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LEGAL REGULATION OF THE USE OF FORCE BY STATES

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Introduction[*]

1. Needless to say, the reason for the choice of the subject of the comments below is that the main topic – international justice and peace – is inextricably linked with prohibition and limitation of use of force by States. The social doctrine of the Church affirms that 'the constitutive principles of the international community', *inter alia*, exclude 'recourse to violence and war' and to 'intimidation',[1] while '[i]nternational law becomes the guarantor of international order'.[2] 'The Magisterium recognizes the importance of national sovereignty', yet it is far from treating it as 'absolute'.[3] Respect for the rule *pacta sunt servanda* is paramount in view of the 'temptation to appeal to the *law of force* rather than to the *force of law*'.[4] In this context the Church refers to the Charter of the United Nations and its ban on recourse to force and threat of force.[5]

Basic Rule

2. In this regard, the basic rule is to be found in Article 2, paragraph 4, of the Charter: *All Members shall refrain in their international relations from*

[*] Throughout these comments the term 'force' is employed as meaning armed force unless otherwise indicated.

[1] Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, Libreria Editrice Vaticana 2004 (hereafter: *Compendium*), paragraph 433.

[2] *Compendium*, paragraph 434.

[3] *Compendium*, paragraph 435.

[4] John Paul II, Message for the 2004 World Day of Peace, paragraph 5; *Compendium*, paragraph 437.

[5] *Compendium*, paragraph 438.

the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

3. This regulation refers to 'the threat or use of force' instead of 'war' or 'resort to war'. Thus the Charter avoids the difficulties which arose under the Covenant of the League of Nations (1919) and the Treaty for the Renunciation of War (Briand-Kellogg Pact, 1928) in connection with the meaning of the term 'war'. The Charter clearly encompasses also the use of armed force short of war.

4. Article 2, paragraph 4, of the Charter, may now be said to constitute the law universally binding on States and not exclusively on the Members of the Organization. The principle contained in that Article has become a customary rule of international law. Numerous declarations by States, the interpretations which they adopt when problems regarding the use of force arise, and the explanations which they submit whenever accused of unlawful employment of force bear witness to the acceptance of the view that Article 2, paragraph 4, besides being part of the law of the United Nations, is a principle of the law that governs the relations of all States. This is also born out by the decisions of international courts and tribunals.

5. The fundamental question which constantly arises in State practice and which is studied by writers is whether Article 2, paragraph 4, embodies a general prohibition to take any initiative in the use of force. For the Charter does not speak of *any* use of force but such use as is made 'against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations'. In other words, can States resort to force if they do not aim at anybody's territorial integrity or political independence and do not otherwise violate the purposes of the United Nations? The problem has been discussed, *inter alia*, in connection with the Cuban crisis of 1962 and the 'quarantine' then introduced by the United States.

6. Let me briefly consider the foregoing issue. The first problem is self-defence and its limits.

Self-Defence

7. The notion of self-defence, also called legitimate defence, is, primarily, one of municipal law, in particular, criminal law. The Charter of the United Nations deals with self-defence in Article 51:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the

United Nations, until the Security Council has taken measures to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

8. The above provision has been interpreted in two ways.

9. According to the *first interpretation* the Charter left the content of the right of self-defence unimpaired. For the Charter refers to that right as 'inherent' (in the French version it even uses the expression 'natural right'). And the very wording of Article 51 that '[n]othing [...] shall impair [...] [that] right' shows that a change in the law has been neither intended nor brought about. In classical international law and in State practice, self-defence often has not been distinguished from action in self-preservation, self-help or necessity. Incidentally, are these notions still relevant? This question is answered in paragraphs 14-16 below.

10. Under that interpretation, the Charter only clarifies the legal position with respect to self-defence when an armed attack occurs. But Article 51 does not regulate, let alone restrict, the right of self-defence in situations other than the occurrence of such attack. Self-defence thus continues to remain a lawful means of protecting certain essential rights, and not only the right to be free from an armed attack. As soon as an essential right has been infringed, the wronged State can act in self-defence against the delinquent State. Consequently, certain international delicts justify action in self-defence even if those delicts do not involve force.[6]

11. The *second interpretation* takes the position that the Charter modified the customary right of self-defence. Some writers even uphold the view that the Charter provision simply expresses a change which that right had already undergone in the period between 1920 and 1945. The second interpretation appears to have the backing of the United Nations itself and of the majority of its Members and it is here submitted that that interpretation is in line with contemporary developments on the use of force by States.[7] The enabling formula of Article 51, 'Nothing [...] shall

[6] For support of that view see, *e.g.*, D.W. Bowett, *Self-Defence in International Law*, Manchester University Press, 1958, in particular at p. 24.

