

## HUMAN DIGNITY IN THE SOCIAL DOCTRINE OF THE CHURCH AND THE CONTEXT OF INTERNATIONAL LAW

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The purpose of these comments is to recall some pronouncements of the Church relating to human rights and to make some observations on the role of international law in the context of Professor Kirchhof's paper.

1. Human dignity depends predominantly on the respect of human rights and fundamental freedoms. The intrinsic and inherent link between human dignity and human rights has been emphasized by the Second Vatican Ecumenical Council.<sup>1</sup> According to its social doctrine, the 'Church sees in these rights the extraordinary opportunity that our modern times offer, through the affirmation of these rights, for more effectively recognizing human dignity and universally promoting it as a characteristic inscribed by God the Creator in his creature'.<sup>2</sup> For 'all people have the same dignity as creatures made in [God's] image and likeness'.<sup>3</sup> 'In fact, the roots of human rights are to be found in the dignity that belongs to each human being'.<sup>4</sup> '[T]he inalienable dignity of the human person' is one of the 'foundations of Christian anthropology'.<sup>5</sup> Thus, in the Church's social doctrine, human dignity, together with the commandment to love one another, is central and, therefore, more than a specific human right, no matter how basic and important.<sup>6</sup>

<sup>1</sup> Declaration *Dignitatis Humanae*; Pastoral Constitution *Gaudium et Spes*, paragraph 41.

<sup>2</sup> Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, Libreria Editrice Vaticana 2004, paragraph 152 (cited below as *Compendium*).

<sup>3</sup> *Catechism of the Catholic Church*, No. 1934.

<sup>4</sup> *Compendium*, paragraph 153.

<sup>5</sup> *Ibid.*, paragraph 36.

<sup>6</sup> One reason for making this point is the view of some writers who speak of the dignity of the human person as a human right. They usually point out that it is a *fundamental* right.

2. By the Encyclical *Pacem in Terris* Pope John XXIII inaugurated a long series of contemporaneous papal pronouncements on human rights. In his teachings, John Paul II indefatigably spoke for human rights, strove for their application and promoted them systematically. Indeed, as early as 1979 this 'Pope of human rights' emphasized the importance of the human person in the Encyclical *Redemptor Hominis*. Theological anthropology constitutes the foundation of human rights in the social doctrine of the Church; these rights belong to an objective order created by God. Nonetheless, the relevant secular instrumentalities, including those of positive law, are not absent from the numerous statements, addresses and messages on human rights by Popes. One such instrumentality is a State constitution which guarantees human dignity, the subject Professor Kirchhof dealt with.

3. The preamble of the Charter of the United Nations of 1945 reaffirms faith 'in the dignity and worth of the human person'. The preamble to the Universal Declaration of Human Rights<sup>7</sup> starts by recognising 'the inherent dignity' and the 'equal and inalienable rights of all members of the human family'. Article 1 of the Declaration states that '[a]ll human beings are born free and equal in dignity and rights'. UN Covenants on Human Rights (1966) recall in their preambles the 'recognition of the inherent dignity [...] of all members of the human family'. While other treaties on human rights, both those that embrace all such rights or some of their categories, are usually less explicit, there can be no doubt that several human rights they list serve human dignity.<sup>8</sup>

'The Church's Magisterium has not failed to note the positive value of the Universal Declaration of Human Rights'.<sup>9</sup> Pope John Paul II defined the Universal Declaration as 'a true milestone on the part of humanity's moral progress';<sup>10</sup> the Declaration 'remains one of the highest expressions of the human conscience of our time'.<sup>11</sup>

4. Corresponding to 'the demands of human dignity' human rights 'entail, in the first place, the fulfilment of the essential needs of the person

<sup>7</sup> Proclaimed by the General Assembly of the United Nations by resolution 217 (III) on 10 December 1948 'as a common standard of achievement for all peoples and nations'.

<sup>8</sup> 'Several', of course, does not mean 'all'. For a critique of certain UN instruments and policies in the field of human rights, see M. Schooyans, *La face cachée de l'ONU*, Le Sarmant, Paris 2000.

<sup>9</sup> *Compendium*, paragraph 152.

<sup>10</sup> Address to the UN General Assembly, 34th session, 2 October 1979.

