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ENCOUNTER BETWEEN TWO WORLDS

By adopting the theme "Encounter between two worlds" for the celebration marking the 500th anniversary of Christopher Columbus's first voyage to the Americas, the international community was seeking to highlight what the Old World and the New World have in common and what can bring the peoples on either side of the Atlantic closer together. Such concern is understandable in a community engaged in a ceaseless quest for a new world order based on dialogue and harmony.

There is no denying that what began in 1492 was initially a clash of different races and cultures; there is no concealing the blood that was spilt, the dark side of *la Conquista*. On the other hand, there is no doubt that Europe gained an entirely new perspective and that the New World emerged transformed by this initial shock. Thenceforth, over the centuries, the mixing of the races and the growth of transatlantic communications led to the exchange of ideas, the spread of knowledge and the gradual development of a civilization common to the two continents.

Such a commemoration would not be complete without reference to the work of the prescient Spanish jurists and theologians who understood at once, at the height of the struggle, that the time had come to change the nature of human relations within each State and between States themselves, to make conflict less inhuman and generally to promote mutual understanding.

* * *

The Spanish conquest has been seen as the violation of a pristine world, a violation deplored by Montaigne in his *Essays*. Yet the aim was not merely to amass wealth, but also to save souls. This could not be achieved without destruction and enslavement. How can such acts

be justified? How should the conquistadors have behaved towards the Indians, those unfamiliar beings, those "godless, lawless savages"? In 1511, the Dominican friar Antonio de Montesinos delivered an impassioned sermon denouncing the enslavement of the Indians. "Are they not human beings? Do they not have rational spirits?". For the first time in history, a European was speaking out against the emerging colonialism.

Bartolomé de Las Casas, a Dominican theologian who felt conversion to Christianity should be a matter of free choice, condemned the excesses committed by the conquistadors and championed the cause of the Indians. He spent his life pursuing his ideal of a Spanish-Indian society where peace, prosperity, justice and Christianity would triumph once all forms of oppression had disappeared.

The strong sense of otherness that marked relations between the Europeans and Indians as the Spanish discovered the New World was at the centre of the concerns of Francisco de Vitoria and his followers at the prestigious University of Salamanca.

The role played by Vitoria, the "Spanish Socrates", in developing the law of nations is well known. Challenging mediaeval theories about the universal political power of the Pope and the Emperor, he contributed to the Thomist concept of natural law and laid the foundations for international law based on the idea of a universal community *(totus urbis)*. He proclaimed the equality of all peoples, whether Christian or pagan, before the law, and thus called into question the legality of the conquest whose excesses he deplored.

Vitoria — who by no means rejected the concept of just war — also succeeded in tempering *jus ad bellum*: only an *injuria*, a grave violation of a right, such as the right to preach, to communicate and to trade with the Indians, could justify the use of force. Vitoria also recognized the right to intervene on humanitarian grounds, in order to assist innocent people subjected to the tyranny of barbarian chiefs, thus making his thinking very relevant to the present day. He implied respect for the principles of humanity and proportionality when he declared in *De jure belli* that might was not necessarily right and that war should be a last resort, an extreme remedy when there were no other means of restoring justice. Finally, the victor should enforce a peace characterized by Christian moderation and concern for the welfare of all.

It is true that Vitoria's endeavours to limit the violence of conflict and attenuate the suffering it causes are more those of a moralist than of a jurist, and that his humanitarian thinking is not devoid of the ambiguity caused by confusing law, religion and the interests of the

Spanish Crown. He nevertheless made an outstanding contribution to what was to become the law of war.

* * *

As part of its ongoing research into the origins of humanitarian law, the *Review* is marking the anniversary of the Encounter by inviting its readers to discover these jurists and theologians of the Golden Age of Spanish empire, who did so much to give a new direction to humanitarian thought. The contributors to this issue look first at the principles underlying the sixteenth-century Spanish theory of war and then at how the School of Salamanca and, above all, Vitoria developed a veritable theology of human rights.

The Review

The Spanish School of the new law of nations

by Sergio Moratiel Villa

Introduction

Pain and suffering are as old as mankind, but so are compassion and clemency. In whatever mythology, the god of war is not always cruel, vengeful and ferocious. There have always been good Samaritans — even when the parable was first told it was spoken in the past tense. The history of humanitarianism runs parallel to that of mankind. Cruelty and kindness are opposites but inseparable.

If all men are brothers then all discord, strife and wars from Cain onwards have been fratricidal. Individuals may fight like wild beasts, but when the fighting is done there is nothing to stop them from acting humanely. There are countless examples of brutes who after the fray have shown leniency towards the vanquished and the disabled, and respect for the dead. In all cultures and some "non-cultures" there would seem to be a natural law that it is nobler to pity the unfortunate than to join freely in immoderate mirth. In the beginning was envy, and out of envy came progress.

It may at first seem strange that St. Thomas Aquinas should consider war and peace in his treatise on charity rather than in his treatise on justice, but there was no place for them in the latter because there was then no objective equality between individuals and nations.[1]

Nearly all the controversies of the last five centuries about which scholar first wrote this or that, or what principle can be attributed to

[1] "Pax est opus justitiae indirecte; sed est opus charitatis directe, quia secundum propriam rationem charitas pacem causat". *Summa Theologica*, Secunda Secundae, Quaestio XXIX, Art. III.

which school of thought, stem from confusion between humanitarian law and international law. There has always been humanitarian law. Before writing was known it was transmitted by word of mouth. International law first appeared (in writing) in Christopher Colombus' journal. It reappeared in the will of Isabella the Catholic, Queen of Castile and Leon. Antonio de Montesinos proclaimed it on the fourth Sunday of Advent in the year 1511 from the pulpit of a humble church in the recently discovered territories of America. The Dominican Francisco de Vitoria taught it from his chair of theology at Salamanca University from 1523 onwards. The Jesuit Francisco Suárez confirmed it in 1612 and Grotius compiled and codified it in 1625. In our day it has been ratified by the community of nations in The Hague, Geneva and New York.

Before Spain's discovery of America and the first circumnavigation of the globe (by the Spaniard Juan Sebastián Elanco), there was, strictly speaking, no universally accepted international law. Indeed, even in the broader sense it did not exist, because when it came to applying the law of nations one "power" claimed supremacy, as did Greece in the time of Alexander the Great, and later, the Roman Empire. Wars were fought around the Mediterranean — Mare Nostrum — or in the valleys of rivers of lesser international importance, mainly for commercial or cultural hegemony (like the Persian and Punic Wars) or to further tribal interests (as in India, China, Mongolia and Africa). Of the wars of religion, paradigms of intolerance and fury, the less said the better. The philosophical discourses of Plato and others, with their Utopian overtones, were and still are mere working hypotheses.

In the traditional distorted vision of the world, Western culture has been given exaggerated importance. This is known as "Eurocentrism". It is now readily conceded that the European West should no longer be considered as the hub of the world, as it is not the only source of historic initiative and global ideas. It is nevertheless an incontrovertible fact that nearly all the first works dealing (jointly) with humanitarian law and international law were written by Spanish authors in Spanish or Latin, and published from 1492 onwards. Latin eventually gave way to Spanish, and Elio Antonio de Nebrija's first *Castilian Grammar* is a valuable key that opens new horizons.

The foundations of modern international law were laid by the missionary zeal of the religious orders (not only the Dominicans, but also the Augustinians, Franciscans and Jesuits). The new learning and the spread of knowledge by Vitoria, Urdaneta, Zumárraga, Suárez and a galaxy of philosophers, theologians, jurists, ecclesiastics and soldiers

were paralleled by the exploits of the Conquistadores and the fervour of the Church in the New World.

This epic, successively Spanish, Iberian and European, was a prelude to the exploration and colonization of the entire globe. The conquering nations of Europe soon became rivals on the ocean vastness open to all. Two fundamental questions arose: (a) What rights did discovery give the discoverers? (b) What rules could conquerors impose on the conquered? The answers to those questions led to the simultaneous formulation of the basic principles of humanitarian law and international law.

Over the centuries, the untiring labours of a long line of great statesmen, learned professors and eminent writers have rid the law of war and, indeed, the law of nations as a whole of much muddle, outdated ethics, biblical references, antiquated citations of Justinian law, canonical precepts, feudal codes, chivalresque ideals, and the like. As Huizinga might have said, a flash of Renaissance lightning occasionally lit up the darkness of mediaeval Europe. Written law did not take hold or flourish in its present form until Spain, the first politically modern State, began two centuries — its Golden Age — of colonization and conquest in the Americas and elsewhere; and the consent of peoples, and the customs of the States forming the "family of nations", reinforced these sound foundations of legal practice throughout the known world, as is clear from the vigorous application of custom and the general acceptance of treaties and conventions.

The history of the law of war can be traced back through the Renaissance to Roman and Greek times, to the ancient civilizations of Egypt, Chaldea, Persia and Babylonia, to Genesis, and perhaps even further. Ancient texts provide irrefutable proof that those peoples applied certain standards and respected certain dictates of a rudimentary form of customary law in their relations with "barbarians", especially as regards declarations of war, the sending of emissaries, truces to bury the dead, the ransom and exchange of prisoners and the spoils of war. Successive groups of tribes and peoples cohabited in the Middle East, Greece, Rome, China, India and regions under Islamic and Western Christian influence, where some remarkable civilizations sprang up. The concepts of dignity and freedom have been with us since man first walked the earth, but there was no civilized form of "human rights" until the advent of the Renaissance and modern Europe.

Cohabitation as neighbours confers rights and duties which in the course of time natural law and tacit agreement between peoples turn into a system of human relations.

Before discovering America, Spain lived for eight centuries with the great civilization of Islam, against which it also waged the most extensive war of national liberation of all time. Europe would not be what it is today without the Greek heritage brought by the Arabs, mainly from the 10th to the 15th centuries. The great European intellectuals of the time studied at Toledo, Cordoba, Seville and Granada, the major centres of Muslim culture in Spain. Due credit must be given to Muslim civilization for paving the way for progress in western Europe at the dawn of modern times.

The Muslims applied the Koranic law known as *siyar*, a code of rules and customs governing the cessation or suspension of hostilities, peace treaties, and the transfer of people from one territory to another.

The Muslims had no international law as distinct from the sacred law of the Koran governing relations between believers and non-believers. They were obliged, however, for reasons of reciprocity, to apply some of their neighbours' rules, for example for exchange and ransom of prisoners, diplomatic immunity, and customs dues.