[7] I. Brownlie, *International Law and the Use of Force by States*, Clarendon Press, Oxford 1963.

impair the [...] right of [...] self-defence', cannot have, by itself, the effect of depriving Article 2, paragraph 4, of most of its significance[8] and, in fact, opening the door to a return to past practices whereby States were the sole and final arbiters of whether force should be used. The principle of effectiveness stands in the way of attributing to Article 51 a meaning that would make Article 2, paragraph 4, – one of the principles of the United Nations – a rather hollow phrase.

12. It may be said, in connection with the second interpretation, that the Charter of the United Nations introduced a new approach to self-defence. While formerly self-defence served the protection of certain essential rights, though their list was never established in a way that would remove arbitrariness or vagueness, today self-defence offers protection 'against the illegal use of force, not against other violations of law'.[9] Thus, the decisive factor becomes not the content of the right in question, and the measure or extent of its violation, but the form in which such violation takes place: that form must be an armed attack.

13. It remains to clarify the notion of collective self-defence because the Charter refers to it apart from individual self-defence. That notion goes further than the mere application, on a collective plane, of individual self-defence. This view finds support in the preparatory work on the Charter at the San Francisco conference in 1945 and, what is particularly important, in the subsequent practice of the Members of the United Nations. The lawfulness of their bilateral or multilateral mutual defence treaties could not be and was not questioned by the United Nations, international courts and tribunals or – barring some political propaganda arguments – State practice. Strictly speaking, one should refer here to collective defence or defence of another State rather then collective *self*-defence.

Use of Force in Self-Preservation, Self-Help or Necessity

14. Before a choice is made between the two interpretations of the law of self-defence it is convenient to mention some other categories of use of force by States which might be similar to self-defence or contain some ele-

[8] H. Kelsen, *Recent Trends in the Law of the United Nations*, Stevens, London 1951, p. 918.

[9] H. Kelsen, 'Collective Security and Collective Self-Defence under the Charter of the United Nations', *American Journal of International Law*, vol. 42, 1948, p. 783 at p. 784.

ments of it. They are self-preservation, self-protection, self-help and necessity. The history of international relations, including that of the nineteenth and twentieth centuries, abounds in examples of forcible action when those pleas were invoked. The practice of States which developed when war was still a lawful means of settlement does not allow for any clear-cut distinctions between these categories. They are used interchangeably in diplomatic language and, contrary to the developed systems of municipal, and particularly criminal law, no effort has been made to distinguish one category from the other or from each and self-defence.

15. In the past, various military actions were justified by the invocation of the said pleas. They consisted, *inter alia,* in full-scale invasions, occupation of the whole or part of foreign territory, destruction of foreign armed forces, fighting insurgents abroad or committing of other acts on foreign territory without the sovereign's authorization.

16. The answer appears to be that the United Nations Charter has eliminated the admissibility of forcible measures based *exclusively* on the above pleas as understood by the State concerned. In the *Corfu Channel* case between the United Kingdom and Albania the International Court of Justice said in the context of 'self-protection or self-help' that '[b]etween independent States, respect for territorial sovereignty is an essential foundation of international relations'.[10] States seeking protection of their interests or rights are under a duty to submit to peaceful procedures of settlement. These procedures, no doubt, may prove, as they often do, lengthy, ineffective or inconclusive, and the State's interests may suffer before it receives satisfaction of one kind or another. But it remains the paramount interest of the international community that force is not used unilaterally, when States invoke such general reasons for their armed action as their preservation or protection and when the party at which such action is aimed has not yet attacked another State by force of arms or is not preparing an imminent attack. In fact, the latter possibility, *i.e.*, the lawfulness of pre-emptive action in self-defence, is what today remains of the past justification of the use of force by one country against another in self-preservation, self-help or necessity. It may also be added that recent experience, *e.g.*, the Iraq war, shows that use of force by individual States or groups thereof, rarely brings the desired fruits.

[10] ICJ Reports, 1949, at p. 35.