<sup>11</sup> Address to the UN General Assembly, 50th session, 5 October 1995.

in the material and spiritual spheres'.<sup>12</sup> Human rights 'apply to every stage of life and to every political, social, economic and cultural situation. Together they form a single whole directed unambiguously at the promotion of every aspect of the good of both the person and the society'.<sup>13</sup>

The Encyclical *Pacem in Terris* by Pope John XXIII (1963), the Pastoral Constitution *Gaudium et Spes* of the Second Vatican Ecumenical Council, the teachings of Popes Paul VI and John Paul II, in particular the latter's Encyclical *Centesimus Annus* (1991), have specified various human rights. They include the right to life; the right to establish a family and to live in a united family: 'the right to develop one's intelligence and freedom in seeking and knowing the truth'; the right to work; and the right to religious freedom.<sup>14</sup> In his address to the Diplomatic Corps on 12 May 2005, Pope Benedict XVI recalled that the Church

oeuvre afin que soient reconnus les droits de toute personne humaine à la vie, à la nourriture, à un toit, au travail, à l'assistance sanitaire, à la protection de la famille et à la promotion du développement social, dans le respect de la dignité de l'homme et de la femme, créées à l'image de Dieu. Soyez assurés que l'Église catholique continuera, dans le cadre et avec les moyens qui lui sont propres, à offrir sa collaboration pour la sauvegarde de la dignité de tout homme et le service du bien commun.

The Church's Magisterium emphasizes that economic rights aim at satisfying men's material needs and thereby promote their dignity.<sup>15</sup> In particular, '[t]he right to the common use of goods is "the first principle of the whole ethical and social order" and "the characteristic principle of Christian social doctrine"'.<sup>16</sup> 'It is first of all a *natural right* and it is an 'inherent' right.<sup>17</sup>

5. In light of these statements there is room for recognizing the integrity of regulation by both United Nations Covenants on Human Rights of 1966, *i.e.*, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

<sup>12</sup> *Compendium*, paragraph 154.

<sup>13</sup> *Ibid.*; John Paul II, Message for the 1999 World Day of Peace, paragraph 3.

<sup>14</sup> *Compendium*, paragraph 155.

<sup>15</sup> *Cf.* The Encyclical *Mater et Magistra* by Pope John XXIII (1961) and *Compendium*, paragraph 94.

<sup>16</sup> The quotations in single quotation marks are from the Encyclicals by John Paul II *Laborem Exercens* (1981), para. 19 and *Sollicitudo Rei Socialis* (1988), para. 42, respectively.

<sup>17</sup> *Compendium*, paragraph 172.

6. Professor Kirchhof states that '[m]odern constitutions are based upon the concept of man as being endowed with dignity, destined to be free, and capable of responsibility' (section I, para. 1). This view obviously applies to *democratic* constitutions and practice that is concordant with them. It may be added that in several countries the constitutional guarantee of human dignity, 'preexisting' as it is,<sup>18</sup> has an international origin in the sense that that guarantee has found its way into constitutional law through international law.<sup>19</sup>

7. Thus, in the authoritarian or totalitarian States defeated in World War II democratic constitutions were adopted as a result of international arrangements and, in some instances, in a framework based on the functioning of an administration of an international character. Democratization of those States took place, *inter alia*, as a consequence of international concern for human rights generated by World War II. It was expressed in particular in the Atlantic Charter of 1941 and the Charter of the United Nations of 1945, which was soon followed by the Universal Declaration of Human Rights of 1948. The Peace Treaties of 1947 and 1951 and certain other equivalent instruments provided for respect of human rights in the territories of former enemies of the United Nations alliance. War experience also induced some of the victorious democratic States to strengthen the legal fabric of respect for human dignity and human rights. France, for instance, reenacted a declaration of human rights in connection with her post-war constitutional reform.

What should also be noted in connection with the end of World War II is the development of international criminal law and the beginnings of an international jurisdiction covering war crimes, crimes against peace and crimes against humanity, which includes the concept of genocide.

8. Decolonization was another stage where international law was expected to have some bearing on State constitutions in the field of human rights. The Universal Declaration of Human Rights is a case in point.<sup>20</sup> An

<sup>18</sup> Kirchhof, section I, para. 1.