The community of nations as it had been understood in Europe since Greek and Roman times was not a consistent whole. The system of military and economic relations, alliances, protectorates, domination and submission imposed by religion and force could exist only under dictatorial regimes and disintegrated with the onset of the Renaissance. Vestiges of customary law nevertheless continued to exist, and were in part accepted by the dominant Christian society of the Middle Ages. Modern international law arose from the ruins of the absolutist State, throwing off the shackles of Emperor and Pope in the process. It was at first almost exclusively a Spanish science. Its intellectual and practical origins are now generally attributed to Las Casas, Vitoria and Suárez rather than to Grotius.

Las Casas, a man of prayer and action

The Dominican friar and bishop Bartolomé de Las Casas came to social and intellectual maturity at a time when Spain was in the midst of the transformation from the Middle Ages to the Renaissance. Christians, Arabs and Jews lived side by side — admittedly not always peacefully — among peoples with Iberian, Celtic, Phoenician, Carthaginian, Roman and Gothic blood in their veins. It was hardly a propitious environment for the development of a radical reformer, the first to raise his voice in outrage, who provoked the very first crisis of

colonialism. Pablo Neruda, winner of the Nobel Prize for Literature, regards Las Casas as the standard-bearer of America's liberators:

Father Bartolomé, we thank you
for this gift from the bitter night,
we thank you because your thread could not be broken...
In the oneness of time,
in the course of life,
your hand pointed the way,
a sign from the heavens, a sign of the people.[2]

The biography of this agitated agitator has been styled "the anthropology of hope". The "rebels" in the universities of Salamanca and Alcalá deserve all the more credit because the world they lived in when the colonial upheaval took place was one they regarded as well-ordered; the philosophical and theological synthesis of Aristotelian and Thomist thought made possible an almost perfect Christian concept of life and the cosmos. In reinventing colonialism, Spain invented criticism of colonization. Not all of the later "colonizers" did it any better. The authors of the "black legend" of Spanish exploitation, genocide, and "ecocide" saw the mote in their brother's eye but not the beam in their own.

Spain, and the King of Spain, by no means evaded the issue of the legality of the "conquest" just beginning. In 1550-1551, in Valladolid, Sepúlveda, Charles V's confessor, faced Las Casas in an open debate on the subject. It must be remembered that the pacifist ideas of Erasmus of Rotterdam were then much in vogue, in Spain and elsewhere. The destruction of Amerindian beliefs, their forcible conversion to Christianity and consequent subjugation were unjustifiable on theological grounds alone. The native rite of human sacrifice, for example, could not be invoked as sufficient or legitimate grounds for war, since the resulting war would cause more deaths than the atrocities it was intended to punish, and would alienate the indigenous population from Christianity, which was born of the evangelical mandate: "go forth and preach... to all creatures".

To plead the cause of the Amerindians, Las Casas crossed the Atlantic fourteen times. In 1550 the burning question was: is it right to make war for the purpose of evangelization? Sepúlveda, in his zeal to justify Spanish domination in the Indies, went so far as to affirm, in his *Democrates alter, sive de justis belli causis apud Indos*, that the

[2] *Canto General*, English translation by the ICRC Languages Division.

Amerindians were to the Spaniards as monkeys were to men. He quoted Aristotle (already cited by the Scottish Dominican John Mayr to justify the Spanish evangelization of America) in support of his contention that some men were by their nature free and others servile. Thus the Amerindians, naturally inferior beings — he went so far as to call them "hominicules" — of limited capacities and barbarous customs, should serve the Spanish, "who had greater gifts of intelligence, religion and government". Charles V and Philip II authorized Las Casas to publish his works (which described Spanish cruelties in the recently discovered territories and even cast doubt on the very right of jurisdiction of the Iberian monarchs over the Indians), but categorically opposed the publication of Sepúlveda's defence of Spanish domination. Las Casas triumphed over Sepúlveda, but only on paper, for the real clash of interests was going on far from the Spanish court, in places where the "baddies" knew nothing of the law of nations and the "goodies" often refused to apply it. But it may be asked whether at the time international law was in fact a law at all. At the very least one can say that Las Casas was a social reformer and to some extent a precursor of modern liberation theology.

The real founders of international law are Spanish missionaries, philosophers, theologians, jurists and soldiers. Quite rightly, they considered the law not as an independent subject of study or practice, but always in the broader context of global human problems and the moment in history. They wrote of the "peaceful evangelization" of the world as a part of a scheme of things whose landmarks were Scholasticism, the Renaissance, the Reformation, Erasmian thought, the papacy and the monarchy.

There were in Spain at that time three main schools of philosophical / theological / legal thought: (a) the Dominican school (Montesinos, Las Casas, Vitoria, Soto, Cano); (b) the Jesuit school (Suárez, Molina); and (c) the independent school (Covarrubias, Ayala, Vázquez de Menchaca).

Montesinos affirmed the universal equality of mankind, without distinction based on race, religion or degree of civilization: he taught that there are no inferior beings, for all have a rational soul. This, in the second decade of the conquest, was the first express recognition of human rights and of the legitimate aspiration of peoples to peaceful co-existence.

In his earliest written work Las Casas set forth the classic notion of natural law, in detailed proposals and advice to the King of Spain. The indefatigable missionary bishop, over three centuries ahead of his time, urged what was then unimaginable: decolonization. He listed

twelve causes of the "destruction of the Indians", which can be summarized as follows: in general, the violation of civil, political, social, cultural and commercial rights; specifically, the hard labour imposed on the Amerindians by the rapacious Spaniards, and ill-treatment, above all in terms of hygiene, food and clothing.

In keeping with the Dominican school of thought, Las Casas proclaimed that war, however just in principle, was "a plague to body and soul", and was subject to certain limitations. His *Apologetica* expounds a list of rules for the protection of the innocent and the most vulnerable. Like Henry Dunant centuries later, he proposed principles for a body of legislation which anticipated to astonishing extent, for both peace and war, the philosophy underlying the four Geneva Conventions and their two Additional Protocols with regard to: (a) women, children and the elderly; (b) chaplains and religious observance; (c) agriculture, markets and labour; (d) foreigners in general; (e) the duty to give prior notice, and the prescribed duration of declarations of war; (f) the institution of neutralized and demilitarized zones; (g) the right of requisition; (h) the lawfulness of plunder; (i) decent burial; and (j) the exchange and ransom of prisoners.

Las Casas has been accused of Manichaeism; for him all Amerindians were good and all Spaniards were bad. He conceded, as the Bible does, that war may be waged: (a) if unbelievers hinder evangelization or trade; (b) if unbelievers have previously committed a grave offence; (c) for the just recovery of goods taken by force. But there is a blot on his enlightened pages: he suggested that for hard labour the weak and innocent Amerindians should be replaced by black slaves (who were stronger and apparently not so innocent). He asked that "the King should deign to allocate 500 or 600 blacks to each of these islands, to be shared out among the Spanish colonists for labour, especially in the mines; this is the only way to save the Indians from extinction, repeople these islands and so increase profits in gold and revenue for the Crown".[3]

The Flemings at the court of Charles V secured a monopoly of the black slave trade with the Indies, and later handed over this lucrative business to the Genoese. Spaniards were rarely involved in the black

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[3] Las Casas, *Memorial al Consejo de Indias*, 1531, Biblioteca de Autores Españoles, vol. 110, No. 7, pp. 54-55. This is an obvious reference to the *encomenderos* who, with official licence, exploited the labour of groups of natives in America or levied taxes on them, albeit always with the obligation to "endeavour to defray the cost of their instruction in the Christian religion". Las Casas, who never distinguished between immediate interests and the general rights of the natives, denounced this as the "cause of all the trouble".

slave trade, mainly for religious reasons. Officially, they could not deal in slaves; in private, they undoubtedly committed abuses.

The Dominicans of Salamanca, in particular Domingo de Soto, vigorously condemned the slave trade initiated by Portugal before Philip II annexed that country.

Since the Dominican Las Casas was the first to denounce the abuses committed in America, the Spanish Dominicans, especially those of San Esteban College in Salamanca, felt obliged to deal with the matter without delay.

Vitoria: the gentle rebel

When in 1925 the Dutch universities celebrated the tricentenary of the publication of Grotius's principal work, *De jure belli ac pacis*, they sent a commission to Salamanca to "place a wreath on the grave of Vitoria and deliver to the University the gold medal struck in honour of this celebrated Dominican, the founder of international law".[4]

Vitoria doubted the sincerity of the conquerors turned settlers for the legitimacy conferred by the right to preach the gospel was subject to conditions to prevent its abuse by unscrupulous oppressors bent on enlarging their lands. He would not accept that he was merely a man of law; and he was right, for it took more than legal expertise to make the subject-matter clear. One looks in vain in the instruments of modern international humanitarian law (particularly the Conventions of The Hague and Geneva) for an explicit link with natural law, with man's common heritage, with the ontological unity and solidarity of mankind and the inalienable dignity of every human being, but that link is immediately obvious in the writings of 16th and 17th century Spanish internationalists and in the "social" encyclicals of the Popes of the past two centuries.

Vitoria was a theologian and at the same time a "practical" man with no time to waste. He had to find the answers. He wanted to find them; he therefore needed the relevant arguments and principles then and there to give the precise and sensible answers the situation required.

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[4] Letter, undated, delivered to the Office of the Rector of the University of Salamanca.

His reputation as an internationalist is due to his correct application of the basic principles of justice to the major events of his generation (discovery, exploration, conquest, pacification, colonization, and the development of America). In any given situation, Vitoria formulated the principles of modern international law and paved the way for the appropriate philosophical concept. He held the Prime chair of theology in Salamanca, but was also an "armchair" missionary; he added his voice to the controversy about the Amerindians, who until then were unknown in Europe. He was consulted personally by Charles V on the advice of Las Casas (in three letters to the King between 1539 and 1541). Vitoria was well informed about what was happening in the New World, by his former students who were missionaries there.

With Vitoria, international law really took shape as the law *between States*, the States of the whole world. He attributed to the Amerindians entire possession, "private and public", of the lands inhabited by them and maintained that these could not be taken away from them, even if they refused to become Christians, or committed crimes, and although they were heretics. But the Spanish were entitled to preach, travel and trade in America *(jus comunicandi, jus peregrinandi, jus negotiandi)*; the children of Spaniards born in the New World could not be expelled *(jus soli)* nor denied their economic, cultural or political rights.