Conclusion on Self-Defence

17. The conclusion is that a State may act in individual self-defence or in defence of another State only if an armed attack occurred or if a threatened attack is imminent or proximate, 'no other means would deflect it and the action is proportionate'.[11] As already indicated, the latter possibility is that of a pre-emptive action in self-defence.[12] Such action must be distinguished from preventive action (anticipating self-defence). Preventive action, when the threat is not imminent yet exists (e.g., acquisition, with allegedly hostile intent, of nuclear weapons[13]), is within the competence of the UN Security Council which then acts under Chapter VIII of the Charter (military action authorized by the Council is not the subject of the present comments).

The Magisterium and Self-Defence

18. It is submitted that the foregoing presentation of international law on self-defence conforms to the social doctrine of the Church. The Catechism of the Catholic Church lays down the traditional elements of the just war doctrine. 'The evaluation of these conditions for moral legitimacy belongs to the prudential judgment of those who have responsibility for the common good'.[14] The Church states that 'the right to self-defence must respect "the traditional limits of *necessity* and *proportionality*"'. Referring to 'preventive war' the *Compendium of the Social Doctrine of the Church* speaks of the requirement of a 'clear proof that an attack is imminent'. What is meant here is pre-emptive rather than preventive action (see paragraph 17 above). For 'without clear proof' of such imminence '[i]nternational legitimacy for the use of armed force [...] can only be giv-

[11] *A More Secure World: Our Shared Responsibility*. Report of the High-level Panel on Threats, Challenges and Change (hereafter: Report), United Nations 2004, p. 63, paragraph 188.

[12] My earlier views on self-defence were more restrictive, *i.e.*, I did not regard pre-emptive action as constituting self-defence. I have found support for my earlier view in some practice of the UN Security Council. See, *inter alia*, Chapter 12 in M. Soerensen (ed.), *Manual of Public International Law*, Macmillan, London-Melbourne-Toronto and St. Martin's Press, New York 1968, pp. 767-768. On pre-emptive action in self-defence, see Yoramj Dinstein, *War, Aggression and Self-Defence*, Fourth Edition, Cambridge University Press 2005, pp.187-192.

[13] Report, paragraphs 188-190.

[14] Paragraph 2309. See also *Compendium*, paragraph 500.

en by the decision of a competent body'; the latter term means the UN Security Council.[15]

Non-Intervention and Responsibility to Protect

19. The prohibition to refrain from the threat or use of force (Article 2, paragraph 4, of the UN Charter) covers armed intervention. Generally, with regard to intervention, the UN Charter sets down the following principle (Article 2, paragraph 7): *Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.*

From the outset, in its practice, the United Nations adopted an interpretation of that principle that did not prevent its organs to deal with various issues which specific States might have regarded or did regard as belonging to their 'domestic jurisdiction'. The very description of those matters as *essentially* belonging to the said jurisdiction is problematic and, in practice, rather meaningless. For what is or is not domestic or internal depends on the existing state of regulation by international law and is, thus, flexible and in constant flux. It does not depend on any immutable legal dogma. International regulation is becoming broader and deeper, especially with the inclusion of human rights and fundamental liberties into the scope and range of international law. Indeed, very rare are instances when the quoted principle stopped the United Nations from dealing with matters that traditionally constituted the internal sphere of the State.

20. In resolution 2131 (XX) of 21 December 1965, which embodies the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, the UN General Assembly stated the law in the following terms (para. 1): *No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are condemned.*

21. The prohibition of armed intervention as formulated by the above statement would apply equally to humanitarian intervention. This is inter-

[15] *Compendium*, paragraph 501.

vention which used to be regarded as permissible when a State was guilty of cruelties against, and persecution of, its nationals or foreign nationals residing in its territory. Before the First World War, European powers resorted to humanitarian intervention in their relations with the Ottoman Empire and certain non-European States. As a tool of policy in the hands of individual states, and particularly the great powers, humanitarian intervention frequently led to abuses. For often the intervening party did not restrict its activity only to prevent the State guilty of carrying out inhuman policies to continue, but also fostered its own interests. Under the law of the UN Charter and decolonization humanitarian intervention might be held to have fallen into desuetude[16] because it was disregarded in practice. When there was an attempt to resort to it, by Belgium in the Congo crisis in 1960, the United Nations did not recognize the existence, in this incident, of a right by an individual State to intervene for humanitarian reasons. On the other hand, the Security Council decisions on the Congo crisis support the view that there is room for collective intervention on behalf of the United Nations when internal disorders in a State assume the proportions of a threat to international peace and security.

