

# JURIDICAL WORLD ORDER

## *A Symposium:*

The Role of Force in the International Juridical Order

Pius XII's Legacy to World Federalism

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American Catholic Opinion and the UN

The Right to Travel and Migrate

*The first article  
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# PIUS XII'S LEGACY TO WORLD FEDERALISM

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**W**HEN DEATH CALLED POPE PIUS XII at 3:52 a.m. on Thursday, October 6, 1958, the world stood still in awesome admiration of the Pope of Peace whose ringing words and slender white-clad figure had become a unique and beloved symbol of stability and love during the previous two decades which had witnessed the worst upheaval in the history of the world. On October 25, 1958 — nineteen days after the death of the most international-minded of all modern Popes — the Catholic Association for International Peace opened its thirty-first annual meeting. Some twenty of CAIP's annual gatherings had been held during the pontificate of Pius XII and it is not an exaggeration to state that his magnificent leadership in urging a true community of nations formed a large part of the inspiration of those dedicated men and women who have so developed and intensified the activities of the CAIP that it now stands as one of the most vital Christian groups in the entire English-speaking world.

There was occasion in last year's gathering of the CAIP to mourn the greatest international jurist and statesman of this century, but his passing — so abrupt and so recent — precluded a quiet analysis of the legacy which Pius XII left to the family of nations concerning the urgency of their living together under a rule of love and of law. As the world grasps to understand and apply that legacy, lest it be plunged into a nuclear war more monstrous than imagination can portray, it is eminently fitting that the members of the CAIP contemplate and analyze that to which they are heirs. Many times, of course, the participants in this most important of all Catholic organizations have pondered on Pius' call to a world order, a symbiosis of free states, based on love. In this call the late Pontiff echoed with new clarity and dynamic inspiration the Catholic tradition of the law of nations which enriches the pages of Aquinas, Suarez and all the moral theologians of the Church.

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But now that the voice of this century's most respected diplomat and most beloved servant of peace is silenced forever, it is appropriate to consider what this gifted jurist stated concerning the Church's position on the growth and development of international juridical institutions. Aside from the obligation of always re-examining what the Papacy is teaching, the present reappraisal has a special urgency in view of the fact that American Catholics seem to manifest a massive reluctance to endorse any form of internationalism which requires the smallest surrender of American sovereignty.

The common opinion of Catholics in America has by instinct and tradition never been fully in total sympathy with the world federalism advocated by the late Holy Father. It is indeed a tragedy that the average Catholic in the United States, blessed with remarkable fidelity to the teachings of the Holy See, has failed in a notable way even to know, much less to radiate, the principles of international brotherhood so brilliantly expounded to the world by Pius XII.

### The Pope and the War

It seems true to state that Cardinal Pacelli was startled by his election as Pope on March 2, 1939 in the shortest conclave since 1623. No Papal Secretary of State had been so elevated since 1775. The statements of Pius XII during the first few weeks of his pontificate seem to suggest that he in all humility felt unprepared to try to lead the Church and to guide the nations of the world away from the brink of disaster. The burden of virtually all of his messages during this time is an exhortation to Europe and to the world to preserve the peace by every available means. It is probably understandable that a Pontiff, who did not antici-

pate his election and who beheld before his eyes the imminent renewal of world war, did not immediately enunciate the Church's position on a juridical world organization for peace. But in the years to come, from March 2, 1939 to October 6, 1958, the Pope, destined by God to lead His Church during mankind's greatest upheaval, gradually and realistically evolved a detailed position on a world federation of nations which stands as a challenge to humanity and a rebuke to those all too numerous Catholics who have not relinquished their false notions of exaggerated nationalism and have thus failed to appreciate the mind of the Holy See on the most burning issue of our generation.

Let us review the evolution, year by year, of Pius XII's ideas on world organization. If we see chronologically how the late Pontiff reacted to events, we will then be in a better position to summarize and evaluate his over-all intellectual and spiritual legacy concerning the problem upon the resolution of which depends the very survival of the human race.

The first message of Pius XII adumbrates the general themes which will make up the great symphony of this teaching. The morning after his election the Pope spoke to the world in moving terms of "the peace which joins nations . . . by friendly helping alliances."<sup>1</sup> On June 2, 1939, the Feast of St. Eugene, the Holy Father, speaking to the College of Cardinals, solemnly offered the services of the Holy See to stay the "imminent eruption of force."<sup>2</sup> Touchingly he called for a crusade of prayer and placed "the white legions of . . . children in the

<sup>1</sup> KOENIG, PRINCIPLES FOR PEACE 554 (1943), hereinafter cited as KOENIG.

<sup>2</sup> KOENIG 570.

vanguard."<sup>3</sup> On August 24, 1939 the Shepherd of Nations urged upon the whole world that "nothing is lost with peace; all may be lost with war."<sup>4</sup>

As the world plunged into a war which His Holiness called "a terrible scourge of God,"<sup>5</sup> the Pontiff initiated a long series of appeals to the belligerents to observe "the laws of humanity and to act in accordance with the stipulations of international agreements"<sup>6</sup> in connection with civilian populations, occupied territories and prisoners of war. He pleaded that "asphyxiating and poison gases . . . be excluded."<sup>7</sup>

The late Pope's first encyclical, timed to coincide with the Feast of Christ the King, is not merely a powerful denunciation of the omniscient state but suggests for the first time that after "the cruel strifes of the present have ceased, the new order of the world, of national and international life, must rest . . . on the solid rock of natural law and Divine Revelation."<sup>8</sup> This "solid rock" is the very essence of the Papal plan for peace; the nations of the world should join together not because they will thereby spare themselves grief but because God intended by the law of nature that the nations of the earth form one family. The Holy Father therefore rejects outright that pernicious positivism which had for so long dominated the field of international law, that positivism which, in a vicious circle, would deny the status of law to international agreements because there is no tribunal to enforce them and deny jurisdic-

tion to an international tribunal because the nations of the world are not willing to consent to any diminution of their sovereignty by submitting to the authority of an international court.

The first of Pius' nineteen Christmas addresses looks ahead amid the chaos and calamities of the war and urges that "in order to avoid . . . unilateral interpretations of treaties, it is of the first importance to erect *some juridical institution* which shall *guarantee* the loyal and faithful fulfillment of the conditions agreed upon. . . ."<sup>9</sup> The Pope does not spell out the nature of this needed "institution" but does insist that it be able to "guarantee" its objectives.

During the early years of the war the Holy Father seemed to be too anguished over the millions of souls whose lives had been devastated to ponder deeply on the nature of a new international legal order. One does not think of a new family home while the flames still consume the home that one loves. The Holy Father expressed his tender concern for humanity and for the people of Germany, among whom he had spent so many devoted years, when he denounced the demand for unconditional surrender agreed to by the allied forces at Casablanca. Pius' tenderness for war prisoners, refugees and orphans found expression in addresses truly classical in their moving compassion for the victims of war. Many addresses assert repeatedly the *need* for a new international order, but the specific *nature* of that order is not treated in detail.

As the war dragged on, the Holy Father spoke from time to time of his hopes for a new order. On September 1, 1944, for example, the fifth anniversary of Hitler's

<sup>3</sup> *Id.* at 571.

<sup>4</sup> *Id.* at 585.

<sup>5</sup> *Id.* at 589.

<sup>6</sup> *Id.* at 588.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Id.* at 607.

<sup>9</sup> *Id.* at 637. (Emphasis added.)

attack on defiant Poland, the Pope stated that

An old world lies in fragments. To see rising as quickly as possible from those ruins a new world, healthier, *juridically better organized*, more in harmony with the exigencies of human nature — such is the longing of its tortured people. . . . Since today . . . the desire to secure a new world-wide peace institution . . . is ever more occupying the attention and care of statesmen and peoples, We gladly express Our pleasure and form the hope that its actual achievement may really correspond in the largest possible measure to the nobility of its end, which is the maintenance of tranquility and security in the world for the benefit of all.<sup>10</sup>

With the famous 1944 Christmas address on democracy, the Holy Father could be said to have entered a new phase of outlining his aspirations for a new world order. The message struck the world like a thunderbolt because, in the words of the document itself, “beneath the sinister lightning of the war . . . the peoples have, as it were, awakened from a long torpor.”<sup>11</sup> To avoid another war there must be, Pius XII stated, “the possibility of censuring and correcting the actions of public authority” and this power must be vested “in the people.” This democratic power calls for great “moral maturity” so that from the democracies of the world there will emerge an organization with an authority which “must be real and effective over the member states.” The Pope, expressing by implication the hope that the Dumbarton Oaks proposals would be successful, goes on to state that

An essential point in any future international arrangement would be the formation of an organ for the maintenance of peace,

of an organ invested by common consent with supreme power to whose office it would also pertain to smother in its germinal state any threat of isolated or collective aggression.<sup>12</sup>

The call of the Pope for a “War on war” includes a call for

The threat of judicial intervention by the nations and of chastisement inflicted on the aggressor by the society of states, so that war will always be subject to the stigma of proscription, always under surveillance and liable to preventive measures. . . .<sup>13</sup>

The Holy Father was sterner in this message than ever before when he outlawed “all wars of aggression as legitimate solutions of international disputes.”<sup>14</sup>

Five months after the ringing Christmas Eve message of 1944, the Pope exulted on V-E Day; on that day, May 9, 1945, he spoke on the radio in the most moving terms of the “moulders and builders of a new and better Europe, of a new and better universe.”<sup>15</sup> Three weeks later the Holy Father in an address to the College of Cardinals returned to the theme that the peoples of the world “claim the right to take their destinies into their own hands.”<sup>16</sup> With manifest deep interest the Pope stated that the “thought of a new peace organization is inspired . . . by the most sincere and loyal good will.” He goes on:

What a bitter disillusionment it would be if it were to fail, if so many years of suffering and self-sacrifice were to be made in vain, by permitting again to prevail that spirit of oppression from which the world hoped to see itself at last freed once and for all.<sup>17</sup>

<sup>12</sup> *Id.* at 73.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Id.* at 72.

<sup>15</sup> *Id.* at 385.

<sup>16</sup> *Id.* at 455.

<sup>17</sup> *Id.* at 456.

<sup>10</sup> POWERS, ed., *PAPAL PRONOUNCEMENTS ON THE POLITICAL ORDER* 172 (1952). (Emphasis added.)

<sup>11</sup> 43 *CATHOLIC MIND* 66 (1945).

### The Pope and the United Nations

The words just cited were enunciated by the Holy Father as the United Nations Conference met in San Francisco. Forty-six nations participated but the Holy See was not invited. If the Holy Father was disappointed at the weaknesses inherent in the UN Charter, signed on June 26, 1945, he did not so indicate and in fact made no reference to the UN until January 1946. On November 18, 1945 the Administrative Board of the National Catholic Welfare Conference in the annual message of the American hierarchy made clear the bishops' objections:

The charter which emerged from the San Francisco Conference, while undoubtedly an improvement on the Dumbarton Oaks proposals, *does not provide for a sound, institutional organization of the international society*. The Security Council provisions make it no more than a virtual alliance of the great Powers for the maintenance of peace. These nations are given a status above the law. Nevertheless, our country acted wisely in deciding to participate in this world organization. It is better than world chaos. . . . *In time . . . we may have a sound institutional organization of the international community which will develop, not through mere voluntary concessions of the nations, but from the recognition of the rights and duties of international society.*<sup>18</sup>

By the summer of 1947 the limitations of the United Nations had become evident. The smaller nations in particular were dissatisfied with the domination of the great powers in the Security Council. Speaking to the new Minister of El Salvador, one of the world's smallest states, Pius XII urged the lesser nations not to "renounce the use" of the forum of the UN but to employ it

"to prod the conscience of the world."<sup>19</sup> This address along with several others exhorted nations to make every possible use of the UN while at the same time urging them to work for its strengthening.

On September 1, 1948 the Pope expressed his concern for the forthcoming session of the Assembly of the United Nations in these terms:

If any assembly of men, gathered at a critical cross-road in history, needed the help of prayer, it is this assembly of the United Nations.<sup>20</sup>

In his 1948 Christmas message Pius XII returns to the UN and expresses the following aspirations:

May the United Nations Organization become the full and faultless expression of this international solidarity for peace, erasing from its institutions and statutes every vestige of its origin, which was of necessity a solidarity in war!<sup>21</sup>

Although the Pope spoke almost as bluntly as the American hierarchy about the limitations of the UN, the Pontiff, like the American bishops, has repeatedly urged the fullest cooperation with this less than perfect world organization. The Pope in July 1951 stated that

We are happy to assure all the agencies and offices of the United Nations, destined to bring international assistance to the working man, that the Church is ever prepared to support their efforts with her most sympathetic collaboration.<sup>22</sup>

<sup>19</sup> Koenig, *Pius XII and the U.N.*, 52 CATHOLIC MIND 143-48 (1954).