In Vitoria's view, the right of navigation derives from the general principle that the sea, like the air, is by nature open to all and that nobody can claim exclusive rights to it. Likewise, coasts, river banks, international waterways, bays and ports must be open to all for refuge and replenishment of supplies, and as a guarantee of reciprocal rights and the duties of hospitality. The local sovereign has only supervisory and administrative powers. To reach America the Spanish had to cross the sea: by virtue of natural law the rivers and oceans belong to all mankind, and under the law of nations, ships of any flag are entitled to cast anchor and berth in any waters. Since waterways belong to all, they are public property, and no one can lawfully be deprived of them. This is the concept of *mare liberum*, a basic principle attributed to Grotius but transcribed by him from Section III of Vitoria's *Relectio I.* In Chapter one, paragraph one of *Mare Liberum*, Grotius puts forward Vitoria's doctrine as the basis of his own arguments, but without mentioning him. It might be thought that Grotius elaborated this doctrine unaided, but at the end of the chapter he quotes Vitoria by name on the same subject. Maritime law was also dealt with — and Grotius knew this, as is clear from certain passages of his work — in *Consolato del Mare*, a work probably dating from the 12th century

but first published in 1474 in Barcelona, in Catalan, which contains the relevant legislation of Castile, France, Syria, Cyprus, the Balearic Islands, Venice and Genoa.

Grotius also adopted Vitoria's views on the judgement of conscience. For example, the visible tribunal in The Hague notwithstanding, he called on the invisible tribunal of conscience in support of Dutch rights, against Portuguese opposition, to sail the high seas and trade freely both on the mainland and on the islands of the Indian Ocean. National courts, he said, judged breaches of the law committed within their jurisdiction, but it was the Creator's prerogative to punish the offences of nations and those governing them. He added that there was one court no sinner, be he ever so fortunate, could escape. By this he meant one's conscience or self-esteem and public opinion or the esteem of others. Grotius put before this dual tribunal a new case, one of paramount significance, since it concerned practically the entire high seas, the right of navigation and freedom to trade. In this controversy (with the Portuguese), he called upon Spanish jurists particularly well versed in both codes of law, divine and man-made. In fact, he invoked nothing less than the laws of Spain (and Portugal).

Before Vitoria, the code for regulating relations between nations drew on Roman and canon law, the laws of chivalry, custom, and (mainly Christian) morals.

The Spanish architects of the modern law of nations were the first to propound that States are subjects of transnational relations, and that their freedom of political action is limited only by international law.

Vitoria treated inter-State relations as "matters of conscience". He was the first to use the expression *jus inter gentes* to mean the rules imposed by reason on all peoples. In Vitoria's view (as he says in his treatise *De justitia*, also written on Las Casas' pressing recommendation), the Amerindian chieftains were on an equal footing with Charles V (who did not dispute this). It took courage to say so, challenging the medieval tradition of imperial and papal absolutism. Vitoria's attitude to the pretensions of the Pope was not only admirable, but extraordinarily courageous. He said that the legitimacy of Spanish authority in the New World could be argued on grounds other than those put forward by the staunch supporters of Pope and Emperor. The Pope was not the universal sovereign (contrary to Alexander VI's *Inter caetera* bull of 1493, giving Spain and Portugal rights of conquest and jurisdiction in the Indies), and the Emperor was not the ruler of the world.

If necessary, the Spaniards could defend their rights by the sword, but war had to be a last resort. Serious hindrances to the propagation

of the faith could be a just cause of war, and if converted Indians were harassed, they could be defended.

So much for *jus ad bellum*. Now let us look at *jus in bello*.

Even the noblest idea needs more than its own virtue to survive. St. Isidore of Seville in his *Etimologías*, and Raimundo Lulio in many of his writings, speak of the energy with which Spain pursued its policy of creating by fair means or foul a multilingual, multiracial, plurireligious culture that would, as so many people ardently desired, gain universal acceptance. Just causes of war were stated by Plato, Aristotle, Cicero (the first to speak of "just war"; 16th century Spaniards preferred to speak of "unjust war"), St. Ambrose, St. Augustine, St. Isidore, St. Thomas, Legnano, Macchiavelli, Luther, Erasmus, Thomas More, Bacon, Vitoria, Ayala, Suárez, Vázquez de Menchaca, Belli, Gentili, Rousseau, Kant, Grotius, Zouche, Pufendorf, Rachel, Textor, Bynkershoek, Moser, De Martens, Wolff, and De Vattel.

A new era began with the discovery of America and the opening of new lands to the European and Christian West. Christian States, Castile, France and Venice for example, used a number of written and unwritten rules to settle disputes and controversies amongst themselves and govern their relations with non-Christian States. Canon law still prohibited treaties with Islamic powers, but when papal supremacy was strongly challenged Spanish jurists took the bold and praiseworthy step of proclaiming that the law applied to all peoples and religions alike. Although in 1519 the King of Castile and Leon declared that the Amerindians were his subjects by virtue of the bull of Pope Alexander VI, Las Casas, Vitoria and Suárez were guided by their own law of nations.

This is all the more remarkable because (a) it was not until 1924 that Congress recognized the right to citizenship of Indians born in the United States (the granting of that right has not always sufficed to preserve the Amerindian population from non-discriminatory treatment; indeed, special laws and statutes — *ubi injuria ibi jus* — have had to be enacted ever since for its protection, and (b) Czarist Russia did not start to free its serfs until the 1880s.

It would not be an exaggeration to say that in international relations before Vitoria "primitive" or "savage" peoples were subjected to the "civilized" law that might is right. The most important of Vitoria's tenets on natural law was not that peaceful entry into foreign countries was a right, but the recognition that American natives were a part of the international system although they were "savages"; that Indians had the same rights as Spaniards. He even went so far as to say that

the Indians could legitimately resist the Spaniards by waging a "just war" on them. On the one hand were legitimate rights and on the other insuperable ignorance, and *"par in parem non habet imperium"*.

The general doctrine of justified intervention (to protect rights of communication, free passage and trade) is another of Vitoria's internationalist innovations. Some Protestant jurists (De Vattel and Pufendorf, in particular) later rejected it on grounds of national sovereignty and non-intervention, a view clearly reflected in the Monroe Doctrine. In practice, however, some European States have set an example soon followed by others, by using innumerable pretexts to justify their interventionist, and especially imperialist, policies. At present, the right, and even the duty to interfere (referred to by some as "humanitarian intervention") is tending to gain acceptance as a means of defending basic rights violated in a given territory, as Vitoria suggested. This concept is one of the pillars of the international community's legal framework as endorsed by the Charter of the United Nations. Humanitarian intervention is based on respect for freedom and human rights; it should not be a cloak for colonialism imposed by a State and maintained by force.

Gayo, in his *Instituta Justiniani*, writes of law *"inter homines"*. Vitoria changed this to law *"inter gentes"*, thus introducing a vitally important change; for law *inter gentes* has the binding force of a convention or pact on all peoples *(communitas totius orbis)*. More exactly, it has force of law. In a way, the whole world is one political community, with the power to enact just laws for the common good. These form the law between nations, *jus inter gentes*, which is therefore a natural international law, that becomes positive law by dint of custom and conventions between peoples, nations and States. The dichotomy between the natural and positive aspects of the law was used, first by Suárez and later by Grotius, to make the well-known distinction between *necessary* and *voluntary law* of nations. Vázquez de Menchaca distinguished between *jus gentium primaevum*, natural law, and *jus gentium secundarium*, which is the positive law derived from custom.

Since a republic or State is part of the universe and a (Christian) province is part of the republic, if war serves one province or republic to the detriment of the universe *(totus orbis)* or Christianity, Vitoria says that for that reason alone it is unjust. Thus any subjective right to make war that one member of the world community might have must be relinquished when it entails violating the objective right to law and order which is the paramount right of the entire community. Thus, the internal laws of a State are subordinate to international law.

Vitoria clearly distinguishes between the "internal order" of each State (municipal law), whose aim is the common good of the citizens, and the "common universal good". This is the richest and most original of his ideas: the "common good of the orb" limits the activities and consequently the sovereignty of States by subordinating them to a higher principle. This is hardly ever mentioned because it does not figure in either of Vitoria's two famous *Relectiones*.[5]

Vitoria's *lectiones* and *relectiones* deal with topics of practical and current interest. As well as an abstract mental exercise, they are a study of serious matters whose resolution was (and still is) of utmost importance to the entire human race. The *relectiones* are a sequel to the *quaestiones disputandas* which summarized his lectures. Vitoria gave fifteen *relectiones* of which thirteen have survived. Two of them, the fifth, entitled *De indis noviter inventis*, and the sixth, *De jure belli*, are of signal importance to the law of nations. They are revisory essays on various subjects treated as problems of casuistry. They were not published by Vitoria, but by his disciples, and there were six editions. The first appeared in 1557 in Lyon, the last in 1626 in Venice. Vitoria read the fifth in his Salamanca classroom in January 1539, and the sixth in June of the same year.

In *De indis*, Vitoria asked four questions:

(a) May Christians make war?
(b) What authority is entitled to declare war?
(c) What are just causes for war?
(d) What can lawfully be done to the enemy during and after the war?

Vitoria quoted passages from both Testaments which appear to condemn the use of force, but he says they are advice, not precepts. Thus he refutes Luther's doctrine, which prohibited war even against the Turks because "If God so wills, the Turks will invade us".

Like St. Augustine, Vitoria conceded that there were just causes for war, namely (a) self-defence; (b) to fight evildoers and seditious persons; (c) to repel attacks; (d) to maintain and defend public safety; and (e) to preserve general peace from tyranny and oppression. The purpose of war is not to destroy the enemy, but to maintain peace and security. Some laws are just in time of war, and some are unjust in time of peace. It is not unjust to use force against those who refuse to meet honourable requests or are impervious to reason. In this, Vitoria echoes St. Augustine's dicta over ten centuries earlier: that Moses,

[5] See *De potestate civili*, Art. 13.

David and other just men did not refrain from using force (they agreed to truces, shared out plunder, and took ransom for prisoners, etc.); that the Apostle Paul exhorted slaves to obey their masters and serve them "single-mindedly"; and that intellectual honesty has led wise and just men to the natural belief that human depravity can be repressed by war, captivity, enslavement and coercion.

Vitoria says, correcting Ovid: "Man is not a wolf to man, but a man", and adds: "The Indians (the 'savages') cannot stop the Spaniards from taking things that are common property — for example, gold from the mines, fish from the river, or pearls from the sea". He accepts that opportunities for trading must be assured by suitable penalties. The Spaniards could live, travel, preach and trade in America, so long as they did not harm person or property. Denial of hospitality or of leave to trade was a just cause for war; sovereignty was acquired by right of conquest confirmed through voluntary cession (as when Hernán Cortés occupied the lands of the Toltec and the Tlascaltec peoples, who had been dominated for decades by the Aztecs).

