the international rule on the protection of the person

#### 4.2.1. As an individual in general and in the situations of *ius in bello*;

Contemporary western juridical tradition recognises a conception of the human being according to which each element of the context in which s/he lives should be addressed.

The centrality of the individual is affirmed in the constitutional orders which establish the inviolability of human dignity.

For this purpose a great number of charters on the protection of human rights, as well as international agreements of humanitarian law have been adopted. In short, it should be noted that the former (i.e. the charters) provide the protection of the individual as such, both in peacetime and in wartime, and standards to interpret the latter (i.e. the international agreements), which, on the contrary, operate in wartime in the attempt to make war more humane. Besides regulating the conduct of hostilities, the conventions relating to armed conflicts are also intended to protect persons not actively engaged in warfare (i.e. the civilians); those who are *hors-de combat* (i.e. the wounded and sick in armed forces in the field, the ship-wrecked members of the armed forces at sea and the prisoners of war). The protection covers also journalists, medical, religious and other humanitarian personnel.

Even in this elementary distribution of competences between the laws relating to the protection of human rights and international humanitarian law, it is evident the central role that human dignity plays in both juridical systems.

Contemporary international practice confirms the above. In particular, it shows States' firm belief that the valuation of which situation may compromise human dignity is no longer an internal affair shielded by the principle of domestic jurisdiction; and this regardless of the fact that the situation occurs in peacetime or in wartime, in the case of an internal conflict or an international one or during a "low intensity" conflict, that refers to the maintenance of the internal public order.

In this context we should consider the rules of most international instruments dealing with human rights. Such instruments, on the one hand, recognize the State's power to evaluate whether and to what extent a person's right or freedom can be compressed to the common advantage; on the other hand they protect inherent dignity and proclaim its inviolability by providing which rights and freedoms may not be derogated «even in times of war or other public emergency threatening the nation» (article 15 ECHR). These are the rights to life and human treatment, the prohibition on torture and slavery. Not only regional treaties, such as the European convention on human rights, but also international treaties provide an extensive protection of human dignity. Among those multilateral treaties of particular relevance here is the International Covenant on Civil and Political Rights of 1966, whose article 4 limits the hypotheses of evaluation and extends the cases of non-derogation to other situations considered detrimental to individual dignity. Therefore, the conduct of the parties to an armed conflict should be marked by the respect of human dignity as encoded in "Marten's clause". The latter provides that «in cases not included in the Regulations... the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usage established among civilised peoples from the laws of humanity and the dictates of the public conscience». Not only States but all

subjects taking part in hostilities whether they be governments or non- governments are bound to this clause.

#### 4.2.2. As people;

It is in this context, where the principle of territorial integrity struggles to coexist with the protection of human rights, that the principle of self-determination emerges on two levels: the first being external and the other internal.

As far as the former is concerned, it requires a State to take action by means of its foreign policy consistent with the attainment of self-determination in the remaining areas of colonial or racist occupation. In other words, according to this principle States shall promote the realisation of the right of all people to freely determine their own political status. On the contrary, the principle of internal self-determination, which has not been completely affirmed yet, is directed to the State's own peoples and implies that a State should enable people to have a representative and democratic system.

Both dimensions might erode not only the territorial aspect of the principle of territorial integrity (for example, in case of secession of territory from an existing State), but also the integrity of the sovereign power, giving rise to a right of external valuation on the legality of State's authority. Such an evaluation should take into consideration as parameters the respect of human rights (i.e. the rights of the individual, of peoples and of minorities), as well as the democratic nature of the political regime.

#### 4.2.3. Humanitarian intervention

In this context the problem of humanitarian intervention should also be considered. What we are referring to is intervention in order to protect the lives of persons situated within a particular State (not necessarily nationals of the intervening State) and subjected to inhumane and degrading treatments; an intervention carried out without the consent of the territorial sovereign. Thanks to the western countries, a new belief is making its way forward: the exigency to resolve from a juridical point of view the antinomy between the violation of the territorial integrity and external interference justified by the necessity to stop gross and widespread violations of human rights. This rule has not been established yet, mainly because it is feared that this "duty" (or "right") of humanitarian intervention might be used for other purposes. The only remedy is to resort to the collective security system established by the UN, which invests the Security Council with the power to use armed force once it has decided that there exists a threat to the peace with regard to a humanitarian emergency.

#### 4.3. Human rights and security council sanctions

The actions adopted by the Council, once it has resolved that a particular dispute or situation involves a threat to the peace or an act of aggression may fall into either two categories. It may amount to the application of measures not involving the use of armed force under article 41, such as the disruption of economic relations or the severance of diplomatic relations, or may call for the use of such force as may be necessary to maintain or restore international peace and security under article 42.

The power of the Security Council to impose sanctions on the basis of article 41 of the Charter clashes with the protection of human rights. Indeed, more than governments, such measures may affect the civil society, especially those who are more vulnerable, since «they often cause significant disruption in the distribution of food, pharmaceuticals and sanitarian supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work». In order to make up for these negative and non-intentional consequences, the new practice of the Security Council has opted for the inclusion, in its resolutions imposing economic sanctions, of reservations of humanitarian nature (for example, providing humanitarian corridors or authorizing the flow of essential goods). However, up to now there are not remarkable results as to the attainment of a greater respect of peoples' dignity.