<sup>20</sup> *Id.* at 147.

<sup>21</sup> *Ibid.*

<sup>22</sup> Address of His Holiness, Pope Pius XII, to members of the International Catholic Congress on Rural Problems, July 2, 1951, in 49 CATHOLIC MIND 708, 711 (1951).

<sup>18</sup> Cited in Conway, *Catholics and Revision of the U.N. Charter*, 88 AMERICA 230 (1952).



### Pius XII and World Government

After the deficiencies of the United Nations became ever more apparent the late Holy Father began to work — cautiously but clearly — to advance the ideas of world government or world federalism. In several statements His Holiness impliedly expressed his dissatisfaction with the UN Charter and at least by implication stated that the UN was a series of compromises, that it ran counter to the ideas he had enunciated during the war and that it had been weakened by the concessions made at Teheran, Yalta and Potsdam. But the Holy Father was never bitter; he never once called for anything even approaching a preventive war even though almost one-sixth of the members of the Mystical Body were being martyred behind the Iron Curtain in the satellite nations.

The Holy Father was well aware on April 6, 1951 that the world federalists advocated the transformation of the United Nations by charter revision into an organization comparable to that which he himself had called for at Christmas of 1944, a body *“with supreme authority and with power to smother in its germinal stages any threat of isolated or collective aggression.”*<sup>23</sup> Yet in an historic address on that day the Holy Father stated:

Your movement dedicates itself to realizing an effective political organization of the world. Nothing is more in conformity with the traditional doctrine of the Church. . . . It is necessary therefore to arrive at an organization of this kind, if for no other reason than to put a stop to the armament race. . . .

His Holiness added only one qualification

to his endorsement of the program of the world federalists:

You are of the opinion that this world political organization, in order to be effective, must be federal in form. If by this you understand that it should not be enmeshed in a mechanical unitarism, again you are in harmony with the principles of social and political life so firmly founded and sustained by the Church.<sup>24</sup>

The one qualification of Pius XII is that the structure of a world federation of nations must not be mechanical but organic and based on what he would later call the *“divinely-willed unification”* of humanity.<sup>25</sup>

It is significant to note that in late July of 1953 the Vatican Pro-Secretary of State, Monsignor Giovanni B. Montini, writing in the name of the Holy Father to the *Semaines Sociales* meeting in France, in strong terms rebuked Catholics insensible to admonitions of the Papacy. The letter read:

How many . . . continue to shut themselves up within the narrow confines of a chauvinistic nationalism, incompatible with the courageous effort to start a world community demanded by recent Popes.<sup>26</sup>

On October 3, 1953, Pius, in an address to the International Congress of Penal Law, vigorously called for an international penal code and for a Court with jurisdiction reaching into individual sovereign states. On December 6, 1953 the Holy Father, in perhaps his most significant address on world government, asserted that:

The setting up of a community of peoples, *which today has been partially realized*, but which is striving to be established and con-

<sup>24</sup> *Id.* at 232.

<sup>25</sup> 4 THE POPE SPEAKS 195, 196 (1959).

<sup>26</sup> Graham, *War and Peace at PAU*, 89 AMERICA 497 (1953). (Emphasis added.)

<sup>23</sup> See Conway, *Catholics and Revision of the U.N. Charter*, 88 AMERICA 230, 231 (1952).

solidated on a more elevated and perfect level, is an ascent . . . *from a pluralism of sovereign states to the greatest possible unity.*<sup>27</sup>

One can conclude from this that Pius XII felt that the UN had "partially realized" the desired "supra-national juridical community" but that more was yet to be achieved before the world would witness "*a higher community of men, [the one] willed by the Creator and rooted in the unity of their common origin, nature and final destiny.*" After a carefully balanced definition of true sovereignty the Holy Father enunciates a "fundamental theoretical principle for coping" with the difficulties in the "establishment, maintenance and functioning of a real community of states, especially one which would embrace all the peoples."<sup>28</sup> The principle reads:

Within the limits of the possible and the lawful, to promote everything that facilitates union and makes it more effective; to raise dykes against anything that disturbs it; to tolerate at times that which it is impossible to correct, but which, on the other hand, must not be permitted to make shipwreck of the community of peoples, because of the higher good that is expected from it.<sup>29</sup>

### Pius XII and European Unity

While never retreating from the ideal of a truly juridical supra-national organization Pius XII worked incessantly "to promote everything that facilitates union." He was especially active in encouraging anything that advanced European unity; he told members of the NATO college on November 3,

1955 that their work was an indispensable necessity in a "deeply divided world."<sup>30</sup> On June 6, 1954 he inaugurated an all European television network with a dramatic appeal for a "world community."<sup>31</sup> On November 10, 1955 the Pope told the delegates of 71 nations to the Food and Agricultural Organization (FAO) of the UN that the "Holy See could not hold aloof from so beneficial and necessary an undertaking" and expressed gratitude that the Holy See had been admitted in 1950 as a permanent observer at the FAO — "a status which it alone has up to the present."<sup>32</sup> In his Easter message of 1954 the Holy Father affirmed that he would "endeavor to bring about, by means of international agreements . . . the effective proscription and banishment of atomic, biological and chemical warfare."<sup>33</sup> It seems important to point out that the Holy Father cooperated in and encouraged all these efforts towards peace even though they were not organized on a religious basis following that principle which he enunciated on another occasion: "[C]ooperation for the good of the community, in institutions where God is not recognized expressly as the author and law-giver of the universe" is not forbidden.<sup>34</sup>

But the fearful "co-existence in terror," as Pius described the post-war period in his brilliant Christmas message of 1954, brought the attention of His Holiness back again and again to the limitations of the existing juridical machinery for the preservation of peace. On November 10, 1956, after witnessing a broken Hungary and an

<sup>27</sup> Cited in Conway, *Pius XII on "The Community of Peoples,"* 90 AMERICA 335, 336 (1953).

<sup>28</sup> *Id.* at 335.

<sup>29</sup> *Id.* at 336.

<sup>30</sup> 2 THE POPE SPEAKS 341-42 (1955).

<sup>31</sup> 1 THE POPE SPEAKS 161, 164 (1954).

<sup>32</sup> 2 THE POPE SPEAKS 327 (1955).

<sup>33</sup> 52 CATHOLIC MIND 438, 439 (1954).

<sup>34</sup> 4 THE POPE SPEAKS 195, 197 (1957).

exploding Middle East, the Pope made an unprecedented radio appeal to governments and peoples "to bind closely in a solid public pact all those" who seek a peace worthy of the sons of God.<sup>35</sup> His eighteenth Christmas message spells out as never before the inadequacies of the United Nations. In an address on December 23, 1956, relayed by Radio Free Europe and the Voice of America to all the conquered nations of Eastern Europe, the Vicar of Christ urges that the

exercise of their rights, as members of this organization [the United Nations] be denied to states which refuse even the admission of observers — thus showing that their concept of state sovereignty threatens the very foundations of the United Nations.<sup>36</sup>

After the disillusionment of Geneva and the intervention of Suez the Holy Father writes with unusual directness:

This organization [the UN] ought also to have the right and power of forestalling all military intervention of one state in another, whatever be the pretext under which it is effected, and also the right and power of assuming, by means of a sufficient police force, the safeguarding of order in the state which is threatened.<sup>37</sup>

The Pope goes on with specific directives:

We desire to see the authority of the United Nations strengthened, especially for affecting the general disarmament which we have so much at heart. . . . In fact only in the ambit of an institution like the United Nations can the promise of individual nations to reduce armaments . . . be mutually exchanged under the strict obligation of international law. [O]nly the United Nations is at present in a position to exact the observ-

ance of this obligation by assuming effective control of the armaments of all nations without exception.<sup>38</sup>

### Work for World Unity on Three Levels

It can be seen from the foregoing that Pius XII urged work for peace on three levels — first and most important, the untiring reaffirmation of the necessity of a supra-national juridical world order based on the natural law; second, the acceptance of the United Nations but with ceaseless efforts to strengthen it; and third, the fullest cooperation and collaboration with every agency that promotes international friendship. The late Pontiff was an unabashed internationalist. He desired and sought and prayed for a "future world political organization . . . true to the spirit of federalism."<sup>39</sup> At the same time he was using the influence of the Holy See to promote "the idea of a United Europe, the Council of Europe and other movements of the kind" which to Pius XII were "a manifestation of the world's need to break through, . . . politically and economically, the old rigid lines of geographical frontiers. . . ."<sup>40</sup>

### Conclusions

Pius XII therefore very firmly committed the Holy See to the support of the basic principles behind the movement for world federalism. By asserting that the present legal machinery to preserve the peace is inadequate the late Pope had at least infer-

<sup>35</sup> *Id.* at 345.

<sup>36</sup> Cited in Pollock, *Address to World Federalists*, April 6, 1951.

<sup>37</sup> Address of His Holiness, Pope Pius XII, to the First International Private Law Congress, July 15, 1950, in 48 *CATHOLIC MIND* 754, 755 (1950).

<sup>35</sup> 96 *AMERICA* 214 (1956).

<sup>36</sup> 3 *THE POPE SPEAKS* 331, 344 (1956).

<sup>37</sup> *Id.* at 344-45.

entially stated that the United Nations is a compromise solution among nations too jealous of their own sovereignty to form a union of nations which would be in fact a supra-national federation outlawing war and giving juridical enforceability to the unity of mankind.

How has the Catholic world responded to the Pope's imperious demand for a new and "juridically better organized" world? How have American Catholics reacted to the challenge of Pius XII's statement that

Catholics . . . are extraordinarily well equipped to collaborate in the creation of a climate without which a common action on the international plane can have neither substance nor prosperous growth. . . . There is no other group of human beings so favorably disposed, in breadth and in depth, for international understanding. . . . Catholics . . . above all . . . must realize that they are called to overcome every vestige of nationalistic narrowness. . . .<sup>41</sup>

Do not Catholics therefore have a special mandate to continue on all three fronts the work of Pius XII? Do not Catholics, for example, have the obligation of insisting on the ratification by America of the Genocide pact, the repeal of America's reservation to the jurisdiction of the Inter-

national Court of Justice enacted on the floor of the Senate in 1946 in the Connally Amendment? And who can deny the duty of Catholics to work for the reorganization of the United Nations in order to make it more consistent with that world institution which Pius XII stated should have "supreme power"?

Time has not eroded but rather deepened the urgent necessity of implementing the commitments made by Pius XII and by the hierarchies of the entire English-speaking world. A distinguished body, the Catholic Association for International Peace, has met to explore and to analyze the greatest legacy it has ever received, the intellectual and spiritual teaching of the greatest jurist of our age. May its study be fruitful and its recommendations wise. And may its deliberations — which are of such enormous consequence to all mankind — be carried on in the spirit of the inspiring words of the late Pontiff of Peace:

The task confided to you by Providence in this crucial hour is not to conclude a weak and timid peace with the world but to establish for the world a peace really worthy in the sight of God and man.<sup>42</sup>

<sup>41</sup> POLLOCK, ed., *THE MIND OF PIUS XII* 81-82 (1955).

<sup>42</sup> Address of His Holiness, Pope Pius XII, on Feast of St. Eugene, June 2, 1947.

# AVAILABLE LEGAL MACHINERY FOR A JURIDICAL WORLD ORDER

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“JURIDICAL” MEANS ARISING BY OPERATION OF LAW, as distinguished from that which arises by agreement or act of the parties.

“Law” as defined by St. Thomas Aquinas — a definition which has persevered — is an ordinance of reason, promulgated by a duly constituted authority, intended for the common good.

“Machinery” will be understood as the agencies whose functions relate to the establishment or maintenance of world order.

“World order” will be regarded as world-wide ordered peace between states.

Strictly speaking, therefore, one may well argue that there is no available legal machinery for a juridical world order in that there is no agency or institution with legislative, executive or judicial competency — as we understand those terms. Certainly, there is no such agency with supra-national, international or per-national authority (to coin a phrase), to restrict the scope of national or state sovereignty of any major power.

Insofar as effective sanction may be the criterion of the rule of law — the governmental authority to prevent wrongful activities and to punish their perpetration — as urged by Austin — there is, at present, no such authority.

Insofar as effective moral sanction may be the criterion — the authority of the natural, moral law and the obligations imposed thereby, as urged by St. Thomas Aquinas and the Scholastics — there is, at present, no general or effective recognition of any such authority.

While the people in control of the governments of many states are theistic in their religion and believe in and try to live by the principles of the natural, moral law, nevertheless, approximately one-half of the

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population of the world lives under Communist rule and its atheistic principles. Denying God, the Communists repudiate the existence of any such moral law and guide their state solely by the precept of what they think best for it at any particular time. Morality, as we understand it, plays no part in their human relations either between individuals or states.

