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Intervention of the Secretary for Relations with States at the 72nd Session of the United Nations General Assembly on the “responsibility to protect”

The following is the intervention the Secretary for Relations with States, H.E. Msgr. Paul R. Gallagher, pronounced on 25 September at the seat of the United Nations in New York, during the 72nd Session of the United Nations General Assembly, on the theme *The responsibility of religious leaders regarding the responsibility to protect*.

Intervention of H.E. Msgr. Paul R. Gallagher

In general terms, and before the recent international juridical debate, one can say that the *responsibility to protect* is one of the primary objectives of the State and Criminal Law. From the time of the ancient Mesopotamic civilisations, the history of criminal law can be summarised in its effort to ensure cohesion and social order and to protect persons and property, at the very least, certain social groups. Therefore, we can say that the *responsibility to protect* began when social order was maintained no longer by the private vendetta of the clan or the tribe but as a responsibility of Authority. A fundamental and historic turning point in the development of the *responsibility to protect* within every State was the constitutionalism of the eighteenth and nineteenth centuries, particularly with the *Declaration of Independence of the United States of America*, on 4 July 1776, and the *Declaration of the Rights of Man and of the Citizen* by France's National Constituent Assembly on 26 August 1789. Both of these Declarations established the equality of citizens before the law, from which would develop certain fundamental principles which are the hallmarks of criminal law today, namely, the principle of the legality of penalties and sanctions: *nullum crimen, nulla poena sine praevia lege poenali*. At the level of political theory and constitutional law, the primary responsibility of the State to protect public order, social harmony and the life and security of persons and their families as well as their property, is today an indisputable and absolute principle accepted by everyone. The performance of this task, moreover, is the fundamental basis for the legitimacy of governments, and a good part of constitutional mechanisms have as their objective to prevent governments from disregarding these principles.

After the Second World War, the major juridical principles that imposed on national governments the obligation

to *protect* the public order and the life and dignity of persons also became the basic principles of the international order. In particular, the *Universal Declaration of Human Rights*, approved by the General Assembly of the United Nations on 10 December 1948, is nothing other than making explicit the objectives contained in the second introductory paragraph of the Charter of the United Nations: “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small....” Thus, in addressing the General Assembly of the United Nations on 2 October 1979, Pope John Paul II (now Pope St. John Paul II for Catholics) described the Universal Declaration of Human Rights as “a milestone on the long and difficult path of the human race.”

However, it is well known that when we speak of the *responsibility to protect* in the current international debate, we refer to concepts that are more precise and more limited than those concerning the primary responsibility of the State to respect human rights and to protect public order, social harmony and the security of persons and their families and their property. The 60th Session of the General Assembly of the United Nations set forth three pillars on which rest the international concept of the *responsibility to protect*. These are: (1) States have a responsibility to protect populations under their jurisdiction from genocide, war crimes, ethnic cleansing and crimes against humanity; (2) The international community has a responsibility to help states to fulfil their responsibility to protect; (3) When a state is ‘manifestly failing’ to protect its own populations then the international community has a responsibility to protect and may take collective action in a timely manner, even to the point of using force as a last resort.[1]

The first element of the principle of the *responsibility to protect* is self-evident and accepted by everyone. Protection from genocide, from war crimes, from ethnic cleansing and from crimes against humanity, is nothing other than a re-statement of the most important parts of the fundamental obligation of Governments to protect public order, social harmony and the life and security of the person. Moreover, a Government that would consent to such crimes would lose all ethical legitimacy or, in the case that it was unable to prevent them, it would prove itself to have failed absolutely as a Government.

The second and third elements of the international definition of the *responsibility to protect*, instead, raise some important international issues. Firstly, there is a difficulty in reconciling the International Community’s obligation to protect with the principle of non-interference, as ratified by Article 2.7 of the Charter of the United Nations, and secondly, there is not yet an international legal text that authorises the use of collective force above and beyond the cases or circumstances that are set forth in Chapter VII of the UN Charter. A juridical formulation of the principle would require, at the very least, a reform of Article 39 to include among the various circumstances which would authorise an intervention of the Security Council also those crimes to which the concept of *responsibility to protect* refers to. There would also need to be a reform or, at least, an authoritative interpretation of Article 2.7, to define the competence of the United Nations concerning those crimes that fall within the ambit of the *responsibility to protect*. On the other hand, the decision of a State to assume to itself the right to intervene militarily in another State, on the pretext of applying the principle of *responsibility to protect*, would setback all the achievements of the twentieth century in developing international law, by going back to an international juridical culture of the times before the Congress of Vienna of 1815. Such an intervention, then, would obtain nothing other than the undermining of the *responsibility to protect* or, at the very least, raise serious reservations about it.