#### 4.4. Prohibition of the use of force and codification of warfare

Following what we have said above it might seem that there is a basic incoherence in contemporary international law: the peaceful settlement of disputes is a principle of *ius cogens*, which coexists both with the right of self defence (provided in article 51 of the UN Charter), enabling the unilateral resort to war when a conflict arises, and with the collective security system, which in its turn uses force for the same purpose.

This legal situation leads to another antinomy: the prohibition of the threat or of the use of force seems, in fact, to contrast with the encouragement to codify the rules regarding warfare. This fact can be explained by noting that when States resort to the armed force at odds with the normative and institutional system established by the international law, the latter cannot but take cognisance of the situation and try to constrain the conduct of military operations in a humanitarian fashion, preventing the extension of the conflict to third States. That is the objective of the international humanitarian law codified in the "Hague system" and in the "Geneva System".

### 5. Widespread illegality in both State's and individuals' behaviour to use force and to warfare.

In situations where the threat or the use of force and massive violations of human rights are concerned, the common feature appears to be the widespread illegality in both States' and individuals' behaviour. Illegality characterizes the decision to use force and warfare. The conflicts in Kosovo (1999), in Afghanistan (2001) and in Iraq (2003) testify the tension to which the juridical system is submitted, the difficulties to reconcile the antinomies, and the attempts to pressurise the existing system with illegal actions.

#### 5.1. International responsibility in compromising international peace

A widespread illegality characterizes the conduct of those who have resorted to force. We should consider first of all the actions of those who have had the initiative to use force to compromise international peace. As to terrorist activities - which is the *casus foederis* in Afghanistan and, to some extent, Iraqi conflicts - any further comment would be superfluous, since they have been condemned by all; whereas we should examine the

perception of their gravity and whether it exists or an international rule is in the making which qualifies the act of terrorism as individual crime.

As to the military operations on Yugoslavian territory - which has determined NATO's reaction - their aptitudes to compromise peace and international security is ascertained; and the same is true of the possession of arms of mass destruction.

Secondly, we should consider the reaction to an act of terrorism and verify if the exercise of the right of self-defence (by article 51) or the use of force authorised by the Security Council are legitimate as reactions to an illegal act of war (armed aggression). The issue is extremely complex since three variables should be taken into account: the first one concerns the objective element of international responsibility (i.e. illegitimate use of the force able to threaten peace); the second deals with the subjective element (attribution of such illegal conduct to an international subject); the third variable regards the limits of the reaction because it could be considered legitimate and not an act of retaliation.

This is not the right place to discuss such matters: we merely want to propose some conclusions that could be useful for the second part of the report.

Regarding the objective element of the international responsibility, behaviours such as the September 11th attacks, their violation of the rule which prohibits the use of force in international relations and their characteristics (the nature of the objectives chosen by the terrorists, the way of carrying out the attacks, the induced effects), would authorize an answer which implies the use of force, firstly as an exercise of the right of self-defence and secondly to execute the authorization of the Security Council.

The same can be said in the case of a political authority, which causes a conflict in its territory; and also when such political authority would own - with high probability - mass destruction weapons. Even though there is no accepted definition of aggression, these acts can be reconducted to this matter.

With regard to the subjective element of the responsibility, the Yugoslavian and the Iraqi events do not present particular problems. In both cases the majority of acts, against which it has been necessary to react by self-defence, were of government's organs, or of people bound to the State by a formal relation. In the first case NATO's action was meant to face a humanitarian catastrophe determined by the policy carried out by the Yugoslavian public authorities; in the Iraqi case the "Coalition of the willing" has operated to force the political leaders of that country to comply with the resolutions adopted by the Security Council in the nineties dealing with the total elimination of the weapons of mass destruction. The individuals responsible for the humanitarian catastrophe or for the hypothetical possession and usage of such weapons, being among the highest political and military authorities in the respective States, acted on the States' behalf. Therefore their conduct, has been considered a breach of the international rule which prohibits the use of armed force and so an aggression act.

More complex and less univocal is the situation determined by the use of force in Afghanistan: indeed, in that circumstance, self-defence has been resorted to in order to reply to an act of terrorism committed by people who were not formally linked with that country. The need to face the danger of international terrorism is also one of the reasons advanced to justify the intervention in Iraq. In this hypothesis, it might refer to the General Assembly resolution No. 3314(XXIX) which deals with State activities involving the «sending by or

on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State (...)». The International Court of Justice has denounced these activities as contrasting with the provision of the UN Charter since they are similar to the use of force by a State (the sender State). When there is this connection the responsibility of the individual act might be ascribed to the juridical domain of the State: this relation would not be asymmetric any longer and it would be possible to exercise the right of self-defence against the international subject responsible for the breach of peace. However, we think that current developments in international law, caused by the indubitable dangerousness of the terrorist threat, should be addressed to a more rigorous practice, implying a better control of the effectiveness and intensity of this link by means of trial criteria derived from the internal and international practice. Both, in fact, have already outlined the boundaries of those situations, which involve the exercise of State prerogatives by a group of individuals, or, on the contrary, the State control upon these subjects, and they clearly define the concept of complicity existing between the terrorist and the State. In relation to the Afghanistan events this relation has been easily established on the basis of the facts observed and of the practice developed within the UN before the attacks of September 2001. Whereas, with regard to the Iraqi event it is difficult to accept the thesis that this link was proved beyond all well-founded doubts: suffice it to consider the reports delivered by the public authorities of the States which claimed the existence of a connection between Iraq and Al Qaeda to justify their use of forceful measures.