Not to end this paper with that statement, let us examine the international agencies that do exist. These, by amendment or other grant of greater competency, may become legal agencies in a juridical world order.

First in order is the World Court of Justice.

The World Court was "established by the Charter of the United Nations"<sup>1</sup> and functions "in accordance with the provisions of the present Statute," *i.e.*, the statute or agreement organizing the Court,<sup>2</sup> to which all members of the United Nations are parties. Its members are elected by the General Assembly and Security Council of the United Nations.<sup>3</sup>

States only may be parties to litigation in the World Court<sup>4</sup> and no competency by way of criminal jurisdiction over human individuals is vested in it.<sup>5</sup>

Its jurisdiction comprises "*all cases* which the parties refer to it and *all matters* specially provided for in the Charter of the United Nations or in treaties and conventions in force."<sup>6</sup> Such jurisdiction of "cases"

is not compulsory but voluntary. No state can compel another to respond to a complaint filed in that Court. However, states which are "parties" to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning the interpretation of treaties, any question of international law, the existence of breaches of international obligations and reparations therefor.<sup>7</sup>

Various states, for a period of years and upon conditions, have accepted this compulsory jurisdiction. Among them the United States accepted it on August 14, 1946, but upon conditions, one of which is the Connally Reservation. This reservation provides that the declaration of acceptance shall not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America. . . ."<sup>8</sup> Since August 14, 1946, various other states have attached the provisions of the Connally Reservation to their acceptance.<sup>9</sup>

The effect of this provision is to make the acceptance almost a nullity because the reserving state upon its mere "*ipse dixit*" can preclude the Court from taking jurisdiction.

It has another effect. It impliedly accords to any other state which is a party to a given dispute the same right as is reserved to the reserving state.

The Court, as an adjunct or judicial organ of the United Nations, has no com-

<sup>1</sup> U. N. CHARTER art. 14.

<sup>2</sup> U. N. CHARTER art. 1.

<sup>3</sup> U. N. CHARTER arts. 3-10.

<sup>4</sup> *Ibid.*

<sup>5</sup> U. N. CHARTER arts. 34, 35.

<sup>6</sup> U. N. CHARTER art. 36.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

petency to try issues which are within the domestic jurisdiction of any state. The United Nations Charter provides that "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 members to submit such matters to settlement under the present Charter."<sup>10</sup>

The Statute of the Court provides that "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."<sup>11</sup>

The result is that the Court is an institution with no jurisdiction over international disputes unless conferred by the parties to the dispute. But, assuming that such jurisdiction is conferred, there is no provision in the Statute or the Charter which provides effective execution or implementation of its adjudications or decrees.

The Charter provides that each member "undertakes to comply with the decisions" of the Court "in any case to which it is a party." But, in the event of a failure to perform obligations under "a judgment rendered by the Court," the prevailing party "may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."<sup>12</sup> This function of the Security Council concerns a matter "other than procedural" and is subject to the veto under Article 27, Section 3.

Far from constituting a piece of currently available legal machinery for a juridical world order is concerned, it may well

be argued that the World Court is or may be made a nullity. However, by abandonment of such reservations as the Connally Reservation, and amendment of the Court's Statute and of the United Nations Charter the Court may become a most effective judicial arm of a juridical world order.

As such, the Court would take precedence over the United Nations and the organs thereof primarily concerned with the maintenance of international peace and national as well as international security — the Security Council and the General Assembly. The UN's other organs, such as the Economic and Social Council, the Trusteeship Council and the Secretariat, are but ancillary in character.

The Security Council consists of eleven members, five permanent (Nationalist China, France, United Kingdom, U.S., U.S.S.R.) and six elected by the General Assembly.<sup>13</sup> It is charged with "primary responsibility for the maintenance of international peace and security."<sup>14</sup> It is authorized to call upon disputant states to settle their disputes which threaten such peace and security "by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement . . . or other peaceful means."<sup>15</sup> It may investigate any such disputes to determine whether they threaten such peace and security.<sup>16</sup>

It may determine that a threat to international peace, or a breach thereof or an act of aggression has occurred and recommend or decide what steps should be taken by the members of the United Nations by way of economic sanctions, interruption of means of communications and severance of

<sup>10</sup> U. N. CHARTER art. 2, para. 7.

<sup>11</sup> U. N. CHARTER art. 36, para. 6.

<sup>12</sup> U. N. CHARTER art. 94.

<sup>13</sup> U. N. CHARTER art. 23.

<sup>14</sup> U. N. CHARTER art. 24.

<sup>15</sup> U. N. CHARTER art. 33.

<sup>16</sup> U. N. CHARTER art. 35.

diplomatic relations or military, naval or air operations in the nature of "demonstrations, blockade, and other operations."<sup>17</sup>

The Security Council, however, is restricted in its competency by reason of the Charter provision that on all matters other than procedural — which are decided by an affirmative vote of any seven members — the decision shall be made "by an affirmative vote of seven members *including the concurring votes of the permanent members.*"<sup>18</sup> A negative vote or veto by a permanent member bars any such action. Such a vote has been cast on some eighty occasions.

This veto restriction also applies to the question of whether the matter under discussion is procedural or other than procedural — a double veto.

The Security Council, therefore, cannot always or ever be relied upon to solve any disputes between major powers or their allies or satellites where their vital interest or national honor is thought to be at stake. A veto of a permanent member will prevent any unwanted suggested solution being adopted.

The Security Council has no charter competency to legislate and bind the members of the United Nations or their people thereby. It is not made competent, over a veto, to adjudicate disputes between states or, over a veto, to enforce any such adjudication. It has no conferred competency to restrict in any way the absolute sovereignty of any state or the acts of any state in the exercise thereof over the veto of any permanent member.

The General Assembly consists of all member states or nations.<sup>19</sup> Its functions

include discussion of any matters within the scope of the Charter, consideration of such matters and recommendation to its members on any such matters.<sup>20</sup>

The General Assembly makes its decisions "on important questions" by a majority vote of two-thirds of the members "present and voting."<sup>21</sup>

The "Uniting for Peace" resolution, adopted by the General Assembly in November, 1950, does not increase its competency under the Charter. It does not and cannot constitute an amendment to the Charter.<sup>22</sup> This resolution, which followed the outbreak of the Korean war, provided for setting up within the General Assembly a Collective Measures Committee of fourteen members to study and report on possible means of strengthening international peace and security under the Charter.

While the veto power of any one member does not apply to voting in the General Assembly, the competency of the General Assembly to affect its members is limited to recommendation. It cannot compel action by them. It has no legislative competency as we understand legislation. It has no effective executive or judicial authority.

These recommendations may be adopted or rejected by the member states. That is wholly within their discretion and volition. The fact that a member has voted in favor of a recommendation does not mean that the member is estopped to reject it thereafter, as was evidenced in the recommendations relating to the invasion of Korea as voted on by the People's Republic of China.

In the exercise of its functions to initiate studies to promote "international coopera-

<sup>17</sup> U. N. CHARTER arts. 39, 41, 42.

<sup>18</sup> U. N. CHARTER art. 27.

<sup>19</sup> U. N. CHARTER art. 9.

<sup>20</sup> U. N. CHARTER art. 11.

<sup>21</sup> U. N. CHARTER art. 18.

<sup>22</sup> U. N. CHARTER arts. 108, 109.



tion in the political field” and to encourage “the progressive development of international law and its codification,” and to initiate similar studies in the economic, social, cultural, educational and health fields and to assist “in the realization of human rights and fundamental freedoms,” much has been accomplished and is being achieved. However, as the “political field” and that of “human rights” more directly relate to our subject, they only will be discussed.

The General Assembly established an International Law Commission in 1947 which has produced numerous reports suggesting interpretation and codification of principles of international law, none of which have yet been adopted by the Assembly or approved by the member states. In some matters such as the definition of “aggression,” the members of the Commission have not been able to agree.

The General Assembly on December 10, 1948, without a dissenting vote, adopted and proclaimed the “Universal Declaration of Human Rights,” as a “common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance. . . .”<sup>23</sup> This Declaration contains negative provisions — denying governmental authority in certain areas — and positive provisions — asserting governmental obligation to act in others.

It does not constitute an enforceable Bill of Rights against any state or the United

Nations.<sup>24</sup> It does not have the force of the Bill of Rights of the Constitution of the United States.<sup>25</sup>

In addition the General Assembly has pending before it a “Draft Covenant of Civil and Political Rights.” This Draft Covenant provides that “if it is adopted by the General Assembly and in turn submitted by it to the member states and approved by any of its member states then such states as accept it ‘agree’ upon the provisions thereof.” Its preamble sets forth among other inducements, the consideration of “the obligation of States under the Charter of the United Nations to promote universal respect for, and observation of, human rights and freedoms.”<sup>26</sup>

This Draft Covenant is limited to Civil and Political Rights, not only of individual human beings but of peoples gathered in national units as well. It asserts the right of self-determination of such peoples. It asserts the rights of the individual against his state in various areas. It likewise asserts the rights of the family as a unit of society against the state. It provides for a “Human Rights Committee” to which complaints may be referred by one party to the covenant against another party thereto for violation of its provisions. The Committee may “ascertain the facts” and make available its good offices to effect a friendly solution of the matter, and, in addition, shall report the facts to the disputant parties and to the Secretary General of the United Nations for publication. It may recommend that the Economic and Social Council request an advisory opinion from the World Court upon the matter.

<sup>24</sup> *Ibid.*

<sup>25</sup> U. S. CONST. amends. I-X.

<sup>26</sup> Draft Covenant of Civil and Political Rights.

<sup>23</sup> U. N. CHARTER (preamble).

The Draft Covenant further provides that if the dispute is not otherwise solved, the parties may bring the case before the World Court.

There is also pending before the General Assembly a "Draft Covenant on Economic, Social and Cultural Rights." This likewise contemplates an agreement between member states which become parties to it after it has been adopted by the General Assembly and referred to the member states. This Covenant asserts, among other rights, the right of self-determination of peoples, the rights of individuals to work, to receive adequate pay therefor, to decent living for themselves and families, to rest, reasonable limitation of working hours, to adequate food, clothing and housing, adequate standards of living, education, of protection for motherhood, children and family, and the health thereof.

In addition, the General Assembly has been considering a proposed "Declaration upon the Rights of the Child," which will probably take the same course as the "Universal Declaration of Human Rights."

There is no authority vested in the United Nations to compel any of its member states to enforce any Declaration of Human Rights. There is no such authority as is discussed hereinbefore, to compel compliance with any Multilateral Covenant of Human Rights if the General Assembly should adopt any such Covenant. There is no effective sanction inherent in the United Nations to prevent or to punish violations of any such Declaration or Covenant. Compliance depends upon the good faith of the particular states involved.

The Specialized Agencies which articulate with the United Nations through its General Assembly and Economic and So-

cial Council<sup>27</sup> are ancillary in character to the principal organs of the United Nations and its primary purpose of maintaining international peace and security. Some of them antedate the United Nations Charter and even the League of Nations Covenant, such as the International Telecommunication Union (1865), the Universal Postal Union (1874), and the International Labor Organization (1919). The others postdate the Charter — the Food and Agriculture Organization, the International Bank and the International Monetary Fund (1945), UNESCO (1946), the International Civil Aviation Organization (1947), the World Health Organization (1948) and the World Meteorological Organization (1950).

The Collective Defense Pacts are not included in this discussion for two reasons. They came into existence because of the uncertainty if not the inability of the United Nations to provide a collective security. While they may relate in part to other matters, they are primarily intended for collective self-defense against aggression and are theoretically temporary in character in that they only operate "until the Security Council (United Nations) has taken the measures necessary to maintain international peace and security."<sup>28</sup>

Among such treaties are the Brussels Treaty (1948), covering the Benelux States plus France and the United Kingdom, the International Treaty of Reciprocal Assistance (1947-48), OAS — the Organization of American States, the North Atlantic Treaty — NATO (1949), the South East Asia Treaty — SEATO (1954), the ANZUS Pact (1952), covering Australia, New Zealand and the United States, the Baghdad

<sup>27</sup> U. N. CHARTER arts. 57, 63, 64.

<sup>28</sup> U. N. CHARTER art. 51.

Pact—METO (1955), covering three Near East or Mid-East States and the United Kingdom, and the Warsaw Pact (1955), signed by the Soviet Union and its Eastern European satellites.