22. Yet, when at the end of the twentieth and the beginning of the twenty first centuries several large-scale humanitarian disasters occurred, they gave the law a new turn. They took place, e.g., in Somalia, Bosnia and Herzegovina, Rwanda, and Sudan (Darfur). These tragic facts influenced the development, interpretation and implementation of law: the prohibition of intervention could not apply to genocide or comparable activities. In such situations there is an international responsibility to protect and if, for whatever reason, there is no collective exercise of that responsibility by the United Nations, individual States or groups thereof can act within the limits of what is absolutely necessary to save human lives and health, when other measures have failed. International humanitarian law must be vindicated.

23. The Church speaks in the same vein. 'In modern conflicts, which are often within a State, *the precepts of international humanitarian law must be fully respected*'.[17] Referring to attempts to eliminate entire national, ethnic, religious or linguistic groups, the Church emphasizes

[16] The use of this term implies that humanitarian intervention was based on law, and not only on practice of the great powers. But that was a debatable point.

[17] *Compendium*, paragraph 504.

that States, as members of the international community, 'cannot remain indifferent; on the contrary, if all other available means should prove ineffective, it is "legitimate and even obligatory to take concrete measures to disarm the aggressor"'. 'The principle of national sovereignty cannot be claimed as a motive for preventing an intervention in defence of innocent victims'.[18]

Historical Background

24. It may be added that contemporary social doctrine of the Church relating to the enhancement of peace and the exclusion or limitation of recourse to war has been built on a long tradition of Christianity. The concept of just war (*bellum justum*), which had its beginnings in the law of ancient Rome and the writings of Marcus Tullius Cicero, had been part of the law of the Church, including the Decretum Gratiani. Primarily, however, it has been developed first by St. Ambrosius and St. Augustine, then by scholastic theologians, especially St. Thomas Aquinas and the authors of various *Summae Casuum* (among them the work of Raymond de Pennaforte, the *Summa Raymundi*). Nor should one pass over in silence the contribution by Paulus Vladimiri and his briefs prepared for the purpose of some of the papal arbitrations.[19] Finally, there are the treatises of the immediate precursors of Hugo Grotius: first of all Franciscus de Vitoria and Franciscus Suarez, also Albericus Gentilis, and other authors, e.g., M. Azpilcuetta (Navarrus), Fernandus Vasquius and Covarruvias.[20]

25. In positive law (as summarized in paragraphs 2-17 and 19-22 above) a more convenient term seems to be now *bellum legale* instead of *bellum justum*.[21] It is a question of emphasis and distinction, not of contradiction. For if one assumes (as, in the present context, one has to) that 'the same moral law that governs the life of men must also regulate relations among States',[22] the term *bellum justum* retains its validity.

[18] *Compendium*, paragraph 506.

[19] L. Ehrlich edited those briefs, Pax Publishers, Warsaw. See also Belch's book on the subject.

[20] For a review and analysis, see D. Beaufort, *La guerre comme instrument de secours ou de punition*, M. Nijhoff, La Haye 1933.

[21] J.L. Kunz, 'Bellum Justum and Bellum Legale', American Journal of International Law, vol. 45, 1951, p. 528; Dinstein, op. cit., p. 68.

[22] *Compendium*, paragraph 436.

Natural Law

26. This is particularly so in view of the significance of the concept of natural law for the origins of modern international law and for its operation today. That concept is part and parcel of the Church's social doctrine. Professor Herbert Schambeck recalls it in his paper and so do other contributors to the present Session of the Academy, including Professor Juan José Llach. According to Saint Thomas Aquinas natural law 'is nothing other than the light of intellect infused within us by God. Thanks to this, we know what must be done and what must be avoided.'[23] The Church's social doctrine points out that reason that promulgates natural law 'is proper to human nature'; 'it extends to all people insofar as it is established by reason. In its principal precepts, the divine and natural law is presented in the Decalogue and indicates the primary and essential norms regulating moral life.' '[N]atural moral law, of a universal character, [...] precedes and unites all rights and duties.' The essential point for human rights is that 'natural law expresses the dignity of the person'.[24] And this dignity 'is perceived and understood first of all by reason'.[25]

27. Positive law must conform to natural law[26] – a basic principle accepted by the founding fathers of the science of international law in Europe between XVI and XVIII centuries, not to speak of earlier Church writers like Saint Augustine, Saint Isidor of Sevilla and Saint Thomas Aquinas.[27] The consequences of that principle are clear; one of them is that any political authority 'must enact just laws, that is, laws that correspond to the dignity of the human person and to what is required by right reason'.[28] What partakes in the unchangeable character of natural law is not subject to any derogation.[29]