Finally, we should refer to the limits within which the reaction to an international unlawful act is legitimate. The current normative and institutional measures system establishes that when there are not the conditions to exercise the right of self-defence, it is up to the Security Council to determine the existence of any threat to, or a breach of, the peace or act of aggression. This is the key to the collective security system. Once such determination has been made, in accordance with article 39 of the UN Charter, the way is open whether to the use of armed force as legitimate response, or to the exclusion of such a resort.

With regard to the right of self-defence, article 51 of the UN Charter establishes that it can only be resorted to «if an armed attack occurs» or, according to the current interpretation, in occasion of “actual armed attacks”. The immediateness of the response is a condition necessary because self-defence became legitimate. Indeed, it is argued that under article 51 of the UN Charter self-defence and the consequent use of armed force is an exceptional measure, whose essential aim is to repel an armed attack, instant, overwhelming, leaving no choice, and until the Security Council has taken measures necessary to maintain international peace and security.

From this point of view, Afghanistan practice, breaking with the spirit and the specific provision of article 51, can only be qualified as armed reprisal. It is, in fact, a subsequent response to an act of aggression. The same is true of the Iraqi practice, in relation to which the notion of imminent threat has been developed, using the concept of «pre-emption» «to adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries». It is claimed that «the greater the threat, the greater is the risk of inaction - and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively».

When there are not the conditions of self-defence, the restoration of world peace and security is achieved by means of the collective security system, whose implementation, under customary international law is quite different from that provided by the UN Charter.

The UN Charter established an international organization, in which States, pursuant to article 43, would make armed forces available to the Security Council to counteract threats to the peace. This has not occurred. In its stead, the Security Council has authorised member States to use force: in essence franchising UN members to act on the Organization's behalf.

Such authorization is not questioned in the current practice, so much so that its existence is presumed in relation to the Afghanistan case, by a free interpretation of the Council resolutions nn.1368 ( of the 12<sup>th</sup> September 2001) and 1373 ( of the 28<sup>th</sup> September 2001). Likewise, the use of force in Iraq has been justified on the basis of an implicit authorization in the preamble of the Security Council Resolution n.1441 of the 8<sup>th</sup> November 2002. The latter, however, even though it refers to Resolution n.678 of 1990, has humanitarian purposes, besides the strengthening of the system of inspections in situ. The tendency to bypass the requirement for explicit Security Council authorization, in favour of more ambiguous sources of international authority is evident and does not need further comment.

Finally, we want to underline the attempts made to broaden the concept of self-defence. As mentioned above, it is legitimate both under customary law and under article 51 of the UN Charter to repel an armed attack. It follows that this right does not refer to other situations, such as the necessity to definitively remove threat, or to overthrow the autochthonous political regime in order to exercise the "right of democratic intervention", or to protect nationals abroad threatened by a grave danger situation, or to intervene on humanitarian grounds. NATO's military operations, involving air bombardments on the Yugoslavian territory, and conducted in 1999 from the 24th of March to the 9th of June, were justified by the necessity to face an impending human catastrophe. It was not authorized by the Security Council (which, however, did not condemn NATO's action) nor endorsed, not even implicitly, by Resolution n.1244 of the 10th June 1999: clearly, the way this intervention was carried out was judged so bloody and destructive that its legitimacy was unconceivable even on the grounds of overwhelming humanitarian necessity. Therefore, there was no authorization *a posteriori*, as usually happened in past practice. Moreover, the supposed humanitarian reasons which motivated the intervention revealed to be specious because inconsistent in the light of the modalities and results of the military operations and of the behaviour of the occupying Powers.

## 5.2. The conduct of military operations and the principle of the respect of the individual's dignity

Once armed force has been used, there are international rules, which regulate the conduct of hostilities in order to protect the person's dignity. The necessity to humanize war means, first of all, that the hostilities should involve only the armed forces of the parties to the conflict, therefore reducing the offences caused to the civilians (and, more in general, to non-belligerents) to fortuitous and not-intentional events.

It should be noted that terrorists whose acts are very close to the use of armed force, choose as targets mainly the civil society. That is the reason why it is so important to define this illegitimate conduct. The internal and international practice offer a variety of options as to the conducts which might be qualified as "terrorism". This is indicative of the difficulty in establishing the boundary between these acts and those which make the right of self-determination concrete. However, there is an element, among the others, which recurs in all the descriptions of terrorist acts: we are referring to the fact that such acts hit mostly the civil society, rather than the military forces, breeding panic and terror. Indeed, the

International Convention “for the suppression of the financing of terrorism” in article 2, b, includes among terrorist activities «any other act intended to cause death or seriously bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act». All the international instruments, as well as the national laws, even though they adopt different definitions, share this perspective.

Obviously these kinds of acts clash with the respect of human dignity. The same is true of the conducts which have motivated NATO’s humanitarian intervention in Kosovo.

We want to highlight that in order to exclude the possibility of impunity for war crimes, crimes against humanity, or crimes of genocide, the Security Council, acting under Chapter VII of the UN Charter, established the International Tribunal for the former Yugoslavia for the prosecution of persons responsible for serious violations of international humanitarian law; and to discourage the accomplishment of similar acts also in the future, the international Criminal Court has been established.

However sanctions should be imposed even on those authorities, who tried to put an end to these crimes against international law by resorting to the use of force in such a way to massively and fully violate the principle of humanity.

Likewise, the activity carried out by the coalition of Western countries in the soon to become independent Afghanistan territory and in the occupied and defeated Iraq deserves censure.