No space is given here to the Western European political organizations which are much closer to an organic integration of states into a federation than anything existing elsewhere. The scope of their activities is limited to Western Europe and do not now measure up to the standard of legal machinery for a juridical world order. Among such organizations are the European Community for Coal and Steel (1952), which includes France, West Germany and Italy; Euro-market (1957), establishing a common market for the same states plus the Benelux States; Euratom (1957), establishing among the same states an atomic energy pool; the European Common Market (1957), including the same states; and the Council of Europe (1949), which includes the same states as above plus Denmark, Greece, Ireland, Norway, Sweden, Turkey, and the United Kingdom.

The outstanding agency or organization making any effective effort toward the establishment of a juridical order is the United Nations. As stated by Goodrich and Simons in their study of *The United Nations and the Maintenance of International Peace and Security*, "The United Nations has not imposed a new order of law and justice, but it has provided a framework of established organs and procedures for subjecting international conduct to a judgment based on defined purposes and principles."<sup>29</sup>

The UN Charter, if it may properly be called legal machinery, establishes, in the provisions for its amendment,<sup>30</sup> a way and a means of equipping it with limited but adequate supra-national, trans-national, or per-national competency to prevent or to punish aggression by any state, to maintain peace, and to provide effective national security.

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<sup>29</sup> GOODRICH & SIMONS, *THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 65 (1955).

<sup>30</sup> U. N. CHARTER arts. 108, 109.

# THE ROLE OF FORCE IN THE INTERNATIONAL JURIDICAL ORDER

WILLIAM V. O'BRIEN\*

IT HAS BEEN SAID THAT THERE NEVER was a good war or a bad peace. If that be true, the task of true internationalists is to work for the total elimination of war, that is to say, of all international force. In their understandable revulsion to modern wars many internationalists have indeed tended towards the position that to work for peace is to work for a world in which "armed force" will play no part, a world in which disputes will be settled peaceably and reasonably through international law and international organization. This point of view has influenced our thinking since the establishment of the League of Nations and despite many disappointments we continue to hear pleas for a world order free from the horrors of international conflict. Some of the most respected of our professional men and scholars are joining in the cries for "The Rule of Law in the International Community," "World Peace through World Law," and the like.

Walter Lippmann and Raymond Aron, among others, have remarked on our tendency to go to extremes with respect to questions of international relations, from total disarmament to total war, from unconditional surrender to bundles for defeated enemies. Perhaps there is an element of this kind of zig-zagging in the desire to change abruptly from a world of intense conflict to a world where everything will be solved by submission to laws. To dramatize this concept, the lawyers of the world recently gathered at Runnymede to commemorate the Magna Charta and the triumph of the "Rule of Law."

But what indeed was the scene at Runnymede? Did Good King John succumb to some "unite or perish" pamphlets and joyfully declare the Rule of Law throughout his domain? Indeed no! We are led to believe from our histories — not to mention numerous novels, movies and TV interpretations of the world of Robin Hood — that King John was a scoundrel of the first order who was *forced* to acknowledge the rights

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of those of his subjects who had the capacity and desire to *fight* for them. (You will recall that the Common Man was not greatly affected by the provisions of the Charter.) Moreover, knowing their man, the nobles at Runnymede made specific provisions for the enforcement of the compact in the highly likely event that the King broke it.

On the other hand, great minds from Pierre Dubois, Dante, Bentham, Kant, Ladd and Baroness Von Suttner to Hutchins have produced peace plans and international charters sufficient to fill volumes – without noticeably contributing to anything more than the history of ideas.

The problem of reconciling the desire for peace within the community – whether national or international – with the necessity for fighting for justice is not new. In our own national history we faced it at Philadelphia in the Constitutional Convention of 1788; we faced it at Fort Sumter in 1861; we faced it when we decided that we were not too proud to fight the “War to end Wars”; we faced it in the spring of 1940; in Korea in 1951 and, to an extent not entirely known, in the Berlin crisis of the past year.

Granted the sincere desire that we all have for an international juridical order, what is the role of force? Has it ceased to be relevant to our aspirations? I suggest that force is vitally important to the concept of an international juridical order in three ways: (1) as a reality to be faced; (2) as a legal necessity; (3) as a moral means to attaining the ends of the international juridical order.

First, international conflict and recourse to force continues to be characteristic of the world in which we live, regardless of

ephemeral “thaws.” World juridical order means the triumph of law and order over unrestrained international force. The triumph, like the triumph of fundamental rights at Runnymede, must come about, in the final analysis, as the result of the triumph of force utilized on behalf of justice over force opposing justice. Unfettered international force is a problem. To use the term of Charles de Visscher, it is a “reality” which we must face in order to achieve a true international juridical order. We must learn a great deal more about the enormous reality of our world, unpleasant as it is, just as the doctor and the social worker must learn more about human diseases and human want.

Second, the improving but still primitive international juridical order requires force to uphold it. The authors of the United Nations Charter realistically recognized this and fashioned the institutions and procedures for mobilizing force on behalf of the juridically organized international community. These institutions and procedures are a central, if not the central, part of the United Nations Organization. Let us therefore review the provisions of the Charter in order that we may obtain an authoritative view of the legal status of force.

Article 1, paragraph 1, states as one of the purposes of the Organization the maintenance of peace and security, by “. . . taking collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace” as well as providing for the peaceful settlement of disputes.

The Charter proceeds to develop a regime which divides international force

into three categories: (1) aggression; (2) collective enforcement action in support of decisions of the organization; (3) individual and collective self-defense.

The relevant provisions of the Charter concerning *aggression* would appear to be the following:

In Article 1, paragraph 1, there is as we have seen the reference to suppression of "aggression" and "other breaches of the peace."

Article 2, paragraph 13, requires that "all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered."

Paragraph 4 states that "all Members shall refrain in their international relations from 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."

In principle, therefore, the precedents of the League Covenant, the Kellogg-Briand Pact, and other international conventions "outlawing" war are brought to fruition in a flat proscription against individual recourse to international force. In principle, all such unilateral uses of force are outlawed and branded as illegal acts of aggression.

But there remain, under the Charter, two kinds of situations in which the use of international force is permitted, if not demanded.

First, it is envisaged that force may very likely be required to enforce the provisions of the Charter, just as force is required in all juridically organized communities. We have noted the allusions in Article 1 to the suppression of aggression and the mainte-

nance of security. Article 2, paragraph 2, places an obligation on all members to ". . . fulfill in good faith the obligations assumed by them" and one such obligation is to ". . . give the United Nations every assistance in any action it takes in accordance with the present Charter," while refraining ". . . from giving assistance to any state against which the United Nations is taking preventative or enforcement action."

There follow in Chapter VII, Articles 39-50, detailed provisions for "Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression." Particularly noteworthy is Article 42 which states: "Should the Security Council consider that measures provided for in Article 41 [Coercive measures not involving the use of armed forces, such as the interruption of economic relations, communications, and severance of diplomatic relations] would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

Articles 43-45 call upon the members to contribute to UN Forces. Articles 46-47 envisage a Military Staff Committee to plan and coordinate UN efforts.

Finally, spontaneous acts of legitimate self-defense are approved by Article 51 which, as the years have gone by, has turned out to be one of the most important provisions of the entire Charter. Article 51 states:

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

against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international Peace and Security. Measures taken by the Members in the exercise of this right of self-defense 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.

An interesting question which I shall only raise here for mature consideration is the following: Does Article 51 in effect *grant* the right of self-defense to the members as an exception to the general proscription against recourse to force, or does it rather *recognize* an antecedent "inherent right"? In any event, extreme positivists cannot be happy over the French version of this term, "*le droit naturel de defense legitime*."

We know, of course, that the system has not worked as planned. The Security Council has been rendered virtually helpless by the rift between the Free World and the Communist World. Since the Korean War we have been obliged to fall back upon the somewhat awkward arrangements of the Uniting for Peace Resolution whereby the General Assembly recommends (but does not order) joint action against an aggressor. But action through the Assembly is subject to the hazards of ever-shifting political maneuvering within the Assembly. There is no effective Military Staff Committee, nor any plans. On the other hand, the Suez crisis produced the United Nations Emergency Force. But so far the UNEF has been restricted to a kind of military police function of supervising and enforcing truce arrangements. Nevertheless, had one of the belligerents in the Middle East

resisted the UNEF we might well have had a war directly involving the United Nations as such, rather than an Article 51 situation as we had essentially in Korea.

We have said that force is, first of all, a problem for the international order. Then we have seen that force is a legal necessity for the enforcement of the international juridical order, a necessity clearly recognized in the United Nations Charter. We now turn to a third aspect of force, as a moral means which may be used on behalf of justice and the international common good.

Long before the institutions of modern international law and organization developed the distinction between legal and illegal recourse to force, Scholastic Doctrine recognized a parallel distinction between just and unjust wars. The similarities between the modern international law of force and the Just War Doctrine are such that some authorities have referred to the former as a modern *bellum justum*.<sup>1</sup>

Like the UN Charter, the Scholastic Doctrine of the Just War begins with the proposition that recourse to force is not in general permitted as a means of settling international disputes. St. Thomas, for example, begins his discussion of this subject by asking whether it is always a sin to make war.<sup>2</sup> The answer is that war is permitted, but only under certain conditions. There must be a grave cause, a real necessity for

<sup>1</sup> McDougal & Feliciano, *Legal Regulation of Resort to International Coercion: Aggression and Self-Defense in Policy Perspective*, 68 YALE L.J. 1057, 1065-68, 1071-74 (1959).

<sup>2</sup> AQUINAS, *SUMMA THEOLOGICA*, II-II, q. 40; cf. VANDERPOL, *LA DOCTRINE SCHOLASTIQUE DER DROIT DE GUERRE* 16-23 (1925).

taking up arms to remedy the injustice, the probable consequences of the war must be in proportion to the injuries suffered or to be suffered, and the just belligerent must pursue his action with "right intention."<sup>3</sup>

There is a clear parallel between the Just War Theory and Article 51 of the UN Charter with respect to self-defense. What of enforcement action on behalf of the international community? There was nothing comparable to the UN in the late Middle Ages, although we could say that Christendom during the centuries of the Crusades was a relatively coherent community. But, organization features aside, it is interesting to note that in addition to the defensive just war, Scholastic Doctrine also recognized the institution of the war of vindictive justice, fought not so much as a matter of strict defense as on behalf of justice itself and the international common good.<sup>4</sup>

The Theory of the Just War is familiar to most of us but the question arises as to the continued validity of that theory and its relevance to modern war. A partial answer is to be found in the pronouncements of Pope Pius XII.

As Father Murray brought out so well,<sup>5</sup> the thinking of the late Holy Father on force in the international community must be understood against the background of his abhorrence of war and his zeal to pro-

mote the international juridical order. Indeed, may not these views of Pius XII carry all the more weight precisely because of their "tortured" and reluctant character? Further, while the pronouncements on war of Pius XII are eminently in accord with the traditional Scholastic Doctrine of the Just War, they take on a heightened importance precisely because they were enunciated by the first Pope of the Atomic Era.<sup>6</sup>

The thinking of Pius XII with respect to recourse to force seems to come down to the following propositions:

(1) Aggressive war is a sin and, legally, an international crime.<sup>7</sup>

(2) But "stringent" self-defense is permitted, even to the extent of ABC (Atomic-Bacteriological-Chemical) War.<sup>8</sup>

(3) Moreover, "law and order have need at times of the powerful arm of force."<sup>9</sup>

(4) When the international community is threatened with "grave injustice" it must be defended and, in the light of recent history (particularly the events of 1956), Communism presents such a threat.<sup>10</sup>

(5) Following traditional doctrine, the conditions of a just war (either of "stringent" defense or on behalf of a threatened international juridical order) are: major injustice, real necessity, proportionality,

<sup>3</sup> Cf. EPPSTEIN, *THE CATHOLIC TRADITION OF THE LAW OF NATIONS* 65-123 (1935); INTERNATIONAL UNION OF SOCIAL STUDIES, *CODE OF INTERNATIONAL ETHICS* 106-162 (Eppstein trans. & ed. 1953); ROMMEN, *THE STATE IN CATHOLIC THOUGHT* 641-71 (1947); FENWICK, *INTERNATIONAL LAW* 49 (3d ed. 1948); VANDERPOL, *op. cit. supra* note 2.

<sup>4</sup> VANDERPOL, *op. cit. supra* note 2.

<sup>5</sup> See MURRAY, *MORALITY AND MODERN WAR* (1959).

<sup>6</sup> *Id.* at 9-10.

<sup>7</sup> See Allocation to the World Medical Congress, September 30, 1954, in AAS 46 (1954); cf. MURRAY, *op. cit. supra* note 5, at 10,22.

<sup>8</sup> *Ibid.*

<sup>9</sup> Allocation to the Military Mission of the U.S.A., October 8, 1947; cf. MURRAY, *op. cit. supra* note 5, at 10.