So much for the fifth *relectio, De indis*. The sixth, *De jure belli*, deals solely with the rules applicable in time of war. Vitoria answered the four questions raised in the previous relectio as follows: (a) a *defensive* war may be waged to repel force with force or to recover property; an *offensive* war may be waged to obtain fair compensation for injury or damages suffered; if mere individuals have a right to act in self-defence, States have a much greater right to do so, for they are independent collectivities having their own laws and judicial systems (he gave as examples Castile, Aragon and Venice); (b) only the monarch or the highest authority in the State may declare an international war; (c) war may not be waged against a (hypothetical) enemy because he is an unbeliever, nor to satisfy the desire for vainglory or advantage of the sovereign, who must govern for the common good; injury sustained is the only just cause for war, and not all injuries are serious enough to warrant recourse to war (just as in civil law not every offence is punishable by death, exile, confiscation etc.); in the great society of nations, a slight affront is not to be punished by killings or devastation, which are tantamount to war; (d) it is legitimate, in war, to do everything necessary to preserve and defend the State or recover goods stolen by the enemy and obtain reparations; enough may be taken to cover the cost of the war and compensate for damage unjustly suffered; and enemy territory and fortresses may be occupied to punish the enemy for injuries received, and to achieve peace and safety from his hostile designs.

Those are the rights of the contender in a just war. But, Vitoria asked himself, is it enough for him to believe he is fighting a just war? His answer: not in every case. The belligerent must consult learned men and give due consideration to enemy motives. Subjects are not obliged to follow their monarch in what they perceive to be an unjust war, since no temporal authority can force them to kill innocent people (women, the elderly, or children), "even if they are Turks". Innocents may not be imprisoned, but the people of a nation which has despoiled another may in turn be despoiled (he gives the example of France despoiling and Spain despoiled). Prisoners of war may not be held if a ransom has been paid for them and there is no need to hold them any longer. Hostages, depending on whether they bore arms or are women, elderly persons, children and suchlike, must be respected. During the war, anyone bearing arms may be killed. But if victory is assured, the killing must stop. Vitoria excepts unbelievers, because there is no hope of coming to terms of peace with them. The offended party may appropriate movable property (money, clothing, gold and silver) but not real property (land, towns or fortresses). Fortresses may be occupied until adequate satisfaction has been obtained for the injury inflicted. Vitoria expounds the conditions for peace treaties, and discusses possible tributes and taxes, but warns that decisions must be honest and moderate.

In conclusion he propounds three valuable principles: (a) the sovereign must try to keep the peace with all; (b) once he has won the war he must act with moderation; (c) if he has to go to war his purpose must not be to destroy the enemy but to ensure peace (the war is then a *necessary war).*

Since the world as a whole is in some respects a single State, it can enact just and appropriate laws for all individuals, such as the rules of international law. Clearly, anyone violating those rules on the international scene, whether in peace or war, commits a breach. In key areas such as the inviolability of ambassadors no country may refuse to be bound by the law of nations, because that law has been established by the authority of the world as a whole. This was the basis for the complicated machinery of the League of Nations and later of the United Nations, and for The Hague Conventions of 1899 and 1907, and was the starting point for the 1949 Geneva Conventions and many resolutions adopted by UN conferences and meetings of the International Red Cross and Red Crescent Movement. The will of the international community must be taken as the foundation of obligations in international law *(pacta sunt servanda).*

Even in the absence of treaties, some States have claimed the right to interfere in the affairs of other States. Vitoria approved of interference "if the population is converted and its leaders oblige it to return to idolatry". This is the ideological basis of many interventions (i.e., cases of non-humanitarian interference) by some Powers. History can show plenty of examples, not every one of them a legal quibble to gloss dubious political ends.

Vitoria ends his sixth *relectio* by quoting (or rather, misquoting — he changed *plectuntur* to *plectantur)* Ovid: *"Quidquid delirant reges plectantur Achivi"* — "The Greeks bewail the folly of their kings".

Vitoria's genius lies in the art with which he justifies colonization by appealing to man as a social animal. The scholar and theologian in him wrote down the dictates of his conscience as a free man in Renaissance and Baroque Spain.

He was in no position to denounce Jews, Saracens, "Indians" and unbelievers in general, for he was on his mother's side a Jewish "New Christian".

Amerindians, friars and conquistadores enriched humanitarian law and originated international law, which was born of the discovery and colonization of America. International law is the brainchild of Vitoria the theologian. He is concerned with virtually only one subject, war. War, he says, is "just" because it is "necessary", as the last resort to defend a right that has been violated; and the means used to defend that right must not be out of all proportion to the offence.

> "The Seventh International Conference of American States,
> *resolves*:
> To recommend that a bust of the Spanish theologist Francisco de Vitoria, be placed in the Pan American Union Building, at Washington, in homage to one who in the Sixteenth Century and from the University of Salamanca, laid the foundations of modern International Law".[6]

Suárez hands on the torch to Grotius

Vitoria and Suárez were the founders of the philosophy underlying all law, Vitoria for one branch of law, Suárez for law in general. The

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[6] *Records*, 24 December 1933. Unanimously adopted by the representatives of the American Republics. Published by the Carnegie Endowment for International Peace, 1940.

"great and pious" doctor Francisco Suárez, Spanish Jesuit, academician, philosopher, theologian and jurist, formulated for the first time in history those two most fruitful of principles, already clearly delineated by Vitoria, on which the entire structure of modern international law is based: (a) there does exist a society or family of nations; (b) the body of rules applicable to that transnational (the word "international" came into use only in the 18th century) association is not so much a common body of laws for all peoples, as in the old and still predominant Roman law, as a code of regulations between nations, observed by all. That is the doctrine which much later became widely known through the efforts of Grotius, heir and follower of the internationalists of the Spanish school of the new law of nations. But that is another story...

Sergio Moratiel Villa

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Just War and Regular War in Sixteenth Century Spanish Doctrine*

by Peter Haggenmacher

The ethical and legal problems raised by war loom large in the thinking of the theologians and jurists of Spain's Golden Age. In their reflections and pronouncements on these problems, however, they were not starting from nothing. They had before them a large body of teachings, mostly dating from the Middle Ages. An accurate assessment of their role in this field must therefore begin by recalling those mediaeval teachings on war. We shall thus start with an outline of those teachings, before moving on to consider how they were assimilated and modified by the Spanish authors of the sixteenth century.

* * *

The mediaeval conception of the law of war is usually reduced to the so-called doctrine of just war. Yet this expression, which since the end of the last century has obtained general currency, is not wholly adequate, inasmuch as it implies the existence of a single coherent theory. In fact, that is far from being the case. The law of war of the Middle Ages actually comprises several tendencies, which do overlap but cannot be reduced to the sole idea of just war as commonly understood.[1]

From the legal standpoint there are two main approaches to war. One leads to the notion of just war, the other to that of regular war. Let us briefly outline these two conceptions.

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[1] For an outline of the development of this doctrine, see Peter Haggenmacher, *Grotius et la doctrine de la guerre juste*, PUF, Paris, 1983, pp. 11-49 (Publications de l'Institut universitaire de hautes études internationales, Genève).

The doctrine of just war focuses first and foremost on the lawfulness of the use of force, which it allows only in reaction to a wrong that the responsible party refuses to repair. Just war is thus primarily a sanction aimed at restoring the law which has been violated. As a unilateral act of enforcement, it implies by definition the legal inequality of the adversaries, who confront each other in quite distinct capacities, one as an offender, the other as a dispenser of justice. The latter alone is fighting a just war, nay, strictly speaking he is the only genuine belligerent, his wrongful adversary being merely the rebellious object of armed coercion. Central to this conception is therefore the wrong committed: for the injured party it represents the just cause, and hence the basis for the material claim it is pressing by means of its just war. In the face of this fundamental substantive requirement, the formal aspects of war — in particular the legal status of the belligerents, the declaration of war and the law governing the conduct of hostilities — recede to the background.[2]

In the concept of regular war,[3] on the other hand, the formal side takes precedence over the material legal situation underlying the conflict. Instead of focusing attention on the lawfulness of the war, on the wrongs committed by one party and the rights conferred thereby on the other, one simply notes the formal existence of a state of war, which in turn presupposes a clash between sovereign entities. On that condition, both adversaries are considered *a priori* as belligerents in the full sense of the word; from the legal standpoint, they are therefore placed on an equal footing, as in a duel, and are entitled to exert the same prerogatives against each other. Arms alone will in principle decide not only the military outcome of the conflict, but also the resulting legal effects, which may take the form, for example, of acquiring property or, negatively, of impunity in the event of homicide. War thus becomes in itself a source of legal effects, which occur on both sides without distinction, irrespective of the cause of the war. These are then bilateral rights of war, as against a unilateral act of sanction.

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[2] A variant of this conception, already hinted at in the sixteenth century by Francisco de Vitoria, is policing by one or more States acting on behalf of the international community, with or without the blessing of an international organization.

[3] For this somewhat unusual expression, see e.g. Maurice Bourquin, "Grotius est-il le père du droit des gens?" in *Grandes figures et grandes œuvres juridiques*, Genevá, 1948, pp. 92-93 (Mémoires publiés par la faculté de droit de l'Université de Genève, No. 6). The adjective "regular" is used in the same sense as in "regular combatant" or "regular armed forces", the expression "regular war" being intended simply to generalize the connotation they have in common, namely that of a purely formal congruity with certain "regulations", as perfectly symbolized by the "Hague Regulations".

Accordingly, while the *jus ad bellum* has pride of place in the just war, attention will center here on the *jus in bello*. This would even seem to be the only way of conceiving a genuine law of war, an objective rule of conduct applying equally to all adversaries, irrespective of the material legal situation. In the just war, on the other hand, *jus in bello* is merely an extension of *jus ad bellum*; as such, it benefits only one belligerent by legitimizing all the acts necessary to secure his rights; it is essentially relative in nature, varying according to the initial wrong and the unjust resistance of the adversary.

The concept of regular war obtained in ancient Rome, although it was not expressed in an elaborate theory.[4] It also prevailed in classical international law, between the end of the seventeenth and the beginning of the twentieth centuries. As such, it forms the basis of the Hague Conventions and Regulations respecting war on land of 1899/1907, and of humanitarian law as embodied in the Geneva Conventions.

In the Middle Ages, on the other hand, it is generally held that the doctrine of just war predominated more or less exclusively. As we have said, this view has to be qualified. What is true, however, is that the notion of just war, although a very ancient *idea* dating back at least to Saint Augustine and even Cicero, was paradigmatically developed as a genuine *doctrine* only by medieval scholasticism. In this sense, it was very definitely dominant in the Middle Ages. The classic formulation conferred on it by Saint Thomas Aquinas in his *Summa theologica* immediately comes to mind. Drawing inspiration from the work of previous canonists and theologians, starting with Gratian who around 1140 had devoted an important section of his *Decretum* to the subject,[5] he defines just war on the basis of three conditions: first, it must be undertaken or ordered by a sovereign person *(auctoritas principis)*; secondly, it must be founded on a just cause *(justa causa)*; finally, it must be motivated by a pure intention *(recta intentio)* and hence never aim at seeking vengeance, but only at restoring law and peace.[6]

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[4] To be sure, the Romans were not unaware of the notion of just war *(bellum justum vel pium; purum piumque duellum)* and the idea of just cause of war does appear in Cicero's philosophical reflections (e.g. *De officiis*, I, (11) 36) or in Livy's historical accounts (*Ab urbe condita*, I, 32). The fact nevertheless remains that in their eyes *bellum justum* implied above all observance of certain formal requirements; this is the conception implicit in the texts of professional jurisconsults such as Ulpian or Pomponius (*Digest*, 49, 15, 24 and 50, 16, 118), whence it passed on to the Middle Ages.