At this point, considering the difficulties of an international juridical formulation of the principle of the *responsibility to protect*, which are not easily overcome, religious leaders, in the exercise of their mission, and without going beyond the limits of their competence, can greatly facilitate the understanding and the just application of the principle. Indeed, religious leaders can help society understand that the concept of the *responsibility to protect* is also a corollary of the fundamental truths and values of all religions and that, on the contrary, the crimes for which the principle of the *responsibility to protect* would be invoked are a negation of every true religious sentiment. Indeed, all of the world’s great religions affirm the ethical principle of reciprocity, either negatively, “do not do unto others what you would not done to yourself”, or positively, “do unto others what you would want done for you”. From this fundamental ethical principle one can deduce also the obligation of all to respect the life of others and that of governments to protect their citizens.

Addressing religious leaders of the various religious communities that live side-by-side in Azerbaijan, during the

interreligious meeting which closed his visit to that country last year, Pope Francis stated that “*religions, which help to discern the good and put it into practice through deeds, prayer and diligent cultivation of the inner life, are called to build a culture of encounter and peace, based on patience, understanding, and humble, tangible steps. This is the way a humane society is best served.*”[2] Religions which affirm both the existence of a Creator God and the transcendence of every human person, also agree about an essential human dignity, which is shared by all, and about the existence of certain laws of justice which are anterior to all human normative formulations. Likewise, true religious sentiment rejects any form of violent imposition. Moreover, as Pope Francis, quoting Dostoevsky, stated in the same address, “*If God does not exist then everything is permissible*”.[3]

Human rights, the great principles of humanitarian law and, in particular, the total rejection of the crimes of genocide and ethnic cleansing, war crimes and crimes against humanity are part of an universal juridical patrimony, shared by all, and which are also anterior to their legal definition and to the allocation of competences among the various organs of the nation State and between it and the international community. Between this juridical patrimony and true religious ideas there is an inseparable connection, because faith in God who is Creator and Father also leads to the recognition of the unity of human beings and of universal fraternity. It is the responsibility of religious leaders, as part of their mission, to promote the recognition of that universal juridical patrimony, which can also be called natural law, and of the obligations that are derived from it.

A general overview of the history of the genesis and development of international law can help us to understand the importance of the responsibility of religious leaders. Article 53 of the Vienna Convention on the Law of Treaties (Vienna, 23 May 1969) stipulates that “*a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law (jus cogens). For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.*”

Even if within academic circles and within the same Commission of International Law there has been, and continues to be, much discussion on the meaning of the expression *jus cogens* and on the existence or not of imperative norms that cannot be derogated from by any treaty, simple common sense teaches us about the existence of such norms. It is enough to think of the absurdity and of the coarse illegitimacy of a treaty that would legitimise genocide and ethnic cleansing, even if such a hypothetical treaty were to be signed and ratified by all the members of the international community. True religious faith, thus, serves to do no more than to strengthen common sense.

Recently, the Commission for International Law presented the Report of its 69th annual session, which will be debated during the current 72nd session of the General Assembly of the United Nations from 23 October next. Item 7 of the Agenda of the Commission[4].....*Peremptory norms of general international law (jus cogens)* – concern in a particular way the current debate, inasmuch as the provisional conclusion N° 2 [3.(2)], in fact, recognises the existence of *peremptory norms of general international law (jus cogens)* [which] *reflect and protect fundamental values of the international community, are hierarchically superior to other rules of international law and universally applicable.*

In his first report on *jus cogens* the Special Rapporteur Professor Dire Tladi, quoting Professor Eric Suy (a former Under-Secretary General and Legal Counsellor of the United Nations)[5] stated that “*the term jus cogens could be found “in no text prior to the nineteenth century” [but] the idea of a superior law, from which no derogation was permitted “runs like a thread through the whole theory and philosophy of law,”* and he recalled in a particular way the theologians and jurists of the Salamanca school of the fifteenth century and Grotius and Wolff in the following century.[6] It was not by chance that these ‘Fathers’ of international law were also theologians or, at least, men of faith who had a deep knowledge and familiarity with theology, philosophy and history. Pope Benedict XVI, in speaking about them, affirmed that they had perceived the reality of human rights long before they were solemnly formulated and, in a certain way they had already foreseen the *responsibility to protect*.[7]

The most vile crimes of the twentieth century, on the other hand, happened at a time when the idea of God and

universal fraternity, characteristics of the great religions, had been replaced by ideologies of racial or national superiority and class struggle. As Pope Francis said during his visit to Tirana in September 2014: *"When, in the name of an ideology, there is an attempt to remove God from society, it ends up adoring idols, and very soon men and women lose their way, their dignity is trampled and their rights violated. You know well how much pain comes from the denial of freedom of conscience and of religious freedom, and how from such a wound comes a humanity that is impoverished because it lacks hope and ideals to guide it."*[8]