<sup>10</sup> Allocation, October 19, 1953; Christmas Message, 1956; cf. MURRAY, *op. cit. supra* note 5, at 11.



and limitation of the use of force.<sup>11</sup>

It is to these last two conditions, proportionality and limitation of the use of force, that I wish to turn my attention. While a *moral imperative* obliges us to develop the institution of limited war, including limited nuclear war, it seems to me that an important corollary of this thesis is a corresponding imperative to develop realistic principles and rules for the regulation and limitation of modern warfare, including nuclear warfare. In this connection, it is clear from the study of the historical development of the law of war that the central problem is that of defining "proportionality" in concrete belligerent situations.<sup>12</sup>

In the light of the foregoing, therefore, I suggest that the problem of force in the international community is not the total elimination of force. Rather, the problem is one of organizing the international juridical community in such a way as to begin to approach the goal of that relative "monopoly of force" in the hands of the organized community which is characteristic of of true juridical order.<sup>13</sup> I might add that insofar as the tempo of progress towards such an order is concerned, that I am among the conservatives who feel that we are just beginning and that we have a long road ahead. Illusions as to the imminence of an advanced international juridical order are in fact a serious handicap to realistic internationalists who are working towards that goal.<sup>14</sup>

<sup>11</sup> See MURRAY, *op. cit. supra* note 5, at 11-15.

<sup>12</sup> *Id.* at 18.

<sup>13</sup> Kelsen, *PRINCIPLES OF INTERNATIONAL LAW* 13-15 (1952).

<sup>14</sup> Address delivered at the 31st Annual Conference of the Catholic Association for International Peace, October 25, 1958, in ROBERTS, *THE INTERNATIONAL POLITICAL COMMON GOOD* (1958).

If it be granted that international force is a reality which must be faced under all three of the aspects which we have seen, what can be done to improve the situation? First, we must obviously strive to prevent recourse to force. We must, obviously, bend every effort to improve our institutions for pacific settlement of international disputes and to develop international cooperative efforts designed to attack the basic causes of international conflict.

But, second, given the very modest progress made to date towards a true international juridical community, given the absence of anything like a community monopoly of force and, specifically, given the continuing threat of Communist aggression, we must also be prepared for situations in which our primary limitation on force has failed. If this comes to pass we are obliged to do our utmost to see that international conflicts of whatever kind are carried on, at least on our part, in accordance with the principles of proportionality and right intention. But neither proportionality nor right intention are self-evident in practice. It is necessary to provide more explicit guides in the form of principles and rules governing the conduct of war. These normative guides are necessary whether the conflict be an old-fashioned "war," a "police action," a "revolution" or any other form of large-scale violence. The task does not end with efforts to prevent international conflict; the Christian tradition (which lies at the basis of the positive laws of war) requires that international law and morality penetrate into the heat of battle.

Admittedly, this is a most difficult task. Many have said that it is inherently hopeless, that war and law are incompatible. The first line of rebuttal is that rules of war

have been observed and to some extent continue to be observed. Still we must admit that the rules which are observed have increasingly tended to be limited to non-decisive aspects of war and that the principal means of modern war remain virtually unrestrained by law. This unhappy state of affairs is in great measure explained by the technological and ideological characteristics of modern total war. But we cannot avoid the conclusion that it is also due in part to the neglect of the laws of war by internationalists since the end of the First World War.<sup>15</sup> So it is that we are confronted with a situation where we must, to all practical purposes, begin from the beginning if we are to build a realistic body of principles and rules governing the utilization of force in the international community.

In confronting this enormous task we face a number of perplexing problems, even before we come to grips with the substantive military, technological, political and moral problems that are the heart of the matter. It seems to me that the first and in a way, overriding, problem is that of finding an academic, professional, or intellectual "home" for studies of the regulation of international force. The laws of war concern military matters and it is to the credit of the United States armed forces that they have made an outstanding record in the development of international law. The great tradition of Francis Lieber has been carried on by the Army in its field manuals and the tradition of international law studies at the Naval War College in Newport is justly celebrated. But the regu-

lation of means of warfare ultimately involves policy decisions, based upon the highest considerations of national interest and, we trust, of morality. It is not within the province of the military to speculate about such matters and they do not.

The laws of war appear to be a field for legal study, but here again we have problems. The modern lawyer is accustomed, on the whole, to highly developed, advanced legal systems where the principal problems have been resolved and the task is one of applying well-established concepts and rules to new circumstances. A typical lawyer's reaction to a plea for a revival of the laws of war is to recommend a thorough study of existing conventional law, leading to a "restatement" or "codification" of the law. Alternately he may suggest that treaty proposals be drafted for submission to the great powers. Students of modern war try in vain to explain that there is not much left to "restate" or "codify," that the old legal order governing international force collapsed when its material and moral foundations and assumptions collapsed under the impact of total war. Finally, it is hard to get recognition of the simple fact that we cannot draft proposals until we know what we really want to propose and that most of the questions raised by modern means of warfare are as far from receiving coherent answers as they were in 1918 or 1945.

What is needed today is not a team of experts in legal research on loan from the West Publishing Company to codify the laws of war but rather imaginative legal pioneers, possessed of a good working knowledge of military science and international relations, who can chart some promising courses which nations with a con-

<sup>15</sup> O'Brien, *The Meaning of "Military Necessity" in International Law*, 1 *WORLD POLITY* 109, 110.

science might follow in their international and defense policies.

We turn next to moralists and to organizations such as the CAIP itself which are vitally concerned with the problems of limiting international force. Here the most frequent response is the plea of lack of expertise in either the field of military science or of law. Moreover, those who are dedicated to peace find it most difficult to turn their thoughts to the unpleasant possibilities suggested by the very idea of laws of war.

And so it goes, with the result that serious study of the laws of war has been most unusual in our times. To the student of the subject it seems that he always speaks to the wrong audience. A military audience is indulgent but limitation of violence is either a matter for "higher authority" or for private contemplation in the post chapel on Sunday. The legal audience wants to restrict the discussion to strictly legal matters such as the effects of a state of war on contracts with an enemy alien. Quite frequently the audience of religious organizations finds the whole subject unpleasant, beyond their knowledge, and vaguely treasonable to their aspirations for world peace and order.

The truth of the matter, of course, is that *all* of these groups have their contribution to make. The military must tell us what the strategic and technical considerations are; the lawyer must help us to formulate our principles and rules and institutions; and, above all, the moralists and the informed lay community must help us to find the right practical answers from the general precepts of our moral code. No one group, nor any individual, can be expected to have a complete grasp of all facets of

these complex problems. But we must all do our best, cooperating as much as possible, to create a climate of opinion, both in high places where policy is made and throughout the informed public, which will promise a more efficacious attempt to control international conflict.

There are other problems involved in the study of legal limitation of force in international relations which may be appropriately raised here. The serious student of the subject is constantly obliged to divert his efforts from the grim problems of his field to a kind of never-ending apologetics concerning the very existence of the Law of War. Some of the most recurring objections are the following:

(1) Efforts designed to prevent war, to "outlaw" force, are inherently opposed to efforts to regulate war. Why "regulate" criminal behavior? The Laws of War belong to the past, when all states had the unlimited sovereign right to go to war. Now that that right no longer exists, there is no need for codes of conduct in time of war. Moreover, talk of the Law of War is subversive to the efforts to eliminate war.

In a somewhat more subjective form, this viewpoint is represented by the reproach which a lady from the Red Cross directed to a professor during a seminar on International Law at Georgetown in 1946. "If you men," she observed, "would only stop talking about war so much perhaps we would not have so many wars."

Unfortunately there does not seem to be any conclusive evidence that "talking about wars" has a controlling effect on their occurrence. The French talked about wars in a most excited and vehement fashion from 1871 to 1914 and if one could say that the result was World War I, it could as well be

argued that the result was 43 years of peace which is not such a bad record. On the other hand, no peoples tried so hard to avoid war or even to give serious thought to preparations for defense than the English and French between the two world wars. Need we mention in addition to Belgians, Dutch, Danes, Norwegians and others?

In any event, under the United Nations system there is still considerable room for large-scale fighting in the world. Whether we call it war, aggression, police actions or whatever, all of the perennial problems of what used to be called war arise—prisoners of war, protection of the sick and wounded, protection of peoples under military occupation, natural rights, as well as the ultimate problem of limiting the means of war themselves. It will not do to say that the war never should have occurred, or that it is only a police action against misguided war criminals and aggressors. Human beings on both sides of the conflict will be suffering and *any* mitigation of that suffering is urgently wanted, no matter how modest (and, it might be added, no matter what the motivation behind these mitigations).

It is gratifying that the vast majority of international law authorities have recognized that the question of the legality or illegality of recourse to force does not and ought not affect the operation of the laws of war once combat is joined. Prisoners have a right to protection whether they are ordinary belligerents, policemen, aggressors, or partisans. Nuclear weapons have exactly the same characteristics whether they are used by saints or sinners. There are enormous problems involved in the government of occupied areas, problems

for the occupant as well as for the occupied peoples. All of these matters are long overdue for serious consideration. To say that such consideration is in competition with and contradictory to efforts to prevent the outbreak of international violence is to place an almost overwhelming pressure on our infant institutions for the preservation of peace.

Underlying this whole misconception is a deeper error, the idea that international politics, so-called power politics, are irrevocably prejudicial to international law and order.

Encouraged by super-realists on the one hand and over-zealous internationalists on the other, students of international relations and the general public are led to believe that power politics and world law and order are mutually exclusive concepts. Common sense alone refutes this all-too-prevalent attitude. Law and order, in *any* community, operate *on* political and other realities. If law and organizations are out of touch with these realities their effect will be small. Moreover, power politics is not wrong in itself. All societies operate as arenas of power politics. Power politics become bad (or as we say, "Machiavellian") in their employment for evil purposes. It is precisely the function of international law and order to aid in diverting international politics and power from evil or unworthy objects and to channel these forces insofar as possible towards the international common good.

In order to carry out this mission, international law and order requires power political weapons. This should not be surprising. The same thing is true in domestic society. In a mature, successful state such as the United States, politics and "politicking"

go on incessantly. Moreover, "power" and "force" of all kinds are applied to the operation of government, as Federalist No. 10 predicted. Finally, even in so advanced a juridical order as the United States it is sometimes necessary to resort to brute force in order to uphold law and order.

International law and order have to be *enforced* and enforcement means force. Just as in the domestic order it takes "power politics" ("politicking," lobbying, threatening, compromising, and sometimes downright conflict) to make law and order prevail, so must power politics be mastered and harnessed on behalf of the international juridical order.

(2) It is interesting to take note of another objection which has been raised against the thinking of Father Murray, Kissinger, and others with respect to limited nuclear war and the whole idea of controlled international violence. It is said that talk about limitation and regulation of modern nuclear war or, indeed, of any war, is *too rational, too removed from reality*. How can we discuss such a chaotic and horrible subject as though it were a chess problem or an exercise in pure logic? The world is not rational, war is not rational, the terrible forces which may be unleashed are irrational and beyond control. It is foolish to try to solve these problems by intricate reasoning. Besides, how can you be so dispassionate in the face of such human suffering?

Such attitudes are understandable. We revolt from the very discussion of modern total war. Yet there are those who cannot afford the luxury of revolting and throwing up their hands. The members of the National Security Council, who have a much more detailed knowledge of the facts — or

ought to, must make decisions based on those facts. Our military leaders must live with the facts of total war every minute of the day. Every responsible statesman and decision-maker is in fact daily engaging in a kind of grim "brinkmanship" (an activity publicized but hardly invented by the late Secretary of State John Foster Dulles). Are our moral and intellectual leaders permitted to find such problems too revolting to discuss realistically? And if there is discussion is it seriously contended that it should not be carried on with all the accuracy and clarity which language and logic can supply, or that it should not be as free of subjective, emotional considerations as possible?

General U. S. Grant hated war. He particularly hated to see men killed and wounded. He had no stomach for it. Yet he had a job to do and he believed that the job could best be done by the simple strategy of attrition, so he closed his eyes to the casualty lists and kept hammering away until Lee collapsed. Would the Army of the Potomac, would the Union, have been better served if Grant had succumbed to his human feelings of compassion and disgust in the sight of the carnage that he himself was ordering?

What then can Catholic thought contribute to the problem of force in the international juridical order? In general we may answer by saying that Catholic thought must develop a coherent Theory of Force. Those of us who have attempted to apply the concepts of the Doctrine of the Just War and the statements of Pope Pius XII to the practical problems of limitation of modern international conflict have found that there is an enormous gap between our existing theory and the realities that confront the statesman and the soldier. We must pro-

gress beyond such general concepts as proportionality and right intention and discuss the proportionality of specific means of warfare in an historic or hypothetical context sufficiently concrete to permit us to say: "This is the kind of thing which is not proportionate, but that means in that context would be proportionate. This belligerent did not have right intention in the end but he would have been in consonance with right intention if he had stopped here."