<sup>19</sup> The role of that law grew as a result of the system and policies of non-democratic States, especially in the thirties, and their occupation régimes. In those States, municipal law ceased to exercise its protective function with regard to human dignity and rights. For the role of international law as a substitute or support for municipal law in recreating that function, see the pioneering writings of H. Lauterpacht, in particular his Hague Lectures 'The International Protection of Human Rights', Hague Academy of International Law, *Collected Courses - Recueil des Cours*, vol. 70, 1947-I.

<sup>20</sup> E. Schwelb, *The Influence of the Universal Declaration of Human Rights on International and National Law*, *Proceedings of the American Society of International Law*, 1959, pp. 222-226.

endorsement of that Declaration was to be found in the constitutions of twelve new African States that were formerly part of the French colonial empire: Chad, Congo (Brazzaville), Guinea, Ivory Coast, Dahomey, Gabon, Madagascar, Mali, Mauritania, Niger, Senegal and Upper Volta. The constitutions of Togo and the Cameroons proclaimed in 1961 their peoples attachment to the Declaration. The Declaration is also mentioned in Burundi's 1962 constitution.<sup>21</sup> The domestic legal effect of such references to the Declaration may vary. All depends on the positions taken by courts and executive organs. They can use the constitutional endorsement or affirmation of the Declaration as a starting point when interpreting and applying municipal law in conformity with the Declaration. Whether the general references to the Declaration appearing in the various constitutions are either meaningless or helpful in securing compliance with the Declaration depends on the practice of domestic organs. The record of non-compliance with the Declaration by some of those and also some other States speaks for itself. The appalling human catastrophes resulting from such non-compliance – *e.g.*, the genocide in some parts of the former Yugoslavia, Rwanda<sup>22</sup> and Darfur – raise the issue of the relevance of law and its regulatory function in certain States. Here we touch upon the problem of failed States. Thus '[t]he solemn proclamation of human rights is contradicted by a painful reality of violations'; 'there is a gap between the "letter" and the "spirit" of human rights'.<sup>23</sup>

9. Most recently, the constitution-makers in the newly-democratic States which in or after 1989 rejected communism were guided by both general and regional international treaties on human rights, especially by the two United Nations Covenants of 1966 and the earlier European Convention of 1950. In his paper, Professor Herbert Schambeck draws the attention of our Academy to the role of the third basket of the Helsinki Conference and its

<sup>21</sup> As to similar endorsement see also the constitutions of Haiti (1950), San Salvador (1950), Libya (1951), Eritrea (1951), Egypt (1956) and South Vietnam (1956).

<sup>22</sup> Against the background of the genocide in Rwanda in 1994 that country's constitution of 1962 has a tragically unreal undertone. For this constitution provides that the 'fundamental freedoms as defined by the Universal Declaration of Human Rights are guaranteed to all citizens'. At face value and in its formal sense such a provision would be expected to bring about the incorporation of the Declaration into the constitutional law of the country, thus giving it the rank of that law.

<sup>23</sup> *Compendium*, paragraph 158. But the problem has a universal dimension. 'Even in countries with democratic forms of government, these rights are not always fully respected', *ibid.*, John Paul II, Encyclical Letter *Centesimus Annus*, para. 47.

Final Act on Security and Cooperation in Europe; these provisions supported the peaceful fight of many in the Soviet Bloc and the Soviet Union itself for human dignity and rights. Professor Schambeck also recalls the part Pope John Paul II had played in this respect. Indeed, during his first pilgrimage to Poland in 1979 Pope John Paul II addressed millions of people. His message of 'courage mitigated by moderation' started a national renewal which led to the birth of the 'Solidarity' movement for peaceful change; in this movement, the idea of human dignity was fundamental.