These kind of activities seriously contrast with the obligations imposed by the international humanitarian law in favour of human dignity. Such a conclusion is corroborated by the findings of the officially conducted inquiries into the trial and substantive treatment of war prisoners and civilians.

## 6. Summary of Part. I.

This illegality is accompanied by the explicit attempt to modify both the rules and the institutions governing peacekeeping and the respect of human rights in international relations. These modifications try:

- to widen the limits of the State’s international responsibility, acting on its objective requisite (i.e.: broadening the notion of armed aggression also to non-conventional attacks) and on the subjective one (i.e.: finding a link between the activity of an individual- or of a group of individuals- and a State in a less rigorous way, even in the absence of a formal relationship between the two);

- to widen the perimeter of the right of self-defence. This is shown by the attempt to act both on its chronological requisites (i.e. assuming the right to act in prevention or in pre-emption, even if the armed attack is finished) and its substantial requisites (i.e. lowering the test of necessity and proportionality);

- to suggest new ways of legalizing the use of force even in cases where no aggression was launched, but rather to protect different interests (such as the values of democracy and peoples' individual rights through humanitarian intervention)

All the attempts toward suggesting that the existing institutional framework and its laws are obsolete or towards their radical modification in the above-mentioned direction, often betray the will to abandon a multilateral approach and to embrace unilateral solutions. It is worrying that a widespread unilateral approach to international affairs is emerging.

## II. THE SOCIAL DOCTRINE OF THE CHURCH FACING TO RECENT INTERNATIONAL PRACTICE

### 7. The role of the doctrine

Doctrine is the "critical awareness" of States' and people's behaviour. Scholars have always had the task of accompanying evolutions of the praxis.

With regard to international governance, according to article 13 of the UN Charter, doctrine's main task is to promote the progressive development of international law towards a major respect of international legality, taking into account the needs of the international community, which has dramatically changed since the end of the Second World War.

### 8. The contents of the Social Doctrine of the Church

Also the Church's Social Doctrine takes up a definite position on this issue. Here we try to describe briefly such this position giving greater attention to the themes which are of interest to this conference. For this purpose we will refer to the relevant documents of the Catholic Magisterium.

#### 8.1. Human dignity: ground for the building up a society in peace and in justice and source for each human rights

The Social Doctrine of the Church develops from the principles affirming the inviolable dignity of the human person<sup>1</sup>.

Dignity is affirmed as a transcendent value: the person represents the «only criterion for judgments and decisions» of public authorities<sup>2</sup>: «(...) the social order and its development must invariably work to the benefit of the human person, since the order of the things is to be subordinate to the order of persons»<sup>3</sup>. Equal dignity for men/women transcends strict justice<sup>4</sup>. Finally, human dignity is the ground for the building up of a peaceful and just society<sup>5</sup>.

The roots of human rights are to be found in the principle of human dignity<sup>6</sup>.

Human rights have an indivisible and universal character<sup>7</sup>: they are universal because they are present in all human beings, without exception of time, place and subject; inviolable because «they are inherent in the human person»<sup>8</sup>; «inalienable»<sup>9</sup>, so that «no one can legitimately deprive another person, whoever they may be, of these rights, since this would do violence to their nature»<sup>10</sup>.

The duty to protect and defend human rights not only individually but also as a whole descends from their universality and indivisibility<sup>11</sup>: dignity and human rights pertain to individuals, nations, peoples<sup>12</sup>: in fact «what is true for the individual is also true for people»<sup>13</sup>. So the Social Doctrine accepts that international law «rests upon the principle of equal respect of States», but this principle has to be strictly connected with the ones which consider «each people's rights to self-determination<sup>[14]</sup> and (...) their free cooperation in view of the higher common good of humanity»<sup>15</sup>.

The Social Doctrine affirms the mutual complementarity between rights and duties<sup>16</sup>. In a social environment «to one man's rights there corresponds a duty in all other persons: the duty, namely, of acknowledging and respecting the right in question». The responsibility of persons affirming rights corresponds not to «forget or neglect to carry out their respective duties»<sup>17</sup>.

While each person has the right to peace<sup>18</sup>, they have, at the same time, also a duty, an individual and collective responsibility in pursuing them<sup>19</sup>

This happens also when this responsibility has to be implemented at international level<sup>20</sup>, even in a time of war<sup>21</sup>: the role of international Organizations for (and of international Charters on) the protection of human rights and on peaceful settlement of international disputes is irreplaceable, because they can - and must<sup>22</sup> - contribute to consolidate the primacy of law at international level<sup>23</sup>.

## 8.2. Respect and promotion of dignity and human rights as a condition for peace: the refusal of war as a way for settlement of disputes

Peace is the fruit of justice<sup>24</sup>: the defence and promotion of human rights is essential for the building up of a peaceful society and the integral development of individuals, peoples and nations<sup>25</sup>. Respect for the dignity of men/woman and for human rights is considered a condition for peace: «unconditional and effective respect for each one's [imprescriptible and] inalienable rights is the necessary condition so that order that peace reigns in a society»<sup>26</sup>, because «peace comes down to respect for man's inviolable rights»<sup>27</sup>.

Peace has to be accepted in a positive approach<sup>28</sup>: it «is not merely the absence of war, nor can it be reduced solely to the maintenance of a balance of power between enemies. (...) Rather it is founded on a correct understanding of the human person (...) and requires the establishment of an order based on justice (...)»<sup>29</sup>.