[5] P. Haggenmacher, *op. cit.*, pp. 23-32.

[6] Saint Thomas Aquinas, *Summa theologica*, IIa IIae, q. 40, art. 1.

The purpose of that doctrine was to assign war a place in the Christian theological and moral universe. As such, it constituted an attempt to impose restrictions on a practice of recourse to force which was virtually endemic, and could not simply be outlawed given the fragility of the institutions. The only option was thus to incorporate it in law, while subjecting it to certain conditions. The doctrine which endeavoured to set those conditions enjoyed a broad consensus in mediaeval society. Whatever the practical difficulties encountered in its application — except possibly by the victor, in retrospect — it represented the official view on the subject.

Consequently, the Roman idea of regular war should have been precluded, since it was logically incompatible with the concept of just war. Yet this is not the case. Some texts of the *Corpus Juris Civilis* did include the notion of regular war[7] and, insofar as the whole collection of texts applied *ipso jure* in the mediaevel Empire which was considered as the "renovated" Roman Empire, it was difficult to ignore it. Moreover, people were all the more willing to accept the concept of regular war as it fitted in very well with the actual practice of belligerents. War was indeed a profession for a whole category of individuals who lived on the earnings they derived from it in the form of pay, ransoms or booty. In this sense, war at that time was as much an economic and social fact as a military and political reality. Hence, it was only natural that such an activity should give rise to a host of disputes, which the jurists were called upon to settle. Their reflections, which were based on Roman and canonical texts or on customary usage resulting from practice, gradually generated a whole body of rules, which were assembled for the first time around 1360 by the Italian Giovanni da Legnano in a treatise entitled *De bello, de repraesaliis et de duello.* That work prompted a whole current of legal literature which, through authors like Honoré Bonet, Christine de Pisan, Juan López and Pierino Belli, was to continue until the late sixteenth century.[8]

Unlike the theologians' speculative constructions on just war, this mediaeval *jus belli* was anything but systematic, owing to the pragmatic and casuistic approach of the jurists. However, its lack of systematic cohesion did not prevent it from having a kind of practical cohesion, thanks to the ties it maintained with the military profession. In this sense, it is reminiscent of the *jus mercatorum* which governed

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[7] See note 4 above, i.f.

[8] On this literature, see P. Haggenmacher, *op. cit.*, pp. 39-40.

the area of trade. Both were professions whose interests and business relations stretched beyond borders, each one being ruled by a complex code of transnational scope, made up of written and customary law.[9]

The use of the word "transnational" rather than "international" is deliberate here, in order to avoid any confusion with international law of war as we know it today. While the mediaeval *jus belli* did extend beyond frontiers and jurisdictions by virtue of its general validity, it applied to individuals rather than to sovereign States, which were at the very most in their infancy. Moreover, it was almost entirely devoid of the humanitarian restrictions which are central to modern law of war. The predominant concern was business; potential humanitarian implications were merely incidental. Thus it is unlikely that a prisoner worth a heavy ransom would have been put to death; but such scruples would hardly have been harboured for a common mercenary.

On the other hand, mediaeval *jus belli* bears some similarity to classical law of war on another score: in practice, it ignored the problem of the cause of war and hence benefited all the belligerents and combatants alike, at least insofar as the parties were able to claim sovereign authority in law or in fact. Bilateral rights of war, though not yet expressed in theoretical terms, were thus accepted in practice. It was probably even on purpose that they failed to be proclaimed openly, in order not to offend the reigning orthodoxy which, faithful to the concept of just war, clung to unilateral rights of war.[10] The doctrinal tension which these antithetical principles might have produced was attenuated to a large degree by the overlap between them, which obscured the respective theoretical premises behind bulky compilations of texts, whole layers of commentaries and a jungle of glosses and casuistry. Hence the impression of a single doctrinal body, with a speculative pole where it strove to incorporate war in Christian thought and a practical pole where it laid down rules governing the armed profession, and in this sense there is some justification in speaking of one single mediaeval doctrine of war.

The contradictions did not surface before attempts were made to clarify the doctrine and to articulate its components by taking a closer look at its theoretical foundations. This is what happened in the wake

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[9] The mediaeval *jus belli* is admirably described by Maurice H. Keen, *The Laws of War in the Late Middle Ages*, London and Toronto, 1965. See also, from a slightly different point of view, Theodor Meron, "Shakespeare's Henry the Fifth and the Law of War", *American Journal of International Law*, 86, 1992, pp. 1-45.

[10] One notable exception to this silence should however be highlighted in the person of Raphaël Fulgosius; see P. Haggenmacher, *op. cit.*, pp. 203-206 and 284-288.

of the intellectual fervour which swept across the Western world in the waning of the Middle Ages. The Spanish masters of the Golden Age were to play a vital role in this effort to reassess, consolidate and restructure the traditional doctrine.

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We shall thus leave the Middle Ages and move over to Early Modern Times. This transition coincides with the emergence of Spain as a major power, thanks to its political unification brought about by the marriage of the Catholic kings and the completion of the *Reconquista* with the fall of Granada in 1492. It was as if the Holy War for the fatherland had immediately found an extension abroad, with the discovery and colonization of the New World; and the transatlantic conquests were in turn to confer a new dimension on the debate on war in Spain, resulting in a profound renewal of the doctrinal corpus.

Spanish doctrine of war in the sixteenth century may be divided into two main camps, by and large corresponding to the mediaeval developments outlined above. The first, probably the better known, is in line with the scholastic theologians; the second, quite as important but less coherent, follows in the wake of the jurists. Let us consider them in turn.

The field is clearly dominated by the so-called jurist-theologians, that is, theologians who concerned themselves *inter alia* with what today would be termed general theory of law, insofar as it was taught as a part of moral theology. First of all, we should mention Francisco de Vitoria, and then his successors, be they Dominican, like Domingo Báñez, or Jesuit, like Gregorio de Valencia, Gabriel Vásquez, Juan Azor, Luis Molina and Francisco Suárez. They took up the teachings of the mediaeval scholastics, including their speculative and systematic elements. By the same token, they did not hesitate to incorporate the jurists' practical casuistry, tidying it up and inserting it as far as possible in their own concept of just war. As an extreme simplification, one could say that they took Saint Thomas' *Quaestio de bello* as a framework into which they fitted the various rules empirically developed by the jurists.

The consecration of Thomas Aquinas' *Summa theologica* in the sixteenth century as the basic textbook for the teaching of theology was a crucial event in this regard. The work was to become one of the principal stimuli of the revival which started from the University of

Salamanca under the impetus of Francisco de Vitoria, and it was also to have a lasting influence on the doctrine of war. Up to then, it had been Peter Lombard's *Book of Sentences* which had fulfilled that role for nearly three centuries; yet that work contained not a single passage directly relating to war, which was tackled only incidentally in the context of other problems, such as restitutions in connection with the sacrament of penance. Saint Thomas' *Summa*, on the contrary, included a question dealing specifically with war, which thus came to be taught as a matter of course and almost as an obligatory subject.

Even before Vitoria, the ground had been prepared by Cajetan's commentary on the *Summa theologica*, which contained some important remarks on the *Quaestio de bello*. Vitora carried on in the same vein, first by commenting himself on the Question in his lectures on the *Summa*, and later in the two famous *Relectiones de indis* he delivered in 1539, both of which featured war as a central theme.

The first of these solemn lectures examines Spain's legal claims and titles with respect to "those barbarians of the New World, commonly called Indians, who came under Spanish domination forty years ago, and beforehand were unknown to our world".[11] Already in this first lecture, the law of war plays a key role in the discussion of possible legal titles. It constitutes the sole theme of the second lecture, where it is considered in more general terms, independently of the Indian problem; the lecture is therefore usually referred to by its subtitle, *Relectio de jure belli.*

This second lecture on the Indians is so important for the subsequent development of the just war doctrine that it is worth dwelling on it briefly. It is divided into four main parts, the fourth of which, the most innovative, alone represents some three-quarters of the whole.

The first three parts address the traditional questions already raised by Gratian and Aquinas — whether Christians are allowed in general to wage war; who is entitled to have recourse to war; and what are the just grounds for war. The fourth part is entitled *Quid et quantum liceat in bello justo*. Looking at the problem from the point of view of the "just" belligerent, Vitoria inquires into the types of harm the latter is authorized to inflict on his — hypothetically "unjust" — adversary, and within what limits.

It is above all in this last part that he takes account of the jurists' teachings. This leads him virtually to rule out Saint Thomas' third

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[11] Francisco de Vitoria, *De indis recenter inventis relectio prior*, i. pr., in *Obras de Francisco de Vitoria, Relecciones teológicas*, ed. by Teófilo Urdánoz, Biblioteca de Autores Cristianos, Madrid, 1960, p. 642.

condition for just war, namely *recta intentio*, which had been central to the latter's thought, and to replace it with what the sixteenth century was to call *debitus modus*, the right manner of waging war, the limit not to be exceeded. This is then a *jus in bello* conceptually dissociated from the *jus ad bellum* dealt with in the first three parts. Yet despite a superficial similarity, we are still a long way from the "means of injuring the enemy" set out in Articles 22 and following of the Hague Regulations respecting war on land. For Vitoria's *jus in bello*, in line with the logic of just war, is ultimately no more than a unilateral extension of the *jus ad bellum*.

It is true that at the heart of Vitoria's considerations lies an idea which appears to herald the modern principle of protection of civilian persons: only the individuals responsible in one capacity or another for the wrongful act and its persistence may be fought, since they alone are the offenders, the *nocentes*; all other subjects of the enemy are by definition *innocentes* and should thus be spared. This principle recurs as a leitmotif throughout the fourth part of the *Relectio*.

Vitoria was enough of a realist, however, to know that war does also hurt innocent people and that it is even often difficult to avoid hurting them; one need only think of the effects of artillery, which had transformed the face of war since Aquinas' time! Thus, to avoid too obvious a discrepancy between law and practice, he introduces several additional considerations, which may in certain cases justify the effects of attacks on the innocent. First of all, he includes a chronological criterion, according to whether the matter is being considered during or after the fighting: during the operations, he allows some room for military necessity. Secondly, he draws a distinction between actual deliberate harm and indirect harm, which hurts innocent victims as a side-effect of a military operation, for example during a siege. Finally, as a last criterion, Vitoria distinguishes between harm done to the enemy's person and harm done to his property, showing greater lenience for the latter, even if the property belongs to innocent victims.