10. Furthermore, a brief comment on what Professor Kirchhof says about litigation on human rights before international bodies (Section III, para. 1) seems to be in place. In this respect, the most advanced system has been developed on the regional level, namely, under the European Convention on Human Rights and Fundamental Freedoms signed in Rome in 1950. That system was perfected by the revision of the Convention in 1994 by virtue of the Eleventh Protocol to the Convention. Thus, the Convention now provides for the European Court to resolve disputes on violations of human rights not only between States that are parties to it but also between individuals and any of those States. Today, any person subject to the jurisdiction of such a State, having first exhausted local (*i.e.*, national) remedies, can bring a case before the European Court alleging that a decision or measure by a State organ conflicts with the obligations arising from the European Convention. If the State is found in breach of one or more such obligations, it is internationally bound to make reparation. Whenever that is impossible under domestic law, the European Court itself affords satisfaction to the injured person, usually by determining an amount of money to be paid by the respondent State. As one commentator observed, '[d]espite indisputable organizational problems, the huge backlog, and the slowness in bringing about changes in the legal systems of the various member States', the Court is successful in promoting human rights and ensuring respect for them in different European countries. It has thus contributed 'to the creation of an extensive region in Europe where arbitrary and discriminatory action by governments is being strongly curtailed'.<sup>24</sup>

The accomplishments of the system established within the framework of the Organization of American States are also noteworthy. Here the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights apply the American Convention on Human

<sup>24</sup> A. Cassese, *International Law*, Oxford University Press, 2001, p. 367.

Rights of 1969. While individuals can petition the Commission, their cases can reach the Court only by action of the former or of a State party to the Convention. Incidentally, that was the European system before its reform. The Inter-American Commission and Court are important factors in improving the situation with regard to human rights in the relevant part of the Western Hemisphere.<sup>25</sup>

As to the universal level, there is no court of law comparable to the European or Inter-American Courts. On the other hand, the International Criminal Court has jurisdiction over the crime of genocide, crimes against humanity, war crimes and the crime of aggression,<sup>26</sup> all of which involve grave violations of human rights. The Court's *raison d'être* is to protect victims of those violations.<sup>27</sup> The United Nations has at its disposal multifarious mechanisms monitoring compliance with human rights, including the the UN High Commissioner for Human Rights. One of the proposed reforms of the United Nations, now under consideration, is the replacement of the Commission on Human Rights by a smaller Human Rights Council whose members 'should undertake to abide by the highest human rights standards'.

11. Professor Kirchhof admits that the minimal standards of international law, including European law, influence national constitutions and the jurisprudence of constitutional courts (Section IV , paragraph 3). Yet, the governing role of international law has its limits. All the pertinent questions Professor Kirchhof raises (*ibid.*) also confront the international law-maker. Does the cultural diversity of nations and peoples influence the answers to those questions?<sup>28</sup> To some extent, the answer is linked to the issue of universality and indivisibility of human rights.

12. The Church takes 'different cultural and social contexts' into consideration<sup>29</sup> and it does not close its eyes to various traditions in the histor-

<sup>25</sup> Canada and the United States are not parties to this Convention.

<sup>26</sup> Exercise of jurisdiction over the crime of aggression has been suspended until the fulfilment of the conditions stipulated in Article 5, paragraph 2, of the Court's Statute. For the text of the Statute, see UN Document A/CONF. 183/9; *International Legal Materials*, vol. 37, 1998, p. 999. The Statute was adopted on 17 July 1998 in Rome.

<sup>27</sup> *Cf.*, Ph. Kirsch and J.T. Holmes, *The Rome Conference on an International Criminal Court: The Negotiating Process*, *American Journal of International Law*, vol. 93, 1999, p. 12.

<sup>28</sup> Kirchhof, section IV, paragraph 3, *in fine*.

<sup>29</sup> *Compendium*, paragraph 173. *Cf.* also the address by John Paul II to the Diplomatic Corps on 20 October 1978.

ical evolution of countries and regions. Yet the social doctrine of the Church leaves no doubt that '[u]niversality and indivisibility are distinctive characteristics of human rights',<sup>30</sup> Pope John Paul II described those characteristics as 'two guiding principles which at the same time demand that human rights be rooted in each culture and that their juridical profile be strengthened so as to ensure that they are fully observed'.<sup>31</sup>

<sup>30</sup> *Compendium*, paragraph 154.

<sup>31</sup> Message for the 1998 World Day of Peace, paragraph 2. In this respect (as in various other) the Church's stance is concordant with the interpretation of international law on human rights. The Vienna Declaration and Programme of Action adopted in 1993 by the United Nations World Conference on Human Rights (*International Legal Materials*, vol. 32, 1993, p. 1661) states that the 'universal nature' of human rights and fundamental freedoms 'is beyond question' (part I, para. 1). The Declaration also affirms that '[w]hile the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms' (part I, para. 5).