The condemnation of war is clear and radical<sup>30</sup>: war is not a solution to international disputes; violence «is unacceptable as a solution to problems (...), is a lie, for it goes against the truth of our faith, the truth of our humanity. Violence destroys what it claims to defend: the dignity, the life, the freedom of human beings»<sup>31</sup>.

The war of aggression is intrinsically immoral<sup>32</sup>.

In case of break of peace through aggression, legitimate defence is a duty and a right, even if the force of arms is necessary<sup>33</sup>. Sanctions have to be adopted against those who threaten peace, following the forms prescribed by the contemporary international law, with a great discernment when they have an economic impact<sup>34</sup>, because sanctions «must never be used as a means for the direct punishment of an entire population»<sup>35</sup>.

While affirming the fundamental rules of the international Community - based on the coexistence among nations<sup>36</sup> and founded on the sovereignty of each Member State<sup>37</sup> - the Social Doctrine of the Church recognizes the strict necessity of humanitarian intervention in exceptional situations<sup>38</sup>.

The accumulation of arms and the arms race, «far from eliminating the cause of war, (...) risk aggravating them»<sup>39</sup>. The possession of arms of mass destruction determines a great responsibility before all of humanity<sup>40</sup>, because it represents a serious threat to peace: effective control at international level for banning their development, production, stockpiling and use is necessary to guarantee international peace<sup>41</sup>. The same is for weapons inflicting excessively traumatic injury and small arms and light weapons<sup>42</sup>.

As far as terrorism is concerned, it is «condemned in the most absolute terms. It shows complete contempt for human life and can never be justified, since the human person is always an end and never a means»<sup>43</sup>. Sometimes terrorism is similar to an act of war<sup>44</sup>.

If war is inevitable, not all means are legal<sup>45</sup> because the respect of humanitarian law is a priority: nowadays we must be «aware of the need to find a new consensus on humanitarian principles and to reinforce their foundation to prevent the recurrence of atrocities and abuse»<sup>46</sup>: in fact «that minimum protection of the dignity of every person, guaranteed by international humanitarian law, is all too often violated in the name of military or political demands which should never prevail over the value of human person»<sup>47</sup>.

### **8.3. Need of a multilateralism method to deal with international issues: current irreplaceable role of the United Nations Organization**

Approaching the issues of international concern, the Church's Doctrine has always stressed the need to establish «some universal public authority acknowledged as such by all and endowed with effective power to safeguard, on the behalf of all, regard for justice and respect for rights»<sup>48</sup>. In this context the United Nations Organization «has made a notable contribution to the promotion of respect for human dignity, the freedom of peoples and the requirements of development, thus preparing the cultural and institutional soil for the building of peace»<sup>49</sup>. This Organization, in fact, «can ensure that the human person is always the focus and the end of all social institutions»<sup>50</sup>. Also in preserving peace the Charter of San Francisco plays an irreplaceable role: the Organization founds a system based on the generalized prohibition of the use of international and internal armed force, setting only two exceptions: legitimate defence (inside the universally accepted principle of proportionality and necessity) and measures taken by the Security Council on the basis of Chapter VII<sup>51</sup>.

Following the Social Doctrine, the recall both to a multilateral approach and an international institutional framework of decision-making is strong. Even when we have to act on behalf of those groups whose very survival is threatened or whose human rights are seriously violated<sup>52</sup> humanitarian intervention is a right and, at the same time, a duty of the international community *as a whole*. That is to say that humanitarian intervention has to be performed and guaranteed within the framework of an international universally recognized authority<sup>53</sup>, which is the UN<sup>54</sup>. In addition, all measures adopted thereof must be carried out in full adherence with international rules and, in particular, with the principle of decisional equality among States.

## **9. The core question of democracy at international level.**

In conclusion, considering the above mentioned situations, the Church's Doctrine and scholars of international law seem to accept almost the same principles and tasks in abstract.

But, is the bulk of these principles, their content, really the same?

We think that an answer to this question should be found by analyzing the concept of democracy. This for two different sets of reasons: the first, democracy is a value stressed by both international institutions and the Catholic Church<sup>55</sup>; and the second, democracy is the instrument to implement both peace and human dignity. Therefore, the resort to the concept of democracy can be useful both as “litmus paper” to verify if the values taken into consideration by the above mentioned doctrines are the same, and to solve the dichotomies raised by the struggling coexistence of the two basic needs: the collective security and the protection of human rights.

In general, democracy has two different meanings<sup>56</sup>. It has a procedural content: democracy is a governance method, which gives rise to an institutional framework. It has also a substantial content: democracy is an amount of values, as stressed by the Catholic Church<sup>57</sup> and by democratic legal regimes; it translates itself in a normative dimension.

Could we say that the perspectives of the Church and of those international legal scholars are different? and, if so, can we reconcile them?

In a very simplified way, one might argue that - pursuant to the Social Doctrine of the Church and the constitutional doctrine - democracy stems from the civil society: it depends on the concept of the centrality of the person; the State is the first guarantor of the respect for human rights<sup>58</sup>. So, a democratic domestic system is based upon the premise that the law is at the service of human beings: «in reality, what justifies the existence of any political activity is service to man»<sup>59</sup>.