This means that we have to rise above our penchant for turning up our noses at the thought of force and power politics. Both are everyday necessities in the best of organized communities. We must learn more about these "realities" of international relations and when we have mastered them we must enrich our sound basic principles with the practical knowledge that we have gained about the world in which those principles must be applied.

It is along these lines that the Institute of World Polity at Georgetown and cooperating scholars are working. We are studying the practical problems of prisoners of war, guerrilla warfare, submarine warfare, nuclear warfare in its many possible forms, and belligerent occupation with a view to assessing the possibilities for bringing international ethics and international law back into the void of modern total war. We are well aware of the heavy odds against us, but we do not feel that they are necessarily greater than those confronting other internationalists who take on the great problems of international economic, social, health, moral and intellectual reform. And we feel that, whatever our doubts as to our competence in such complex and critical matters, we are laboring in an honorable tradition that includes some of

the finest products of Scholasticism, and in more recent years, a succession of Georgetown professors of International Law which includes Professors James Brown Scott and Ernst Feilchenfeld.

Yes, we must work for the improvement of the young juridical institutions of our international order, not only within the UN system but also in the several regional systems, the Organization of American States and NATO in particular. We must bend every effort to narrow the area wherein unfettered international conflict reigns by expanding the scope and increasing the efficacy of the institutions of international law and international organization. But we must realize that working for the international juridical order does not stop with mere enthusiasm and support for international institutions. It entails the realization that there is a duty to join, if necessary, in coercive measures on behalf of the juridically organized community. The international juridical order is not advanced by acquiescence in brutal injustices, as Pius XII saw so clearly. And once the possibility of recourse to force is raised we are obliged to give much more attention to the policies and principles which ought to govern the use of coercive measures on behalf of the international juridical community. This in turn requires strenuous efforts to bring the generalities of our doctrine much closer to the realities of modern international conflict.

Not long ago I attended a Confirmation ceremony for adult converts at St. Matthew's Cathedral. Appropriately, Bishop Hannan, formerly of the Airborne Infantry, presided. Against the background of continued headlines announcing Communist

*(Continued on page 47)*

# AMERICAN CATHOLIC OPINION AND THE UNITED NATIONS

MOST REVEREND JAMES H. GRIFFITHS\*

THERE WOULD PROBABLY be no semblance of order in my turbulent titular diocese of Gaza were it not for the presence there of the United Nations Emergency Forces. These troops were the first uniformed peace-preserving unit in the history of the United Nations. The situation is still too imponderable, but it may not be too roseate an expectation to regard this small contingent in the Gaza Strip as a possible pattern of things which might still come about. Granted that the implementation of such a plan would be fraught with enormous practical difficulties. The fact does remain that with all the inexorable problems and dissatisfaction, with all the sufferings and seethings of thousands of uprooted refugees cramped into that tiny sliver of terrain, there has been avoided wholesale bloodshed in one of the most sensitive areas in the world.

Mind you, I am not even insinuating that the basic arrangement is ideal or tolerable, or denying that some equitable solution to it must definitely be found. But I do think it a pity that so many persons do not advert to the fact that, were it not for the urging of the United States and the action of the General Assembly, this area which has been the crossroads of history might have become, three years ago, the Sarajevo of an horrendous World War III, and all of us might have found ourselves long since in a silent, ghostly world such as the one envisioned by the Australian Nevil Shute in his appalling science-prophecy *On The Beach*. It seems to me that it was a Vicar of Christ Himself who warned: "Nothing is lost by peace; all may be lost by war."<sup>1</sup>

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\*S.T.D. Auxiliary Bishop of New York.

<sup>1</sup> KOENIG, ed., *PRINCIPLES FOR PEACE* 554, 585 (1943).

Aside from the personal relevance of the situation which I mention, I have purposely introduced it because it is one of those intangible — yes, I would go further and call it, somewhat paradoxically, one of those negative facts which it is so difficult to appraise. Put it this way: There is much less difficulty in assaying or proving the import of a thing which did happen, than in evaluating a thing which did not happen but might have happened. As a cleric, I would say there is no problem about getting a baptismal certificate but one cannot get a non-baptismal certificate. You might get sworn testimony regarding the lack of baptism, but one simply cannot get a non-baptismal certificate.

I think that this limping, awkward metaphor might often be helpful in weighing the attitude of the general public toward the United Nations. Many are prone to think solely of some of the regrettable things which have happened as a result of weaknesses inherent in any purely human organization — especially in one which is tottering and stumbling in its infancy and in one which was born in the turbulence of war, and cradled in a world strongly and bitterly divided along ideological lines; in an organization composed of members with the most fantastically diverse spiritual, moral, cultural, political, economic, and social backgrounds.

On the other hand, the example which we have advanced may explain the tendency or reluctance of the general public to pause to consider the negative facts apropos of the United Nations. By this I mean the short memories we have for the serious things which did not happen but which might have happened had there been no United Nations.

I do not wish to multiply examples, but I do think of Iran, which today might be a Marxist satellite, save for the action of the United Nations in 1946. The Kashmir question still remains unsettled because of the nations involved, but the United Nations did succeed in effecting a truce and terminating bloody warfare. Lebanon was another tinder box. There are those who rightfully will point to the American Marines who landed, but after they withdrew at the request of the United Nations, the peace has been kept.

Each one of the examples cited is an instance of a focus of infection wherein frightful carnage might have ensued; wherein the terrible conflict which hangs like the sword of Damocles over our heads might have fallen with inconceivable devastation, not only on these restricted areas but on all mankind. Please do not misunderstand me. I am not suggesting that the solutions or stopgaps, if you will, were perfect or even nearly perfect. But I do not regard it an exaggeration to say that thousands, possibly millions, of men and women are alive today who might have perished — and this because something did not happen; negative facts, if you will pardon the expression, which so many have long since forgotten.

Those who wish to do so might very effectively cite other instances in which the techniques have bogged down pitifully, and they would be substantially accurate and correct. But let us pause and ask ourselves whether these failures vitiate the gains which have been achieved. Would it have been better that more powder kegs should have exploded? Many may regard this as mealy-mouthed, weak argumentation. But somehow or other, I can't seem to ignore the warning which was ignored



twenty years ago: "Nothing is lost by peace; all may be lost by war" — a warning which rhythmically recurs and recurs whenever I hear well-meaning hotheads impulsively blurt out, "Let's get it over with," or escapists from reality disgustedly crying, "Let's wash our hands of the whole crew."

This, in the space age? This, when the globe has shrunk to the size of an apple? This, when withering weapons rocketed and even massively retaliated can only make the fantasy and fiction of Nevil Shute a frightening fact?

Is this a simpering, puny appeal for strong, righteous men to espouse the collective craven mentality of a rabbit warren? To abandon and to decline to defend their sacred human rights and freedoms against imperialist aggression and Marxist infiltration? By no means! But it is an appeal to leave no stone unturned, to regard no sacrifice too great, to consider no demand on patience too exorbitant to build a juridical world order and an acceptable international organization whereby it may be implemented. It cannot be done in a day, or a year, and probably not even in a decade. But we must build for posterity and if we take only one step forward at a time — and no step backward — we still shall have made progress and, trivial though it be, it is worth all our sweat and tears — particularly when we contemplate the alternatives.

To the impetuous who feel that this is merciless procrastination, it would be opportune to recall that it took from 1776 to 1789 to mold thirteen small, former colonies along the eastern seaboard — for the most part a homogeneous, unilingual grouping — into the crude but solid beginning of a great national entity. How titanic is the task when we are dealing with the whole

world with its maddeningly multiple diversities?

Candidly, we have followed up till now a rather unusual methodology. In a sense, it resembles somewhat the technique followed by St. Thomas in the *Summa Theologica*. We have been raising the objections before we have addressed ourselves to the subject.

To the mercurial subject "American Catholic Opinion and the United Nations" I might address myself immediately by using a venerable scholastic rejoinder, and simply say, "Nego suppositum," or "I deny the assumption." I have given long and serious thought to this topic and I cannot honestly discover any characteristically Catholic opinion in the field which would vary from the cross-sections of public opinion of the general American citizenry.

Despite the convictions harbored by some persons outside the Catholic fold regarding a legendary monolithic massiveness of opinion among Catholics, I find it rather difficult to get them to agree consistently on anything more than the Apostle's Creed. With reference to the United Nations, I think that they share the attitudes of their fellow citizens. Some like chocolate, and some prefer vanilla, and some don't give a rap for either.

Possibly it is the third group which should give us the greatest concern. I mean the uninformed and the apathetic. Whether we like it or whether we don't, the United Nations organization is a paramount factor, not only in world affairs today, but also in the individual life of the private citizen. Even if he looks at it only taxwise, the private citizen cannot afford to ignore it.

Now I know as well as you that the intri-

cate organization is far beyond the IQ of millions. Of them, and the specialized fields, I am not speaking. But I do have in mind the Catholic of average or better than average intelligence, who should at least have some informed opinion one way or the other on this international instrument. And still you know, as I do, plenty of persons in this bracket who think of it only as a big "palaver palace" on the Manhattan Riviera. I dislike cliches, but I find it hard to abandon the good old ostrich, even though ornithologists tell us he doesn't stick his head in the sand as the proverb claims. I regret to say it but there are too many ostriches among our Catholics apropos of foreign affairs in general and the United Nations in particular. They seem to feel that because they cannot see, they cannot be seen.

Among American Catholics as among other American citizens, there are the other two groups who have an attitude favorable or hostile to the United Nations and to the concept of an international community. I think that you will agree that in both groups there are men and women of basic integrity and sincerity, men and women who have given time and study to the subject and to the aspect which they support. Likewise, it is well to recall that in this controversial area, in an organization which is worldwide, everything is not completely black and white. There is a great deal of gray — that gray of which St. Augustine was no doubt thinking when he stressed "in dubiis libertas" (in doubtful things, liberty). Now because of this very fact, the remainder of the phrase of St. Augustine is particularly appreciable in this situation: "sed in omnibus caritas" (but in all things, charity). Particularly among Catholics of differing opin-

ions on this subject, there is no place for bitterness and acrimony nor for bilious name-calling or unfounded aspersions on loyalty, nor again, for the supercilious omniscience of the self-anointed prophet.

On the one hand, we have the extremist who regards the United Nations as some kind of a magic formula for immediate peace which has been distilled in a polyglot alembic and which cannot fail in dealing with any intricate international problem. He often forgets the warning about "artificial uniformity" or "mechanistic unitarism" which can produce nothing unless it be preceded by true adherence to principles of peace or to juridical order.

Both he and his adversary in the opposite school of thought do not realize that there actually is no such thing as the United Nations, but rather the member nations which make it up, with their pluralistic points of view. On the truly great issues which come before the United Nations there is rarely a unanimous vote. There are nearly always the "ayes," the "nays," and the abstentions. In other words, the United Nations merely mirrors the thinking of the world and in the world — thinking and tendencies which not infrequently have been changed and improved precisely because of the open debate to which the subjects have been submitted.

It would be naive to think that we are suggesting that power politics does not enter into the situation or that strategic blocs do not exist. On the other hand, it is equally true that there are entities which are really not committed and which can be and have been convinced because it has been possible to thrash things out. I believe that this too might be termed one of those negative facts of which we have already spoken.

One finds some American Catholics who brush the whole United Nations aside casually and imperturbably with the observation that it is merely a sounding board for communist propaganda. Who would dare deny that the Marxists have grasped the opportunity, oft times unashamedly, to broadcast their viewpoint or to justify their malfeasance? But one should recall too that the United Nations' debates and deliberations are a "two-way street," and that they become a sounding board too for the effective pronouncement of the principles of the Free World — statements which might never reach the statesmen of dozens of nations were it not for the meetings and discussions carried on in these international assemblages.

As a matter of fact, the very doctrine of the Church, which is unknown to scores of statesmen of regions not of the Christian tradition, has been proclaimed time and again by delegates. I think of a few very recent examples. Only the other day in a discussion of "apartheid," a representative of Ireland read into the record for the information of the large numbers of the Afro-Asian bloc the courageous statement of the hierarchy of South Africa regarding this burning question. Ten days ago, in the debate on the rights of the child, several delegates were able to place before the body the teachings of the natural law on the rights of the unborn child. And in the beginning of this month, I personally had the opportunity of speaking before representatives of eighty-four nations in the General Assembly hall, and of citing textually the principles and the position of the Holy See regarding the necessity of technical assistance to the underdeveloped regions of the world. From subsequent conversations I know personally

that representatives of many of those areas were completely unaware of the position and the sympathy and the understanding of Pope John, as enunciated in the letter of last July to the *Semaines Sociales Françaises* at Angers. So, when it comes to the charge of the sounding board, we really would do well to pause a trifle and realize that it is a "two-way street."