The net result of this set of criteria is admittedly rather disappointing in terms of humanitarian law, since in the end there are but few offences against innocent victims which could not be justified one way or another in the name of the law of war. The principle of protection of the civilian population, which despite being frequently flouted in practice is fundamental to present humanitarian law, remains quite fragmentary in the *Relectio*, even in theory. Furthermore, as was already pointed out, Vitoria's law of war is essentially unilateral, whereas the classical law of war postulates equality of the belligerents

and hence bilateral, non-discriminatory application of the *jus in bello*, without any reference to the merits of the conflict. It is true that the idea of a bilateral right of war is not entirely lacking; Vitoria does inquire on occasions whether a war can be just on both sides at once, and accepts this possibility under certain conditions for soldiers, acting in good faith and fulfilling their duty to obey, while he denies political rulers and military commanders such a privilege.[12] Yet this point remains marginal and does not really affect the unilateral character of the rights conferred by just war. Attempts to see a humanization of war in this limited recognition of bilateral rights of war are misguided.[13] Not that Vitoria fails to display any humanitarian inspiration. Behind the dryness of his text, and despite his concessions to the imperatives of war, one does detect in him a genuine concern for the fate of the innocent; but there is no direct link with the question of bilaterally just war.[14]

The same applies to the other Iberian theologians, who, while orchestrating the themes set forth by their leader, consider it axiomatic that war can be just on one side only; just war on both sides remains on the whole a borderline case discussed almost as an oddity. Only a few Jesuits mention in passing a new hypothesis, that of a war waged by some kind of free consent of the adversaries, as if by contract, which would elicit similar legal effects on both sides, at least among men if not before God.[15] This hypothesis, not yet formulated by Vitoria, was borrowed from the jurists, to whom the idea of bilateral rights of war was familiar. This brings us to the other side of the Spanish doctrine of war in the sixteenth century.

Some of the jurists, such as Diego de Covarrubias y Leyva, Martín de Azpilcueta or Fernando Vásquez de Menchaca, address the problem

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[12] *Relectio de jure belli*, 32, in *Obras*, p. 838.

[13] See, e.g. James T. Johnson, *Just War Tradition and the Restraint of War. A Moral and Historical Inquiry*, Princeton University Press, Princeton, 1981, pp. 97-99.

[14] At the place in *Relectio de jure belli* indicated in note 12 above, there is no question of any humanitarian restriction, whether bilateral or even only unilateral; the problem which concerns Vitoria at that juncture is the duty to restore the property taken in an unjust war, as the rest of the text indicates (*Relectio de jure belli*, 33, in *Obras*, pp. 838-849). In *Relectio de indis*, III, 6, (*Obras*, pp. 712-713) where the question of just war on both sides is also raised, Vitoria does admit that on account of the Indians' excusable ignorance, the Spanish should not subject them to the utmost rigours of the law of war. Yet very significantly his view remains unilateral and totally within the logic of just war: the state of mind of the Indians is no more than an extenuating circumstance which the Spanish, who on account of their objectively just cause have in a way become judges of their vanquished adversaries, must take into account in deciding on the sentence.

[15] P. Haggenmacher, *op. cit.*, pp. 292-295 and 435-437.

of war only in passing in works of a more general nature. Others devote monographs to it, such as the disputation *De bello et ejus justitia* published by Francisco Arias de Valderas in 1533, and Alonso Álvarez Guerrero's *Tractatus de bello justo et injusto* of 1543. Alongside these two Neapolitan Spaniards, however, the most significant author in this field is probably a Belgian of Spanish origin, Balthazar de Ayala, who in 1582 issued a whole treatise entitled *De jure et officiis bellicis et disciplina militari libri tres.*

These authors certainly drew on the work of the mediaeval jurists. But, like their theologian colleagues, with whose teachings they were mostly familiar, they endeavoured to present in a more articulate and systematic manner what to some extent had remained confused in the works of their predecessors. Thereby they had to spell out the theoretical premises which had hitherto remained implicit. As a result, they retained the language of the doctrine of just war only superficially. Behind this facade, they more or less frankly conceded the bilateral nature of the rights of war and thus in practice ignored the question of the just cause, focusing solely on formal requirements. This development appears particularly clear and conscious in the work of Balthazar de Ayala, perhaps not by chance, since, as a prosecutor in the army of Alessandro Farnese in the Netherlands, he was in direct contact with war and its legal problems. He therefore strikingly reveals the contrast between the jurists' approach and that of the theologians.

In his treatise mentioned above, Ayala devotes a whole, fairly long chapter to the question of just grounds for war.[16] Yet shortly before the end of it, these considerations are suddenly cut short and virtually deprived of any legal relevance. Ayala asserts point-blank that in the final analysis all this relates solely to equity and to moral duties. It has nothing to do with the legal effects of war, which also occur if there is no just cause and even if the war is patently unjust, provided that the belligerents involved are sovereign. The cause of the war is thus discarded and with it the whole issue of the merits. The adjective "just", Ayala explains, can indeed have various meanings: instead of substantive justice, it may stand for a merely formal adequacy, and it is in this sense that he himself understands the concept of just war. This leads him to a purely formal legality, and hence to the concept of regular war. War in this perspective is no longer the unilateral execution of a legal claim predicated on a prior wrongful act, but rather a

[16] Balthazar de Ayala, *De jure et officiis bellicis et disciplina militari libri tres*, Douai, 1582, I, 2, folios 5-24.

duel between equal adversaries, both equally competent to wage war and between whom arms alone will settle the issue.

This brings to the fore what had remained somewhat implicit in the thought of the mediaeval jurists. The difference from the ideas of Vitoria and his fellow theologians is obvious. Their respective conceptions of war as a legal institution seem irreconcilable, no less so than the underlying general spirit. We thought we could detect a humanitarian streak in Vitoria's work, though paradoxally he accepts in principle only a unilateral right of war. Such humanitarian inspiration is more or less absent from Ayala's work, even though, paradoxically again, he for his part accepts the principle of bilateral rights of war between sovereign belligerents. In this respect, he and the other Spanish jurists display the (not too philanthropic) spirit of the mediaeval *jus belli*, with the difference that what had been a transnational law is gradually recast into a truly international law. This is indeed a feature common to the Spanish theologians and jurists in Early Modern Times: they take account of the new factor of the sovereign State, and in several places their writings already give an inkling of a society of princes and nations which foreshadows our present international community.

Despite this common ground, the doctrine of war at the end of the sixteenth century remains split into two clearly individualized and fairly disparate strands, one reformulating the mediaeval concept of just war while the other follows the logic of regular war. They coexist without truly confronting each other; their conflict remains virtual. Only rare attempts are made to reconcile the two. Francisco Suárez, for example, while adhering to the theological just war theory, nevertheless makes allowance for bilateral rights of war as understood by the jurists.[17] This does not however constitute a true combination of the antagonistic positions.

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Such a combination was not attempted before the seventeenth century, after the height of Spain's Golden Age. It was mainly due to the Protestant jurists who constitute the modern school of natural law, starting with Grotius and Pufendorf, and above all Wolff and Vattel. Their writings altogether reveal and promote the gradual crystallization

[17] P. Haggenmacher, *op. cit.*, p. 293.

of international law and classical law of war, which is bilateral in nature and hence applies equally to all belligerents, giving the limitation of war and its consequences precedence over its intrinsic justice. In practice, only the teachings of the jurists are retained; the doctrine of the theologians remains solely as a moral requirement. Yet at the same time the humanitarian components fostered by the theologians are taken over and made bilaterally applicable as objective legal rules constituting a *jus in bello* in the modern sense.[18]

This evolution therefore took place after the time of the Spanish authors examined in this article. At the most, they identified the basic elements which were to determine that development. But herein precisely lies their great accomplishment, since this formed the groundwork on which their successors were to build. As such, they constitute a decisive link between mediaeval and classical law of war.[19]

Peter Haggenmacher

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[18] P. Haggenmacher, *op. cit.*, pp. 597-612.

[19] As a supplement to this study, see P. Haggenmacher "La place de Francisco de Vitoria parmi les fondateurs du droit international», in *Actualité de la pensée juridique de Francisco de Vitoria*, Travaux de la Journée juridique organisée à Louvain-la-Neuve par le Centre Charles de Visscher, 5 décembre 1986, pp. 27-80. For the subsequent development of ideas, see Peter Haggenmacher, "Mutations du concept de *guerre juste* de Grotius à Kant», in *La guerre*, Actes du Colloque of May 1986 (Coëtquidan-Saint-Cyr), Centre de Publications de l'Université de Caen, 1986, pp. 105-125 (Cahiers de Philosophie politique et juridique, n° 10).

Diálogos militares by Diego García de Palacio: The first American work on the law of nations

by Alejandro Valencia Villa

Over the years the Americas have made significant contributions to the development of international humanitarian law. These include three nineteenth-century texts which constitute the earliest modern foundations of the law of armed conflict. The first is a treaty, signed on 26 November 1820 by the liberator Simón Bolívar and the peacemaker Pablo Morillo, which applied the rules of international conflict to a civil war. The second is a Spanish-American work entitled *Principios de Derecho de Gentes* (Principles of the Law of Nations), which was published in 1832 by Andrés Bello. This work dealt systematically with the various aspects and consequences of war. The third is a legal instrument, signed on 24 April 1863 by United States President Abraham Lincoln, which codified the first body of law on internal conflict under the heading "Instructions for the Government of Armies of the United States in the Field" (General Orders No. 100). This instrument, known as the Lieber Code, was adopted as the new code of conduct for the armies of the Union during the American Civil War.

However, during the period of the Spanish conquests and the spread of colonialism from the sixteenth to the eighteenth centuries, examples of humanitarian treatment were few and far between. Hostilities were directed not only against combatants, but against a whole newly discovered culture and the people and objects which embodied it. The aim of war was total destruction of the adversary, and pillage of enemy property was the rule. War merely begot war.

The classic Spanish School of international law, founded in the sixteenth century by Francisco de Vitoria, a Dominican friar who held the prime chair of theology at the University of Salamanca, gave rise

to a new perception of the law of nations in the period following the discovery of America. The question of Spanish rights and duties in the New World was also seen as a war issue. The principle of the legitimacy of the Spanish conquests had no meaning unless it rested on a general theory of the law of war. For Vitoria and his followers, the only justification for the conquest of America was that colonization of the New World by the Spaniards was aimed not at tyrannizing its inhabitants but at converting them to Christianity.