This approach seems to conflict with the one of international law, which, on the contrary, is a network of relationships existing primarily, if not exclusively, among States (and among entities possessing the characteristic of authority-sovereignty both in the domestic and in the international legal order). Thus, the international legal system is horizontal, recognizing no authority over these entities. International law only exists among States (or analogous entities): it is an intergovernmental framework. Individuals do not create the law (i.e.: they cannot assert values and rights): the law essentially exists for the coexistence of sovereigns. Only in very recent times non-State entities (such as individuals, non-governmental organizations, multinational corporations) were entitled to the benefits of international law, even sometimes being able to act directly at international level (i.e.: individual recourse to international Courts; etc.). This is happening as a consequence of the enlargement of the range of topics covered by international law, «no longer exclusively concerned with issues relating to the territory or jurisdictions of States narrowly understood, but (...) beginning to take into account the specialised problems of contemporary society» (Shaw, *International Law*, p. 47).

International law neglects the procedural approach to international democracy. Certainly, compared to general international law the UN Charter is significantly innovative from various angles. In particular, it has established a collective security system for the preservation and restoration of peace, reserving for the Security Council only the resort to armed force, except for the right of self-defence. Furthermore, the Charter, under article 1.3,

includes in the purposes of the Organization the promotion and encouragement of respect for human rights and fundamental freedoms. However, nothing has been established as to the way a government might become or remain democratic. But it could not be otherwise. As a matter of fact article 2.7 of the UN Charter, prevents intervention «in matters which are essentially within the domestic jurisdiction of any State», as a corollary of the intangibility of State sovereignty. With this regard Boutros-Boutros Ghali in his “*Agenda for Democratization*” declares: «While democratization is a new force in world affairs, and while democracy can and should be assimilated by all cultures and traditions, it is not for the United Nations to offer a model of democratization or democracy or to promote democracy in a specific case. Indeed, to do so could be counter-productive to the process of democratization which, in order to take root and to flourish, must derive from the society itself. Each society must be able to choose the form, face and character of its democratization process. Imposition of foreign models not only contravene the Charter principle of non intervention in internal affairs, it may also generate resentment among both the Government and the public, which may in turn feed internal forces inimical to democratization and to the idea of democracy» (UN Doc. A751/761, 1996, December 20<sup>th</sup>, para. 7 ff.).

Therefore, whereas the rise and development of international law is based upon the “dogma” of the coexistence of sovereign States, the foundations of the Social Doctrine of the Church and of the constitutionalist doctrine lie on the supremacy of each person over the State. In other words, what we have just said implies the recognition of human rights’ supremacy over State prerogatives. The two approaches - that of the Church and constitutionalists; and that of the international scholars and praxis - seem to be irreconcilable. Is that true?

In regard to this, we should consider that democracy’s substantive contents have universal validity, as recognised by the UN Charter itself, and by the several international treaties establishing regional Organizations, such as the Statute of the Council of Europe (1949), the Treaty on European Union (1992), the Charter of Paris which created the Organisation for Security and Cooperation in Europe (OSCE) (1990). The right of all people to self-determination, human rights and the research of peace at both international and national level are democracy’s fundamental values.

The Church Magisterium limits its task to the determination of these principles; from this point onwards it is the political institutions’ duty to put such shared values into rules of law. International law becomes the guarantor of an international order based on justice, freedom and peace<sup>60</sup>: the concurrence between moral values and legal institutes is a necessary condition for the stability of international life<sup>61</sup>.

## 10. Is the concept of a "just war" useful today?

What we have said so far offers the occasion for some closing remarks as well as for some reconsiderations of the concept of democracy in the light of a situation seen from both international law and the Social Doctrine as one of the most grave dangers to peace: war.

Within the civil society peace is considered as democracy’s fundamental value. Hence, war has been banned as a means to settle disputes (article 11 of the Italian Constitution) and the resort to the use of force, according to the UN Charter, is legitimate in two cases only: with regard to the right of self-defense and when it is authorized by the Security Council in response to any threat to, or breach of, peace or act of aggression. However, to uphold the

principles of the Charter, the Security Council must retain clear control over authorizations to use force even if political and military considerations require that it delegates military command to individual nations.

The current diplomatic praxis registers the temptation to rediscover the concept of a just war, associating enemy to «rogue States» (Speech of President Bush at West Point, June 1<sup>st</sup> 2002, in *The National Security Strategy of the United States of America*, p. 13), against which the use of force is very similar to a crusade.

The Church too is reflecting on the concept of "just war", with a new approach compared to the middle age canonist thought. At that time, the concept of just war was rooted in relation to justify the use of armed force at the service of the Truth, in the framework of the *Respublica gentium christianarum*<sup>62</sup>. On the contrary today the Social Doctrine - condemning in a very strong way the war through a path beginning with Pius XII, prosecuted with *Pacem in Terris* and performed with *Gaudium et spes* - accepts the use of armed force solely when the cause is the «community legitimate defense»<sup>63</sup>, and when warfare takes place in the respect of human dignity<sup>64</sup>:

The synergy between the Church Magisterium and the rules of international law seems to us evident. Both doctrines agree on the concept of “just war” when the causes and the conduct of the hostilities are legal. Therefore, the problem is to define the criteria to evaluate whether a war is legal or not from substantial and procedural point of view .I.e. what are the legal bases and justifications of a “just war”? How should the war be conducted to be “just”? Who is entitled to decide and how?

## 11. Democratization of international environment.

Nowadays "thinking democratic" seems to be or a widespread aptitude or inexistant. Democracy should play a key role especially at international level. Indeed, it is up to politically legitimate international institutions to issue the international rules on the prohibition of the use of force and on the “just war” as a last resort when measures short of armed force reveal to be inadequate.

So, the matter is to find modalities to re-legitimate the only institutional multilateral context presently existing in international relations, in order to assure democratic governance at international level.