Then again, since today we are dealing with American Catholics, it is scarcely necessary, but it is opportune to recall that the United States admittedly enjoys a position of pre-eminence in the councils of the United Nations. We are now one of two great powers of the world with all the responsibility that goes with power. Let us face it realistically: In the space age our traditional policy of neutrality and isolation is a thing of the past. Every man and woman, and, therefore, every American Catholic, must share in the consequences of world happenings.

Consequently they must be keenly conscious of their civic responsibility which is part and parcel of our Catholic teaching. This civic responsibility is not limited to the town meeting. It reaches all the way to the federal government here in Washington. Because of the world position of the United States, it reaches now into the sanctum of the General Assembly, the councils, the committees in which the United States plays such a leading role. Have Catholic Americans sufficiently made known to their government their attitude regarding problems with which the United States delegation must deal in the United Nations? I think you will concur that they have not. Yet it is elemental democratic procedure that there be communication between the people and the government. This is a deci-

sive factor in determining the course of action on most of the important issues before the country.

It serves no purpose for any Americans, and particularly Catholic Americans, to sit back resignedly to decry and criticize the activity of the United Nations, or especially the position taken by the United States in the United Nations. We may not abandon what is our privilege and duty, that is, to make our opinion known on any question to the government. But it is equally important that the opinions expressed be not hasty, heated and haphazard. They must be based on information and understanding of the issues at stake. All over the nation there are other groups which are availing themselves of their privilege and informing themselves; groups which are constantly making known to the government and its deputies in the United Nations their viewpoints on critical questions. Catholic Americans may do no less. Hence, it is of the utmost necessity that they be informed and articulate.

Of course, some have felt justified in abstaining from active interest because they have found the United Nations to be irreligious. If there be noticeable an atmosphere of cool secularism, this may be due to the studied neutralism which is occasioned by the multiplicity of religious persuasions in the eighty-two member nations. Let us leave aside for the moment the nations which are officially atheist. Would or could Catholics join in the public prayer offered by a Buddhist monk or a Moslem imam? All nations from vast Brazil to tiny Luxembourg are present as members on an equal footing, and each is sensitive and jealous of its religious and cultural traditions. Let us hasten to say that the situation is regret-

table — aye, deplorable — but that it is one that must be faced in its practical implications.

But of course it has been pointed out to me when I have commented on this lamentable condition that non-Christians are not impressed by the charge often made by Catholic Americans that there is no mention of the name of God in the Charter of the United Nations nor in the Declaration of Human Rights. These gentlemen have hastened to remind me that neither is there any mention of the name of God in the Constitution of the United States nor in the American Bill of Rights, although Catholic Americans do not denounce or repudiate them. Does this make our American instruments godless? Does it make the United Nations documents acceptable because the American ones are similarly fashioned? Of course it doesn't! It merely proves that all four documents are deplorably defective in this regard. But I must confess that it is somewhat difficult to explain.

Nor is that the only thing which I find it difficult to explain. I do understand, humanly speaking, the resentments of some American Catholics who complain that they are opposed to paying taxes to support an organization which they personally feel has not produced proportionate results. Likewise, I can appreciate the position of those who clamor for Charter reform and who deplore the veto — which I do — though I must confess that I often wonder how many of them realize that the United States was also quite insistent on the veto at San Francisco in 1945. But at times it is difficult to explain to foreigners the amazing attitude of some Catholic Americans who readily espouse political isolationism in contrast with the sheer internationalism of their

compassion for the hungry, the naked, the homeless of any quarter of the globe — and not for any strategy of cold war, but purely because of the warmth of their Christian charity.

Baffling as are these paradoxical phenomena, I find most unintelligible the position of some Catholic Americans who, living in this air age which has annihilated distances and perforce brings us daily into contact with the most remote peoples, nevertheless shy away from the mere mention of the international community, as though it were incompatible with Catholic teaching or practice — as though it were possible or permissible to secede from the universal solidarity of the human race.

When we speak of the sense of the universal solidarity of the human race, we have not in mind any mere mechanically contrived unity of a super-organization. It is something deeper than that. It is something which springs not solely from the destruction of distances and differences, nor even from greater familiarity and intercourse with other peoples. It is rooted in human nature, in the natural law. It will rise to the surface and there it must be understood and guided in a systematic, a juridical fashion.

Pope Pius XI, in his inaugural encyclical, “*Ubi Arcano*,” spoke of a “code of common laws . . . such as was possessed in the Middle Ages by that true society of nations which was the community of Christian peoples.”<sup>2</sup> But that true society of nations passed when nationalism, both political and religious, first took over, to be followed by exaggerated militarism which in turn compounded the two into imperi-

alism. And yet, there has remained the nostalgic remembrance of the lost unity of the past.

All these natural factors, for the past seventy-five years especially, have been engendering a hazy, but definite, longing and groping towards a social, political and religious unity. Pope John unmistakably sensed it in the years which he spent on the shores of the Hellespont and in the City of Light in the shadow of the Arc de Triomphe.

Indeed, the Church of Christ for years has watched this groping for spiritual and political unity with unfeigned concern and true maternal interest. She has wisely promoted the wider development of the recognition of the universal solidarity of the human race, as she has also approvingly regarded the establishment of some kind of international community for the practical implementation and realization of this sublime ideal.

All the modern Popes have repeatedly provided the nations with sage directions whereby they might discharge the obligations incumbent on them, to subordinate the claims of their nationalism to the needs of the human community and to promote the organization of these latter efforts.

Just sixty years ago, on April 11, 1899, Pope Leo XIII hailed the International Peace Conference being held at The Hague. In his discourse, “*Rivedere qui oggi*,” the great Pontiff speaks of this gathering in the Netherlands as a ray of sunshine to brighten the end of the century. He begged Heaven to grant that this international assemblage — made up of men of varying religious persuasions — might be the first step leading to the experiment of resolving

<sup>2</sup> *Id.* at 347.

disputes among nations by means of purely moral and persuasive measures.

During the same year, 1899, Cardinal Mariano Rampolla, his Secretary of State, wrote to Count Mouraviev, Secretary of Foreign Affairs for Russia, lamenting the fact that there was lacking in the international consortium of nations a system of legal and moral means proper to determine and to make good the right of each. He urged on the Russian diplomat the establishment of an institution of arbitration, invested with authority, clothed with all the necessary moral prestige, and fortified with the indispensable moral guarantees of compliance and impartiality. Of these efforts was born the Permanent International Court of Arbitration of The Hague, one of the first modern steps toward the realization of an international community.

Even St. Pius X, who held himself aloof as much as possible from diplomacy, the better to concentrate on the direct spiritual apostolate to souls, in a rare instance wrote to Archbishop Falconio, Apostolic Delegate in the United States, in 1911 to praise the Carnegie Endowment for International Peace on the occasion of its founding. It is noteworthy that St. Pius X, with his usual peasant sagacity, remarked that the foundation "might not immediately, or wholly, accomplish its purpose," but he praises it and the zeal of its founders. St. Pius did not expect immediate miracles nor did he regard the foundation as perfect — but he welcomed it as at least partially contributing to the solution of the problem of peace.

When St. Pius X died of a broken heart as war broke out in 1914, his successor, Benedict XV, repeated the proposals of Leo XIII for the institution of agencies of arbitration. He went further and proposed

a means of providing coercion to enforce juridical measures which may be enacted. Indeed, from the letter of Cardinal Gaspari, Secretary of State, to Mr. Lloyd George, it is clear that Benedict XV expected the nations to apply sanctions (general economic isolation, including boycott) against the state which would refuse to submit international questions to arbitration or to accept the decisions handed down in arbitration.

As the First World War raged on, the concept of the League of Nations came to the fore. On May 23, 1920, when hostilities had ended, Pope Benedict XV gave to the world his timely encyclical, "Pacem Dei." In this letter he wrote: "It is much to be desired that all states, Venerable Brethren, putting aside mutual suspicion, should unite in one league, or rather a sort of family of nations, calculated both to maintain their own independence and safeguard the order of human society."<sup>3</sup> But even before that, in 1917, Pope Benedict XV, in his famous peace proposals, had suggested an international institution for *compulsory* arbitration.

The League of Nations, which the United States repudiated, went on for many years after Benedict XV himself had died in 1921. Whatever else may have been the defects of the League of Nations, certainly the absence of an informing, unifying spirit, fundamentally moral, has been recognized, even by its most enthusiastic supporters, as its greatest handicap. On the other hand, Catholic supporters of the League of Nations such as Eppstein and Gonzague de Reynolds and many others, have argued that the failure of Catholics to rally more warmly to its support was in no small measure the reason why the League lacked the

<sup>3</sup> *Id.* at 290.

vivifying principle and acquired instead a laic and humanitarian ethic.

If we opposed or ignored or merely abstained from an organization which had good objectives, as Pope Benedict XV himself admitted it had — even though it were imperfect in many respects — we could hardly hope to work for its improvement or perfection; we could hardly be regarded as without responsibility for the League's inglorious demise in the late thirties. We Catholic Americans of today would do well to ponder this accusation which is not totally without foundation.

Shortly after he had ascended the Chair of Peter, Pope Pius XI in his encyclical "Studiorum Ducem," on the seventh centenary of St. Thomas Aquinas, insisted that in the teachings of St. Thomas there are provided the principles of a "true society of nations." Again in his Christmas allocution of 1930, the same Pius XI, sickened by some of the emotionalist appeals for peace in that day, based solely on fear and on revulsion against the filth and blood and lice of war, cried out: "The peace for which humanity longs is not to be identified with sentimental pacifism, confused, undiscerning and heedless of dangers. True peace is the work and fruit of justice, perfected by love."<sup>4</sup>

If the four first pontiffs of this century at various times and in different ways alluded to the need of creating and evolving juridical international institutions to guarantee the fulfillment of treaties and to preserve peace, Pope Pius XII, the great teacher, had scarcely taken in hand the tiller of the bark of Peter than he promulgated his masterful encyclical "Summi Pontificatus," in which

he expounded forcefully his favorite theme of the universal solidarity of the human race. In doing it, Pius XII laid the basis for an international community which, with characteristic prophetic foresight, he saw later coming into existence.

For thirteen and more years, from 1945 until he died in 1958, Pius XII never ceased to drive home the Church's teaching on an international community. In his Christmas Message of 1948, following the establishment of the United Nations, he said: "The Catholic doctrine on the State and civil society has always been based on the principle that in keeping with the will of God, the nations form together a community with a common aim and common duties. Even when the proclamation of this principle and its practical consequences gave rise to violent reactions, the Church denied her assent to the erroneous concept of an absolutely autonomous sovereignty divested of all social obligations."<sup>5</sup>

Five years later, in 1953, in addressing the Fifth Annual Congress of Italian Catholic Jurists, Pope Pius XII, who during a period of eight years had had the opportunity to observe and appraise the new United Nations, told the jurists: "The institution of a community of nations, which today has been partly realized but which is striving to be established and consolidated on a higher and more perfect level, is an ascent from the lower to the higher, that is, from a plurality of sovereign states to the greatest possible unity."<sup>6</sup>

Here we find Pius XII announcing his realistic acceptance of *the fact* of the United Nations, as a partial realization at least of

<sup>4</sup> Allocution of Pius XI to the College of Cardinals, *Benedetto il Natale* (1930).

<sup>5</sup> Koenig, *Pius XII and the U.N.*, 52 CATHOLIC MIND 143, 147 (1954).

<sup>6</sup> *Ibid.*

the much desired international community. In 1948 he had expressed the hope that the United Nations, after eliminating the weaknesses stemming from its origin, which was, of necessity, a solidarity in war, would become "the full and faultless expression of this international solidarity for peace."

It is the purest kind of captious carping to distort this and similar statements of the great Pontiff as some Catholic Americans have done. They assert that neither here nor elsewhere did Pius XII even insinuate indirectly approval of the United Nations. They add that he merely expressed the hope that the United Nations would improve, as though one might hope for the expansion, strengthening or improvement of something which he regarded as fundamentally wrong or basically objectionable!