28. Professor Schambeck refers to one of the concerns Pope Benedict XVI expressed still before His election, namely the 'dictatorship of relativism' and the dominating role of positivism, also in the sphere of law. To

[23] Quoted in paragraph 140 of the *Compendium*.
[24] *Ibid*., paragraph 140.
[25] *Ibid*., paragraph 153.
[26] *Ibid*., paragraph 224.
[27] See the present paper, paragraph 24 above.
[28] *Compendium*, paragraph 398.
[29] The 'principles of natural law' are 'unchangeable', *ibid*., paragraph 53. *Cf*. also paragraph 37.

some extent the latter danger exists equally with regard to international law. On the other hand, it is difficult to imagine the functioning of international law without the support of natural law. The basic principles of international law flow from the commands of natural law. Paraphrasing Professor Schambeck, one may say that the purposes and aims of international law reach beyond pure positivism because they take natural law into account.

Some other issues

29. The Rapporteur, Dr José Miguel Insulza, has devoted the larger part of his paper to the problems of Latin America seen from the perspective of solidarity, justice and global cooperation. But first he has dealt with what he describes as paradoxes of our times and the limits of the international system that result from these paradoxes. The problem is not new.

30. Let me recall the interwar years. The Covenant of the League of Nations (1919) provided for a partial prohibition of war, i.e., it permitted recourse to war in some circumstances and situations. The gaps that existed in this respect under the Covenant were to be closed by the Geneva Protocol for the Pacific Settlement of International Disputes (1924). It established the concept of an international triad of security, arbitration and disarmament. When that Protocol failed to enter into force, its function was taken over by two other instruments. First, the General Treaty for the Renunciation of War (1928),[30] also known as the Briand-Kellogg Pact or Pact of Paris, which prohibited all wars though it maintained the right of States to go to war against a State that violated the Treaty. Second, in the same year, States concluded the General Act for the Pacific Settlement of International Disputes (usually referred to as General Act of Geneva; in 1949 it was revived, without much success, by the United Nations). The particular feature of the General Act was its complete and full system of dispute settlement. Since under the Briand-Kellog Pact States excluded 'recourse to war for the solution of international controversies' and renounced it 'as an instrument of national policy in their relation with one another' (Article I), there automatically arose the issue of a complete system of peaceful settlement of disputes, i.e., one which would introduce the obligation of such settlement for any inter-State conflict, including conflicts

[30] I have already referred to that Treaty (and to the League of Nations Covenant) in another context, see paragraph 3 above.

of a political nature.[31] Here the General Act of Geneva was to provide a solution: if a political dispute could not be resolved by other means (e.g., conciliation), it had to be submitted to arbitration. This was a novelty, for arbitration is a means for settling legal (juridical) disputes, not political ones; hence the name neoarbitration (*néo-arbitrage*). It may be added that a similar method was adopted in the European Convention for the Peaceful Settlement of Disputes (1957).

31. There is room for the view that, today, the triad of security, arbitration and disarmament continues to be relevant. It must be supplemented and enriched by measures that would protect human dignity, a key element in the social doctrine of the Church.

32. Here we encounter the issue of justice and peace to which, in the Encyclical *Deus Caritas Est*, Pope Benedict XVI attributes primary importance. It should be noted that peace is more than mere absence of war and, therefore, it cannot be adequately defined by reference to war alone. Peace consists in positive values and one of them is justice. According to the said Encyclical, justice 'is both the aim and the intrinsic criterion of all politics'. Justice introduces the element of ethics into any order,[32] including the international one.

33. The Magisterium emphasizes that justice is one of the 'fundamental values' of social life.[33] It distinguishes various 'forms of justice', one of them being 'legal justice'. 'Even greater importance has been given to *social justice*, which represents a real development in *general justice*, the justice that regulates social relationships according to the criterion of observance of the *law*'.[34]

34. In his paper Professor Philip Allott mentions 'countless subordinate forms' of justice among which there are 'social justice, the justice embodied in positive law, the justice of the application and enforcement of the law'. 'But the ultimate validity of the law', he says, rests 'on the paradigm of order present in the human mind'. And he quotes Charles de Montesquieu that '[b]efore laws were made, there were relations of possible justice'.[35] Professor Allott observes that 'the search for international society's highest values' includes 'the ideal of all ideals whose traditional name is "justice"'.[36]

[31] While legal disputes would be submitted to the Permanent Court of International Justice – now International Court of Justice at The Hague.