Following both the Social Doctrine of the Church and the aspirations of the international civil society, efforts to democratize international relations could succeed by means of strengthening the United Nations Organization. This Organization is the potential framework for democratizing international relationships: the intergovernmental activity inside the Organization is expressed at the normative, operational and jurisdictional level; it also affects political, economic, social and legal topics.

How can the UN system regain credibility? Tentatively we could suggest the following items:

- increasing the consideration of “inter-individual” (as opposed to merely “inter-State”) needs (through, for example: the participation of non-governmental organizations in intergovernmental bodies; the codification of human rights law, humanitarian law, internal and external self-determination of peoples as well as individual criminal responsibility);

- reforming the institutional framework, reconsidering *inter alia* the relationship between the Security Council and the General Assembly;

- strengthening the relationship between regional intergovernmental bodies and the United Nations;

- creating the conditions for substantial (as opposed to merely formal) equality of States, through the strengthening of economic intergovernmental Organizations.

In doing so - i.e. laying the bases of an universal authoritative intergovernmental framework able to manage international coexistence -, the indicated dichotomies and, above all, the two current conflicting needs (collective security and human rights) would tend to disappear. In this context, to have a multilateral authority, which is legitimate by all States to solve international crisis, would make it possible to find solutions to the limits of self-defense when a State is confronted with terrorists and with States which have mass destruction weapons at their disposal. Such a solution would involve the resort to peace-enforcement, peace-maintaining and peace-keeping operations.

The establishment of a multilateral authority might enable the international community to face the grave violations to human rights by means of humanitarian interventions and peace building operations.

In this way, even the “specter” of the breach of domestic jurisdiction could be averted.

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\* This draft is not for quotation; it does not contain footnotes, except in case of citation of the document of the Church's Social Doctrine; for pertinent international praxis see *Bibliographical notes*, point. 10.

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<sup>4</sup> *Gaudium et spes*, 78, cit.

<sup>5</sup> *Pope's Address to the Governor-Gen. of Canada*, September 19<sup>th</sup>, 1984, 7.

<sup>6</sup> *Pope's Address to the Governor-Gen. of Canada*, September 19<sup>th</sup>, 1984, 7; *Gaudium et spes*, 27, cit.; *Catechism of the Catholic Church*, 1930.

<sup>7</sup> *Gaudium et spes*, 22 and 26, cit.; *Pacem in terris*, I, 1c.

<sup>8</sup> *Pope's Message for the 1999 World Day of Peace*, 3.

<sup>9</sup> *Pacem in Terris*, AAS 55(1963), 259; *Gaudium et spes*, 22, cit.

<sup>10</sup> *Pope's Message for the 1999 World Day of Peace*, 3.

<sup>11</sup> *Pope's Message for the 1998 World Day of Peace*, 2; *Id.* (1999), 3.

<sup>12</sup> *Sollicitudo Rei Socialis*, 33: ASS 80 (1988), 577-559; *Centesimus Annus*, 21: ASS 83(1991), 818-819.

<sup>13</sup> *Pope's Letter on the Fiftieth Anniversary of the Outbreak of the 2<sup>nd</sup> World War*, 8.

<sup>14</sup> Specifically on the principle of self-determination of people see *Pope's Address to the Diplomatic Corps*, January 9, 1988, 7-8; *Id.*, January 16<sup>st</sup>, 1982, 7; *Id.*, January 1<sup>st</sup>, 1992, n. 3; *Id.*, January 13<sup>rd</sup>, 1996, 8.

<sup>15</sup> Doc. ult. cit., 8.

<sup>16</sup> *Gaudium et spes*, 26, cit.; *Pacem in Terris*, cit., 259-264.

<sup>17</sup> *Pacem in Terris*, cit., 264.

<sup>18</sup> *Pope's Message for the 1999 World Day of the Peace*, 11: ASS 91(1999), 385.

<sup>19</sup> *Pope's Message for the 1974 World Day of the Peace (ASS 1974, )* and *Pope's Message for the 2004 World Day of the Peace (ASS 96(2004), 116)*.

<sup>20</sup> *Pope's Message to the European Court for Human Rights*, October 14<sup>th</sup>, 1985, 3; *Pope's Message for the 30<sup>th</sup> Anniversary of the Universal Declaration of Human Rights*, December 2<sup>nd</sup>, 1978, 2.

<sup>21</sup> *Pope's Message to the Institute of Humanitarian Law*, May 18<sup>th</sup>, 1982, 2.

<sup>22</sup> *Pope's Message for the 2004 World Day of Peace*, 9: ASS 96(2004) 118.

<sup>23</sup> *Christmas Radio Message (Pius XII)*, December 24<sup>th</sup>, 1941: ASS 34(1942), 18; *Id.*, December 24<sup>th</sup>, 1945: ASS 38 (1946), 22. V. *infra*, para. 7.3.

<sup>24</sup> *Pope's Message for the 1972 World Day of the Peace: ibid.*, 63(1971), 868.

<sup>25</sup> *Pope's Message for the 1999 World Day of the Peace*, 12: *ibid.*, 91(1999), 386-387.

<sup>26</sup> *Pacem in terris*, 11; *Pope's Message for the 1982 World Day of the Peace*, 9.

<sup>27</sup> *Redemptor hominis*, 17.

<sup>28</sup> *Gaudium et spes*, 78: AAS 58 (1966), 1101-1102; *Centesimus annus*, 51: *ibid.*, 83(1991), 856-857.