Twenty-one years earlier, also in Tirana, Pope John Paul II spoke about religious freedom and the correct understanding of religion: *"religious freedom [...] is not only a precious gift from the Lord for those who have the grace of faith: it is a gift for each person, because it is the basic guarantee of every other expression of freedom [...]. Only faith reminds us that, if we have one Creator, we are therefore all brothers and sisters. Religious freedom is thus a bulwark against all forms of totalitarianism and contributes decisively to human fraternity."*[9]

Thus, drawing from the words of Popes John Paul II and Francis, true religion *"shuns the temptation to intolerance and sectarianism, and promotes attitudes of respect and constructive dialogue."*[10] And as Pope Francis added, *"as believers we must be particularly vigilant so that, in living out with conviction our religious and ethical code, we may always express the mystery we intend to honour. This means that all those forms which present a distorted use of religion, must be firmly refuted as false since they are unworthy of God or humanity. Authentic religion is a source of peace and not of violence! No one must use the name of God to commit violence! To kill in the name of God is a grave sacrilege. To discriminate in the name of God is inhuman."*[11]

It is, thus, an obligation and a task of religious leaders to create *"a shared space [...] an atmosphere of respect and cooperation that must be built with everyone's participation, even those who have no religious convictions... that regards every man and woman, even those of different religious traditions, not as rivals, less still enemies, but rather as brothers and sisters. When a person is secure of his or her own beliefs, there is no need to impose or put pressure on others: there is a conviction that truth has its own power of attraction. Deep down, we are all pilgrims on this earth, and on this pilgrim journey, as we yearn for truth and eternity, we do not live autonomous and self-sufficient individual lives; the same applies to religious, cultural and national communities. We need each other, and are entrusted to each other's care. Each religious tradition, from within, must be able to take account of others."*[12]

If international norms, and law in general, were to depend solely on the will of States, or worse still, on the *de facto* exercise of power, without recognising the existence of higher principles that cannot be derogated from, it would be impossible to advance the implementation of the principle of the *responsibility to protect*, particularly its third element, the intervention of the international community. True religious faith, instead, offers a clear complementary and alternative path. On the one hand, recognising the transcendent nature of the human person and living the golden rule of charity and all of its consequences, in each and every circumstance, there would be no crimes that would justify the intervention of the international community. On the other hand, even if these crimes were, nevertheless, to occur, a faith that does not lead to the disrespect of others, that brings about dialogue, faith and the search for consensus, would facilitate entrusting the solution of such grave situations to an organised international community. A profound reflection on the nature of faith and on its consequences can be something good for the international community, for the implementation of humanitarian law and for the promotion of human rights and also for the extreme situation when it would be necessary to implement internationally the *responsibility to protect*. Thus, the great role that religious leaders can play regarding the *responsibility to protect* is to ensure that religions are lived in such a way that genocides, war crimes, ethnic cleansings or crimes against humanity never happen.

[1] Cfr. A/RES/60/1. Resolution adopted by the General Assembly – World Summit Outcome, NN. 138-139.

[2] Pope Francis, Interreligious Meeting with the Sheikh and with the Representatives of the Different Religious Communities of the Country, "Heydar Aliyev" Mosque, Baku, Azerbaijan, 2 October 2016.

[3] Fyodor Dostoyevsky, *The Brothers Karamazov*, XI, 4.8.9. Cited by Pope Francis during the same meeting at Baku.

- [4] Preparatory Document of the 72nd Session of the General Assembly of the United Nations A/CN.4/SR.3382, 25 August 2015.
- [5] Eric Suy is a well known international jurist. Professor of the Catholic University of Leuven. Legal Counsel and Under-Secretary General during the time of Secretary General U Thant (1961-1971) and later Director of the United Nations Office in Geneva. He was also associated with the beginning of the Holy See's presence at New York and Geneva.
- [6] Cfr. UN General Assembly, A/CN.4/683, 8 March 2016, NN. 20-21 and notes.
- [7] Cfr. Pope Benedict XVI, *Address to the General Assembly of the United Nations*, 18 April 2008. The Pope on that occasion cited in particular the Dominican friar and theologian, Francisco de Vitoria.
- [8] Pope Francis, Meeting with the Leaders of other religions and other Christian denominations, Catholic University of Our Lady of Good Counsel, Tirana, 21 September 2014.
- [9] Pope St. John Paul II, *Message to the Albanian Nation*, 25 April 1993.
- [10] Ibid.
- [11] Pope Francis, *Meeting with the Leaders of other religions and other Christian denominations*, Catholic University of Our Lady of Good Counsel, Tirana, 21 September 2014.
- [12] Ibid.
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