[32] *Deus Caritas Est*, n. 28.

[33] *Compendium*, paragraph 197.

[34] *Ibid*., paragraph 201.

[35] Paragraph 26 of Allott's paper.

[36] See statement D preceding paragraph 19 of his paper.

35. One may note a certain convergence between, on the one hand, Professor Allott's views on the relationship of justice and law and, on the other, the Church's social doctrine. That doctrine points out that '[j]ustice, in fact, is not merely a simple human convention, because what is "just" is not first determined by the law but by the profound identity of the human being'. '*The full truth about man makes it possible [...] to open up also for justice the new horizon of solidarity and love*'. For one can 'move beyond a contractualistic vision of justice, which is a reductionist vision'.[37] As Archbishop Roland Minnerath put it, justice is guaranteeing *suum cuique*, but it requires constant refuelling by charity.[38]

36. In paragraph 1.4 of the General Introduction to the topic of the Session Professor Llach notes that it is possible to speak of the beginnings of 'the embryo of worldwide governance' which reveals itself, *inter alia*, in 'the establishment of worldwide judiciary systems'; he gives the example of the International Criminal Court. The importance of that Court has also been emphasized by Professor Vittorio Possenti.[39] It is true that this body constitutes the first permanent court of its kind. Its predecessors had or have jurisdiction over persons linked to a specific country and events and, consequently, they were or are temporary: the International Military Tribunals at Nuremberg (1945-1946) and Tokyo (1946-1948) or the International Criminal Tribunals for the Former Yugoslavia (1993 –) and Rwanda (1994 –). Other *ad hoc* tribunals have been envisaged or are already established for particular crimes committed in specific countries, e.g., the Special Court for Sierra Leone. On the other hand, the draft agreement of 2003 provided for the Khmer Rouge tribunal within the judicial system of Cambodia; in this tribunal Cambodian judges would outnumber the international judges.

37. However, permanent international criminal jurisdiction is and will for some time remain in its initial stage. When discussing the administration of international justice in terms of a 'system' one bears in mind also that administration's other forms. The oldest one is arbitration; recently it experienced a revival. Then there is the International Court of Justice at The Hague whose docket is now more than full (in contradistinction to not so distant a past). Last but not least one should recall the activity of various regional courts that decide cases relating to human rights and fundamen-

[37] *Compendium*, paragraph 202.
[38] See last paragraph of his comment.
[39] See his paper 'International Justice, International Law and World Peace'.

tal freedoms. Proliferation of international judicial bodies is today a fact. But do they already constitute a 'system?'

38. I agree with Professor Possenti that international law is becoming or has already become a law of peace; its origin was that of law of war and peace. The concept of international law as a law of peace is particularly strong in the social doctrine of the Church. Yet armed conflicts continue to be, regrettably, part of contemporary international life. For that reason it is more than important that rules on the conduct of hostilities and especially the humanitarian law of armed conflict, i.e., law on the protection of the victims of war, should be applied, implemented and repspected once an armed conflict has broken out (*ius in bello*). What is equally important is the application of at least the basic rules of humanitarian law to internal conflicts.

39. Professors Llach and Possenti refer, among other things, to the reform of the United Nations. That is a large subject. I limit myself to drawing the attention of the Academy to a text prepared under the auspices of the United Nations in 2004 entitled '*A More Secure World: Our Shared Responsibility*. Report of the High-level Panel on Threats, Challenges and Change'.[40] In my view the reform of the United Nations consists not so much in the revision of the Charter – practically, that is an impossible task – as in finding solutions through its interpretation. One may here quote the French jurist Guy de Lacharrière, who, discussing the problem of changes in the United Nations, rightly asked: 'Would not the application of the Charter be the most important reform?'.[41]

For a brief summary of the U.S. doctrine on the use of force after 11 September 2001, see my comment during the Ninth Plenary Session of the Academy in 2003. *The Governance of Globalisation*, Vatican City 2004, p. 131, at pp. 133 and 135-136, paragraphs 8 and 12.

[40] See Note 11 above.

[41] D. Bardonnet (ed.), *The Adaptation of Structures and Methods at the United Nations*, Nijhoff, Dordrecht 1986, p. 401.