<sup>29</sup> *Compendium of the Social Doctrine of the Church*, Vatican City, 2004, 277, referring to *Gaudium et spes*, 70, and to *Centesimus Annus*, 51.

<sup>30</sup> *Gaudium et spes*, 77 and 80.

<sup>31</sup> *Evangelii Nuntiandi*, 37: ASS 68(1976), 29; v. also *Pope's Meeting with the Official of Rome Vicariat*, January 17, 1991; *Pope's Address to the Arabic Region's Bishops*, October 1<sup>st</sup>, 1990, 4.

<sup>32</sup> Pontifical Council for Justice and Peace, *The International Arms Trade. an Ethical Reflection*, Vatican City, 1994, p. 13 (ch.1, 6).

<sup>33</sup> *Catechism of the Catholic Church*, 2265.

<sup>34</sup> *Pope's Address to the Diplomatic Corps*, January 9<sup>th</sup>, 1995, 7.

<sup>35</sup> *Compendium ecc.*, cit., 507.

<sup>36</sup> *Pacem in Terris*, ASS 55(1963), 279-280.

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- <sup>37</sup> *Pacem in Terris*, ASS 55(1963), 289; *Christmas Radio Message on a Just International Peace* (Pius XII), December 24<sup>th</sup>, 1939, 5, ASS 32(1940), 9-11.
- <sup>38</sup> *Pope's Address* to Diplomatic Corps, January 16<sup>th</sup>, 1993; *Pope's Address* to the Ambassador of India, December 13<sup>rd</sup>, 2002, 4; *Pope's Address* to the 27<sup>th</sup> Conference FAO, November 11<sup>st</sup>, 1993, 5. V. *infra*, para. 7.3.
- <sup>39</sup> *Catechism of the Catholic Church*, 2315.
- <sup>40</sup> *Gaudium et spes*, 80; *Catechism of the Catholic Church*, 2314.
- <sup>41</sup> *Address to Diplomatic Corps*, January 13<sup>rd</sup>, 1996, 7
- <sup>42</sup> *Pope's Message* for the 1999 World Day of Peace, 11: ASS 91 (1999), 385-386..
- <sup>43</sup> *Compendium ecc.*, cit. 514.
- <sup>44</sup> *Gaudium et spes*, 79.
- <sup>45</sup> *Gaudium et spes*, 79.
- <sup>46</sup> *Address at General Audience*, August 11<sup>st</sup> 1999, 5, in *L'Osservatore romano* (english ed.), August 25<sup>th</sup>, 1999, p. 6.
- <sup>47</sup> Op. loc. ult. cit.
- <sup>48</sup> The need of a similar authority is affirmed in each sector of international cooperation: see *Gaudium et spes*, 81: ASS 58(1966), 1105; *Pacem in Terris*: ASS 55 (1963), 293; *Populorum Progressio*, 78: ASS 59 (1967), 295.
- <sup>49</sup> *Pope's Message* for the 2004 World Day Peace, 7: ASS 96 (2004), 120.
- <sup>50</sup> *Gaudium et spes*, 25: ASS 58(1966).
- <sup>51</sup> *Pope's Message* for the 2004 World Day Peace, 6: ASS 96 (2004), 120.
- <sup>52</sup> The doctrine on humanitarian intervention is summarized above all in two documents: *Pope's Message* for the 2000 World Day Peace, 11: ASS 92(2000), 363; and *Centesimus Annus*, 52. In addition see *Pope's Message* for the 2004 World Day of Peace, 9: ASS 96(2004), 120.
- <sup>53</sup> See docc. quoted *supra*, footnote 48.
- <sup>54</sup> *Pope's Message* to the Secretary-General of the UN, March 1<sup>st</sup>, 1993, 2.
- <sup>55</sup> *Gaudium et spes*, 78, cit.
- <sup>56</sup> Cardinal Martino's *Speech*, 44<sup>th</sup> Social Week, Bologna, October, 7<sup>th</sup> - 10<sup>th</sup> 2004.
- <sup>57</sup> The respect for the person is a condition of democracy: *Centesimus Annus*, 46: ASS 83(1991), 850.
- <sup>58</sup> *Pope's Address* to the Institute of Humanitarian Law, May 18, 1982, 2.
- <sup>59</sup> *Pope's Address* to the UN, October 1<sup>st</sup>, 1976, 6; *Pope's Address* to the Ambassador of Costa Rica, February 24<sup>th</sup>, 1976.
- <sup>60</sup> *Summi Pontificatus*, 29: ASS 31 (1939), 438-439; (Pius XII) *Christmas Radio Message*, Decembre 24<sup>th</sup>, 1941: ASS 34(1942), 16.
- <sup>61</sup> *Pacem in Terris*: ASS 55 (1963), 277.
- <sup>62</sup> Graziano, *Concordia discordantium canonum, Causa XXIII* (about whose doctrine see A. Morisi, *La guerra nel pensiero cristiano dalle origini alle crociate*, Firenze, 1963).
- <sup>63</sup> *Gaudium et spes*, 79. The Magisterium specified better its though, affirming that the use of force must correspond to some strict conditions: «the damages inflicted by the aggressor on the nation or community of nations must be lasting, grave and certain; all other means of putting an end to it must have been shown to be impractical or ineffective; there must be serious prospects of success; the use of arms must not produce evils and disorders graver than the evil to be eliminated (...). There are the traditional elements enumerated in what is called the "just war" doctrine (...)» (*Catechism of the Catholic Church*, 2309).
- <sup>64</sup> *Catechism of the Catholic Church*, 2312-3.