Vitoria, who curiously enough is believed to have been born in 1492, the year of the discovery of America, had a decisive influence on the entire legal tradition of sixteenth-century Spain, and his ideas naturally filtered through to the New World. The Spanish School also included several minor figures whose work, although far from original since it mainly summarized Vitoria's thought, was of some significance. One of them was Diego García de Palacio, who served as *Oidor de las Reales Audiencias* (judge at the royal high courts) of Mexico and Guatemala. García de Palacio wrote and published in 1583 a work entitled *Diálogos Militares, de la formación e información de personas, instrumentos y cosas necesarias para el buen uso de la guerra* (Military Dialogues: on the training, information and equipment necessary for the proper waging of war), the first treatise on the law of nations written and published in America.[1]

Very little is known about the life of Diego García de Palacio, other than the fact that he occupied various posts in the New World. From 1573 he served as *Oidor de la Real Audiencia* of Guatemala, in 1579 he was appointed *Alcalde de Corte* (municipal magistrate) of Mexico and in 1583, the year that *Diálogos Militares* was published, he was appointed Captain General of the fleet that was launched to fight marauding British vessels which plied the southern seas under the command of Sir Francis Drake.[2]

Diálogos Militares comprises four volumes, each made up of several chapters, in which a native of the Santander region answers questions put to him by a Biscayan. The first volume, which describes the qualities, abilities and character required of a captain or soldier, discusses the legitimacy of war and the concept of just war. The

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[1] This work was published in Mexico by Pedro de Ocharte in 1583. A facsimile edition was issued in 1944 by *Ediciones Cultura Hispánica, Colección de Incunables Americanos*, Vol. VII, Madrid.

[2] Luis García Arias, "La primera obra publicada en América sobre la guerra y su derecho", in *Estudios de Historia y Doctrina del Derecho Internacional, Instituto de Estudios Políticos*, Madrid, 1964, pp. 135 and 136.

second volume, which deals with the nature and composition of gunpowder, the proper use of the arquebus and artillery, the rules of perspective and the instruments necessary to apply them, is a veritable practical manual on the art of artillery at the time. The third volume, which focuses on the proper and most effective formations for the deployment of troops, contains admirable sketches of geometric formations described as "square, cross-shaped, two-pronged and octagonal". The fourth volume, which highlights various instructions, institutions and laws that must be taken into account in discussing and waging war, deals with the organization, history and order of various battles.

It is mainly in the second chapter of the first volume, pages 9 to 23, that García de Palacio develops his theory on the law of war, to which only brief reference is made elsewhere in the work. Although *Diálogos Militares* is more of a soldier's manual than a theoretical treatise on war, several of its points merit discussion.

In an article first published in 1951 and entitled "The first work on war and the law of war published in America", Professor Luis García Arias divided the work of García de Palacio on the law of war into the following six themes: whether or not it is legitimate for Christians to make war; the various types of war; the conditions required for war to be just; the ending of war; whether soldiers have the duty to enquire into the legitimacy of a war; and permissible acts of war.[3]

García de Palacio, aligning himself with the thinking of Saint Augustine and Saint Thomas Aquinas, who defended the concept of just war, answered the question as to whether Christians may wage war in the following terms: "It is morally acceptable for a Christian to fight and war is justifiable in certain circumstances".[4] García de Palacio divided war into two categories, namely, defensive and offensive, and postulated that either may be just, "although it is easier to prove that a defensive war is just".[5]

According to the teachings of Saint Augustine, a just war is one in which Christians may take part, that is declared by a lawful public authority and is waged in the name of justice to right an undeniably great wrong. For a war to be moral and just, the circumstances and motives leading up to it must be such as to warrant the recourse to force. For García Palacio, as for Vitoria, the basic conditions for a just war were that it be declared by a lawful public authority ("that it be

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[3] *Ibid.*, pp. 138 to 151.

[4] *Diálogos Militares*, p. 11.

[5] *Ibid.*, p. 13.

waged under the authority of a lawful republic or a sovereign who heads or represents such a republic),[6] that it defend a just cause ("an injury done to one's sovereign and his realm")[7] and that its aim be morally justifiable ("that the aim of war be just, that is, that it be motivated not by greed or cruelty, but by the desire to bring peace to the republic").[8]

"War has two aims: its intrinsic and direct aim is to procure victory. This is the aim of the captain general. However, war also has a higher and nobler aim which victory, sought and won for the sovereign, simply serves. That aim, which is a natural attribute of the sovereign, is fourfold: first, to defend oneself, one's property and all that one holds dear; secondly, to recover what has been stolen by the enemy; thirdly, to avenge all injury inflicted upon oneself; and fourthly, to bring peace and stability to the realm. The latter is the ultimate aim, to which all the others contribute, since thus to punish and intimidate the enemy will prevent him from inflicting further injury and thus lead to peace, the true aim of war".[9]

Peace as the motive for and the aim of war, the concept defended by García de Palacio, is the very foundation of the theory of just war. This is the position of Saint Augustine, as quoted by Saint Thomas Aquinas, according to the marginal notes of Gratian's *Decretum*: "Wars are permissible providing they are not motivated by ambition or cruelty, but by the desire to bring about peace, suppress evil and promote good". Saint Augustine also said: "Peace should not be used to prepare for war, and war should be waged only to bring about peace (...)".[10]

García de Palacio also established the universality of the law of nations when he replied to the question whether the law of war applied to Christians or infidels, by stating that "what he said held true for all nations".[11] In other words he reaffirmed, in accordance with the thinking of Vitoria, that the law of nations governed the legal relations of all the communities and nations of the world. Today, supranational

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[6] *Ibid.*, p. 14.

[7] *Ibid.*, p. 16.

[8] *Ibid.*, p. 16.

[9] *Ibid.*, p. 19.

[10] Andrés Upegui Jiménez, *La Conquista de América y el Derecho de la Guerra: pensamiento jurídico de Francisco de Vitoria*, University of the Andes, Faculty of Law, Bogotá, pp. 96 and 97.

[11] *Diálogos Militares, op. cit.*, p. 17.

law applies primarily among nations, not to foreigners in foreign lands, as was traditionally the case until the sixteenth century.

The second chapter of García de Palacio's first volume deals with the means soldiers may justifiably use to bring war to an end.[12] Having established that peace is the ultimate aim of war, Vitoria defines permissible means of warfare as acts which entail the use of force, or acts of war proper, excluding any that are instrinsically evil or cause damage not strictly necessary to achieving the aims of a just war.[13]

García de Palacio affirms that the means used to wage war must be in proportion with its aims and that "all acts which are appropriate and conducive to bringing an end to war are permissible provided that they do not violate natural or divine law and are not prohibited by the Church".[14] Among these he specifically includes acts intended to : "...recover all property stolen from the realm by the enemy, or its equivalent value, obtain reparation for all damage inflicted, confiscate enemy property, secure compensation for all expenditure incurred as a result of war and in general do everything necessary to ensure the safety of the realm, such as destroying enemy troops and installations, erecting fortresses or other installations on enemy territory, disarming enemy troops, capturing enemy fleets, taking enemy leaders hostage, and any other acts, provided that they meet the aforesaid conditions, designed to ensure the safety of the realm, avenge the injuries inflicted and thus punish the adversary."[15]

These are the principal aspects of the law of war dealt with by García de Palacio, much of whose work consists in recapitulating and in some instances merely reproducing various passages from Francisco de Vitoria's treatise on Indians, *De jure belli.* Unfortunately, the author of *Diálogos Militares* falls far short of providing as incisive a study of the subject as did the Dominican friar from Salamanca.

Nevertheless, García de Palacio's unusual book, which is more of a manual on the tactics of land warfare than a treatise on the law of nations, has the unique merit of being the first work on the concept of just war to have been written and published in the Americas. Its postulates, like all those of the sixteenth-century Spanish school of international law, are not only interesting from the historical and legal standpoint in relation to the development of natural law and the emergence

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[12] *Ibid.*, p. 19.

[13] Upegui Jiménez, *op. cit.*, p. 98.

[14] *Diálogos Militares, op. cit.*, p. 20.

[15] *Ibid.*, p. 20.

of the law of nations, but continue to be relevant in the context of modern warfare. Indeed, international and non-international armed conflicts today are far from being just, even where the motives of the parties may be considered justifiable or honourable, because the means used all too often violate the law of war and the basic humanitarian principles.

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The defence of human dignity in the New World

by Fernando Murillo Rubiera

Background

The spirit of discovery, which from 1492 led to the conquest of the territories beyond the ocean, lasted practically throughout the sixteenth century. However, those territories were not simply hitherto unknown lands waiting to be discovered and occupied. From the outset it was obvious that they were inhabited. The scenery was accompanied by the presence of man even on the islands of the first landfall.

This human presence had a decisive influence on developments over the first quarter century, corresponding to the West Indian phase. And from the initial exploration of the continental land mass — particularly with the major incursions into the mainland, first Pedrarías' expedition to Darién in 1514, followed by Cortes' venture in 1519 and Francisco Pizarro and Diego de Almagro's push towards Peru in 1528 — the human landscape of the New World unfolded before the Spaniards in all its tremendous complexity. From the very first day and increasingly thereafter, relations with the natives were seen as constituting the most crucial and difficult problem of the many which came with the surprise of having rounded the Earth; indeed, they lay at the centre of the new scheme of things and eventually coloured every aspect in one way or another.

Throughout the Middle Ages Europe had come across other human beings in distant regions outside the Christian world, and had even struck up trading and other relations with them. But it had never experienced the astonishment felt on meeting the peoples of the New World. The only comparable event was very close in time: the encounter with inhabitants of the Atlantic archipelago discovered in the mid-fourteenth century off the coast of the Sahara, namely the Guanches and Gomeros of the Canary Islands.

There Spain had had to deal with the three major problems of conquest and expansion: establishing the legitimacy of its occupation, examining the justice of wars of conquest and determining the fate of the conquered. So what happened in the Canary Islands constituted a precedent which very clearly explains what was to come in the New World.

Bulls handed down by Pope Clement VI in 1344 introduced the principle whereby it was for the Church to decide upon the legitimacy of ownership of land discovered by Christian princes, the sole purpose being to bring the faith to the inhabitants as a means of helping them achieve full human dignity. Moreover, war would be justified to prepare the way for evangelization, an assertion which was reinforced by the experience following the establishment by the same Pope in 1351 of the Bishopric of Telde (Grand Canary); this was entrusted to the Franciscans, who were subsequently wiped out by the Guanches. Such an outcome was seen as evidence that evangelization had to be based upon solid prior occupation. Finally, natives captured in a just war could be enslaved unless a special pact was agreed with the Christian princes — an age-old practice. The Church's doctrine, which evolved in a world where slavery was commonplace, laid down the principles — as a mere corollary to the affirmation of the origin and supernatural destiny of mankind — that all men are equal in dignity; that baptizing infidels means freeing them (Saint Augustine), and that regardless of faith all people have rights which cannot be disregarded (Saint Thomas). The latter principle, however, was challenged by a theocratic trend (Enrique de Susa, Cardinal of Ostia, and Egidio Romano) which upheld the legality of slavery when applied to infidels and idolaters.