Almost as though to confirm the theory that the indifference or hostility of Catholics was partly responsible for the failure of the League of Nations, Pope Pius XII, in a discourse on "Catholics and International Life," declared that "Catholics are extraordinarily well equipped to collaborate in the creation of a climate without which a common action on the international plane can have neither substance nor prosperous growth."<sup>7</sup> In the course of this same speech, he left no doubt as to what he meant about the responsibilities of Catholics in the matter of international life. The Pontiff declared: "Catholics are saddled with a great responsibility. They, above all . . . must realize that they are called upon to overcome every vestige of nationalistic narrowness, and to seek a general fraternal encounter of nation with nation."<sup>8</sup>

If I may, I would leave you with this thought of the responsibility of all Catho-

lics, and therefore of American Catholics, with reference to the international community and, in this moment in history, with reference to the United Nations. Whether they like it or whether they don't, it is a historical reality which they may not ignore, nor of which they may predicate magic formulae for true peace nor demand sudden miracles for lasting peace. Good Pope John, while he was the first observer of the Holy See at UNESCO in Paris, speaking of this specialized agency, cautioned us not to be precipitous or unreasonable. With his typical geniality and homespun wisdom, he said: "I like always to remind the fearful and the impatient that the work of the Hexameron in the Book of Genesis took six days to be completed and that there was a determined task for each day. We must learn to wait."

Catholic Americans have been bountifully blessed by God with the goods of the earth, which fact begets a concurrent responsibility to share them with the underprivileged and economically underdeveloped members of the international community. They have intelligently met and gloriously and generously satisfied this responsibility.

In God's providence these United States have achieved a tremendous power in world affairs and all citizens of this republic have a correlative responsibility to see that their country plays its proper role and plays it properly in the international community as it now exists; to correct its defects, to further its noble objective which is, after all, the achievement of true and lasting peace. Catholic Americans, then, who are members of a supra-national Church and are uniquely equipped, must shoulder this responsibility together with their fellow citizens.

<sup>7</sup> POLLOCK, ed., *THE MIND OF PIUS XII* 81 (1955).

<sup>8</sup> *Id.* at 82.



# THE RIGHT TO TRAVEL AND MIGRATE

JAMES J. NORRIS\*

OUR LATE BELOVED HOLY FATHER, Pius XII, never lost an opportunity to speak out on behalf of the men, women, and children around the world who, living in the hopelessness of refugee camps and hovels, kept their eyes longingly on the faraway lands that could provide a future for them and their children's children. No Pope in history spoke so often and so eloquently on the needs of the refugees and those in heavily populated countries, and their right to a decent living in another land. He was keenly aware of the unjust restrictions on the part of countries that could provide a haven for them, but at the same time he recognized that in the interest of the greater good, a country has the right to prevent an unrestricted flow of immigrants who might disrupt its economy.

In his high vantage point, Pius XII received a never ending flood of appeals from the victims of the war and its aftermath. Touching indeed were the letters written by those poor simple men and women whose last recourse was to pen a letter directly to the Father of Christendom, and even more touching was the concern of His Holiness to see that each one received an answer, and preferably a positive one.

In addition to the letters there came to his door a stream of visitors representing all those who sought his help to resolve their problems. Poles, Czechs, Hungarians, Russians, Chinese, Japanese, Italians, Dutch and many others turned to him to plead their cause.

It was only natural, therefore, that he should do everything within his power to answer these calls for help. Firstly, he made statement after statement on the right to migrate, as a fundamental right based on the natural law. Secondly, through his nuncios and papal representatives around the world he appealed to governments to open their doors to migrants and refugees. Thirdly, working through the Most Reverend Hierarchies, he set in motion the formation of one international agency to concern itself with migration questions, and a number of national agencies

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to occupy themselves with resettlement and integration services. Fourthly, he strengthened the position of the Sacred Consistorial Congregation in its mission for the spiritual care of migrants and, lastly, he issued the Apostolic Constitution *Exsul Familia* which, after giving the history of the Holy See's concern through the centuries for migrants, outlined the norms for the spiritual care of migrants, refugees and foreigners, no matter where they may be.

One of the lesser known statements of the late Pope on the right to migrate was made to a group of American senators in 1946, at a time when his heart was in anguish over the vast displacement of innocent peoples. At that time he said:

It is not surprising that changing circumstances have brought about a certain restriction being placed on foreign immigration. For in this matter not only the interests of the immigrant, but the welfare of the country must also be consulted. However, it is not too much, we are sure, to expect that in the process of restriction, Christian charity and the sense of human solidarity existing between all men, children of the one eternal God and Father, will not be forgotten. Immigration can help in solving one of Europe's saddest human problems, a problem which is being aggravated inhumanely by the enforced transfer of helpless, innocent populations.

This statement is one of the best summaries of the Catholic point of view on the right to migrate and can be used as the basis for a discussion of that natural right.

In a discussion of migration, we must understand that we are not speaking of the right to travel, which is at times called the right to freedom of movement. This freedom of movement is a fundamental human

right which is included in the Universal Declaration of Human Rights, promulgated in December 1948 by the UN General Assembly in these words: "Everyone has the right to freedom of movement and residence within the border of each state." (Art. 13). This is not a new right because it is a natural right; it has always existed. In the 15th century, the Catholic scholar Francisco Victoria gave fourteen reasons to justify travel of Spaniards among the Indians, and among these reasons he stated that "It was permissible from the beginning of the world, when everything was in common, for anyone to set forth and travel wherever he would."

The right to migrate, as distinct from the right to travel, has two aspects: first of all, the right to emigrate, that is, the right of the individual to leave his own country and, secondly, the right to immigrate, that is, the right to come into a country and be accepted there. Whereas the right to emigrate involves only the right to leave a given country, the right to immigrate has three aspects: the right to enter a country, the right to take up residence there, and the right to work in that country. It is, therefore, easy to understand that countries (with the exception of Soviet Russia and its satellites) accept more easily the right to emigrate than the right to immigrate, as the latter has more far-reaching consequences. In fact, the Universal Declaration of Human Rights to which I referred proclaims the right to emigrate in the following words: "Everybody has the right to leave any country, including his own, and to return to his country." Of the right to immigrate, on the other hand, there is no word in the Declaration of Human Rights. This means that it is left to the regulations of the *receiving* country to decide who shall settle there.

In the light of the foregoing, what is the Catholic point of view on the meaning and relation of these rights to *emigrate* and *immigrate*?

Migration was at one time a purely *private* affair touching only the individuals concerned. The right to immigrate, in the 18th and 19th centuries, was considered as a natural outcome of the right to travel, and immigration countries seldom refused entry to anyone, because of the need for hands and heads to increase the strength of the country.

The story of immigration to our own country under these conditions is too well known to bear repetition. On the other hand, what is not so well known is that millions of immigrants fell by the wayside and returned to their country of origin, disappointed at what they found here. The 20th century has seen a great change, with the result that today many immigration countries refuse entry to many individuals without thought for the common good of other nations or of those people who find themselves in a difficult economic situation, through no fault of their own.

The Catholic position on this question is that whereas the right to travel is a free and unrestricted right, the right to emigrate or to immigrate is a natural right which in certain special cases may be restricted by governments.

When may these restrictions be applied? An analysis of papal pronouncements and other Catholic sources show that these restrictions must be based on the moral doctrine of the Church, in harmony with justice and true Christian charity. In the Apostolic Constitution, *Exsul Familia*, the Catholic teaching on the right of individuals, and especially of families, to migrate, and on

the right of restriction by governments of this natural right is clearly set forth.

### **Restrictive Measures Morally Justified**

If we analyze in detail this basic document concerning Catholic principles on migration we find that the late Holy Father condemned, first of all, the principles of totalitarianism which violate the natural right of man to *emigrate*. He refers to his Christmas Message of 1945 and his address to the College of Cardinals in 1946 in which he made declarations on this subject.

As to restrictions on *immigration*, he admitted only those which are tempered with "Christian charity and the sense of human solidarity existing between all men, children of the one eternal God and Father. . . ." He showed that every living being should be able to make use of the earth and that our planet is sufficiently large to permit the right of each family to a living space. This judgment is especially apparent in his letter to the American Bishops in 1948, when he declared that the natural law itself, no less than devotion to humanity, urges that doors be opened to political refugees and other needy persons who are forced to look for work opportunities in other countries.

Restrictions on immigration, when they are necessary, should not be arbitrary, lest such restrictions stem from disregard of man's rights and from worship of power, and not from any sound moral reason. The pretext of a common good "falsely apprehended or falsely applied, yet sanctioned and made mandatory by legal provisions or administration," must be condemned.

### **Consideration of Catholic Doctrine**

Catholic scholars, in line with the above papal declarations, have tried to answer the

question — what *economic* reasons justify limitation of the right to immigrate? In some countries, trade unions, and some experts, maintain that the free right to immigrate may endanger three aspects of a country's economy: 1) living conditions, 2) working conditions, especially the unemployment situation, 3) the level of income and productivity. Father Antonio Perotti, an Italian expert who has made a special study of this problem, has arrived at the conclusion that "it is very difficult to prove, with the means offered at present by the science of economics and immigration statistics, that immigration is a factor detrimental to the economic standard." He shows from both the historical and economic point of view that a cause and effect relationship between immigration and economic crisis is quite superficial. "The State is not free," he writes, "to act according to its will and whim, but it is bound to justify its policy of limitation. . . . The end of the economic activities of human society is to insure the maintenance of its people, not vice-versa. Therefore, the limitation of the exercise of a natural right may *not* be justified whenever it is dictated not . . . by the real, common good, but by a predestined economic structure."

A report summing up the conclusions on the right to migrate was submitted to the International Catholic Migration Commission Congress at Breda, Holland, in 1954. This report was the result of studies made by the ICMC Information Center and it makes the following points:

Taking into account reservations made by the immigration countries and in order not to change the present situation too abruptly, a reasonable degree of restriction would seem advisable, at least during the transition period; the following suggestions

may, therefore, be taken into consideration:

a) consular or administrative control on arrival in the immigration country should be admitted only for reasons of national security (agitators, politically undesirable), public safety (criminals), public health (mentally sick or those suffering from infectious diseases), and public morality (immoral persons);

b) immigration countries should avoid those measures which aim at safeguarding, in an exaggerated way, their spiritual, cultural, and linguistic heritage, but facilitate the integration of immigrants by their dispersal among communities and in surroundings most favorable to their adaptation;

c) immigration countries should have the right to restrict immigration for economic reasons only in case of mass movements which would menace the equilibrium of industrial centers; in these cases immigrants could be directed to rural or other regions where new forms of industry may be created.

The Australian Bishops, in their Social Justice Statement of 1953, *Land Without People*, arrived at the same conclusions, in these words:

There is a natural right to immigration and emigration which may not morally be denied or nullified by the acts of governments. Reasonable regulation of migration is legitimate; to use apparently *reasonable* regulations in fact as a means of denying the right is not legitimate. Consideration of national sovereignty over unoccupied or unused territory may not be carried so far that free access to the earth's bounty . . . should be denied to needy but worthy persons who have been born elsewhere.

The only conclusion that can be drawn from all the statements of the Pope and others is that the material goods of this world were created for all, and not for a select few; the human family is one — all must have access to the earth's abundance; all must have a sense of responsibility for

the welfare, both spiritual and material, of all our brothers on the face of the earth, be they white, yellow, brown, or black. The solidarity of the human family demands that this be a matter of concern to each of us as individuals — we may not shirk this responsibility.

Lest there be a misunderstanding, I should like to make clear that I do not feel that migration is the sole solution to the world problems of population and refugees. It is only one of the solutions, and not the one that will solve the problem for the majority of such people. Nevertheless, we must recognize that for vast numbers of people migration is the only answer to their problem. What other solution is there for the peoples of the Netherlands, Italy, and Greece, whose economies cannot possibly expand to the point where they will support their annual population increase as well as the refugees on their soil? What other possible solution can there be for the refugees from Yugoslavia who are daily fleeing into Italy and Austria? What of the refugees who have been waiting for years in the camps of

Germany and Austria? These are examples of those to whom the application of the right to migrate has a real and vital meaning. Must they go on looking to a future of hopeless despair, while a near-sighted selfish concern keeps doors closed to them? I say near-sighted because these people bring assets and ultimately riches to their new country. One has only to look around and see that the level of living standards is raised and the economies prosper most in those countries where immigration has taken place in substantial numbers.

During World Refugee Year our hands and hearts must go out to refugees wherever they may be: 200,000 Algerians in Morocco and Tunisia; 1,000,000 Palestine Arabs; 1,000,000 Chinese in Hong Kong; the aged; the tubercular, the physically handicapped—these and all the able-bodied who have a claim, in both charity and justice, on our help in building new lives, either where they are now living in despair or in a new homeland, where they can exercise their God-given right to raise their families in dignity and decency.

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### ROLE OF FORCE

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aggressions throughout the world, he explained to his candidates the symbolic meaning of the slap on the cheek. He was making those men and women soldiers of Christ in a world where Christ and all He stands for are under relentless attack. So

he reminded them that they might be called upon to fight and die for their faith. This thought must be with us always. We must work for peace through the successful development of a true international juridical order but we must be willing to fight and die for such an order and for justice, the only true basis for peace.