Such, then, were the underlying ideas with which the Spaniards at the close of the fifteenth century, and those who followed them in succeeding years, faced the events which accompanied the discovery of America.

The precedential nature of the incidents in the Canary Islands must also be borne in mind when considering the Catholic Kings' response to the conquest. No sooner had the Spanish monarchs consolidated their rights over the islands in 1478 than Queen Isabella issued royal warrants banning slavery, announcing royal vigilance to prevent violence and abuses against the islanders (first in 1477 and then in 1490 and 1495) and instituting punishments for excesses committed by the rulers of the four lesser islands. To sustain the impetus of conquest and exploitation, they resorted to deals with trading companies (a common practice in those days), thus providing the opportunity for

those actually on the spot (the Crown's associates) to wash their hands of the evangelization to which they were committed by the occupation agreement and to incline more towards abuse and violence. The same situation was to arise in the New World, where the land grantees were under an obligation to indoctrinate the Indians placed in their charge.

All things considered, we can see that alongside the discoveries and conquests and throughout the sixteenth century there ran a parallel process which, while it seized the opportunity offered by the initial one, was of a very different nature: this was the defence of the Indians' human dignity and freedom, or what Lewis Hanke has termed the struggle for justice in the conquest of America. Only in the light of this second process can the first be seen in its true dimensions: epic events become the mere catalysts or opportunity for what was truly great and new in the American venture.

The beginnings

Concern about events in the Indies was already being voiced by the time Queen Isabella of Castile died on 26 November 1504. In scarcely a dozen years between the preparations for Columbus' second voyage in 1493 and the death of the Queen — who had placed so much emphasis on the primary importance to be given to spreading the gospel and expressed concern about the ethical purpose of the enterprise — a considerable change had come about.

The designs of slavery which Christopher Columbus entertained from the outset, as borne out by events and particularly by the cargoes brought back from Hispaniola (now the Dominican Republic and Haiti), were the main cause of his difficulties with the Crown. These were aggravated by inept administration and the confusion resulting from disputes between Spaniards, not to mention the ill-treatment to which the Indians were subjected.

Nothing yet called into question the legitimacy of Spain's discovery and conquest of the new lands; this was to come later, during the reign of Emperor Charles V. Justification for Spain's acts rested for many years on acceptance of the papal gift entitlement contained in bulls handed down by Pope Alexander VI in manifestation of the Church's powers. But in Spanish society and especially among thinking circles — the universities, monasteries and councils — discussions arose as to the way in which the inhabitants of the New World were being degraded and forced to work for the colonists. News of the depopulation of the islands and of killings and abuses

began to reach Spain. On both sides of the ocean opposing opinions were voiced as to the capacity of the Indians to receive Christian doctrine and live a civil life comparable to that enjoyed in Castile.

The decisions issued by the Crown always and unequivocally reflected the idea that the primary objective of the New World venture was to spread the faith, without prejudice to establishing settlements and engaging in trade relations with the inhabitants. This corresponded to the Church's doctrine, to which the monarchs were fully committed, and was supported by the predominance in Spain of the Thomist theological ideas which facilitated the stance subsequently adopted by the School of Salamanca when it started to take an interest in the matter. The decree issued by Queen Isabella in 1500 banning the taking of slaves and requiring the handing back of captive Indians on pain of severe punishment was in response to the same ideas, and was merely a continuation of what had been decided some years earlier in respect of the Gomeros in the Canary Islands.

However, it was one thing to hear news of the facts and form opinions based on various criteria, and quite another to come face to face with a substantiated accusation from an authoritative source. This did not happen until 1511, although a few years previously, in 1505, King Ferdinand had received one Cristobal Rodriguez, a sailor who had gone to Hispaniola with the earlier expeditions and brought back word from dissident elements in the new society. He had long lived among the Tainos, got on well with them, and was fluent in their language (he was nicknamed "the Tongue"), habits and way of life. Fully aware of the injustices being inflicted upon them, he took advantage of a journey to Spain to report the situation to the monarch, more by way of lamentation and in the hope of a remedy than as an accusation.

All that is known of his humane initiative is that he gained the King's support; we learn from him that he earned the hostility of Governor Ovando for having served against his instructions as an interpreter at weddings between Spaniards and Indians.

Yet the controversy about what was happening in the Indies was already under way and was bound to grow, unleashing as it did a process of profound self-examination marked with the greatness reserved for what is most noble and elevated in human motives, namely the desire for justice and for the restoration of human dignity.

That is the process which interests us here. Of all the examples offered by the historical phenomenon of the movement of peoples, this one enshrines the genuinely new element introduced by Spain's colonization of America. As for the other process, "the harshness of the

conquistadors and colonizers was", in the words of Gregorio Marañón, "not Spanish but a universal illustration of the times".

The vital spark

The first Dominicans to arrive in Hispaniola landed in 1510. They were four in number: three priests and a lay brother. Upon their arrival a colonist housed them in a hut in the yard adjoining his home, where they lived for the first part of their mission.

They soon realized what was going on. Within a year they had gained precise knowledge of the people living on the island and of the circumstances which had accustomed the colonists to live in a manner incompatible with the evangelizing mission that justified the Spanish presence there. Given the general climate of guilt over the treatment of the natives, they decided to accuse the land grantees publicly, in the presence of the island authorities, appealing to their consciences to accept responsibility for their behaviour. They resolved to do this in the one place where they were authorized to speak out, namely the modest church in which they exercised their ministry. Aware of the scandal they were about to unleash, they prepared the sermon which was to open the battle they were ready to fight, a sermon approved by all so that it should be taken as the common voice of their tiny community. Described as "the most choleric and extremely effective with words" by Bartolomé de Las Casas, to whom we owe all the details of the extraordinary events he personally experienced, Brother Antonio de Montesinos was charged with giving the sermon on the fourth Sunday of Advent, which fell on 30 November. And to ensure that the entire town would attend, with no absences at least from among the leaders of society, they invited Deputy Admiral Diego Columbus, the King's officers and all the learned lawyers there, visiting each in his home and announcing that they would be giving their sermon in the main church on Sunday; they would be broaching a matter which affected the whole community and hoped that everyone would come to listen.

It is worth recalling the scene, in all its apparent simplicity, at that turning point for the history of the defence of human dignity, an occasion which may be regarded as the very first declaration of human rights. As the Cuban historian José María Chacón y Calvo put it, in those moments, in the humble abode of a few obscure monks, a new right was born.

Brother Anthony took as the theme of his sermon the biblical quotation "The voice of him that crieth in the wilderness". He bluntly outlined the situation prevailing on the islands, directly pointing to and condemning the inhumanity to which the settlers had become inured out of greed and in disregard of their fundamental reason for being there.

Bartolomé de Las Casas gives his own version of Brother Anthony's formidable accusing words: "With what right or justice are you holding these Indians in such cruel and horrible servitude? With what authority have you waged such detestable war on these peoples who were quietly and peacefully living in their own lands, where you have consumed so many of them with unheard-of killings and destruction? Are they not human beings? Do they not have rational spirits? Do you not understand that?"

After the sermon, Brother Anthony withdrew with head high and defiant. Behind him he left a sea of murmuring, followed shortly by a public outcry. The crowd headed for the hut where the monks lived and asked Pedro de Córdoba, the superior, to reprimand Brother Anthony for the terms in which he had spoken. The superior simply replied that what had been said had been approved by all of them because it was sound doctrine of which they were all certain, and that it had been said for the good of everyone on the island, including the Spaniards. He also announced that there would be a further sermon on the following Sunday. Instead of the retraction they were expecting, the settlers heard that absolution would be denied to all who confessed to holding Indians in subjection. They then demanded that the authorities expel the friars.

Political confusion

Letters were immediately dispatched by Diego Columbus to King Ferdinand and to the Dominican Provincial of Castile, to whom the friars were subject. The replies from the King and the superior have been preserved. They tell us that attention had been diverted, as a sure way of gaining royal support, to the legitimacy of Spain's presence in the islands and to the Crown's authority to allocate Indians to the colonists for work in agriculture and mining. Irritated, the King ordered the friars to keep silent.

In point of fact none of these issues had been raised by the friars, who had simply spoken out against outrages to the dignity of the natives and the flouting of their rights as individuals: they were human

beings with immortal souls and that essential quality gave them rights which could not be ignored whatever their ignorance, dishonesty or lack of Christian faith.

Fortunately, when the sharp strictures arrived in Hispaniola, Brother Anthony, who had been detailed to defend the friars' action, was already nearing Spain. Once there he was able to talk to the King and explain the situation as it was. Impressed by what he heard, the King immediately convened his advisers to a special assembly at Burgos, where he happened to be at the time; that assembly — which included Brother Anthony — marked the first official act in the process of revision which, set in motion by the Crown, was to occupy the coming years. The outcome was the Laws of Burgos issued on 27 December 1512; these contained 35 provisions, the first ever enacted to protect the Indians on the basis of the principle that they were free men. The content of the Royal Warrant of 20 June 1500 was thus ratified.

Dispute over freedom and peaceful evangelization

The revision process had only just begun. No sudden change could be expected. There was simply a shift in outlook intended to break deep-rooted habits and overcome obstacles anchored in the realm of ideas, in the concept of expansion and of the ascendancy of one people over others.

The Burgos Assembly was followed in 1513 by another at Valladolid. This was prompted not only by the inadequacy of what had been approved at Burgos, as pointed out to the King by Friar Pedro de Córdoba who had also arrived hurriedly to rebut the accusations contained in the letters from Spain, but also for the purpose of delaying the departure of the great armada which, under the command of Pedrarías, was preparing to sail to Castilla de Oro (Panama), until the problems raised by further conquest had received more careful consideration. The expedition was in fact held up — the first time such a thing had happened — until the following year, precisely the one in which the cleric and land grantee Bartolomé de Las Casas joined in the struggle.

Over the years leading up to the drafting of the New Laws of the Indies in 1542, the major problem was on the one hand to give practical form to the principle of Indian freedom within the civil order that had spontaneously resulted from expansion and settlement and, on the other, to confirm the efficacy of peaceful evangelization at a time

when the conquering urge was gaining irresistible momentum. On all this depended the steps to be taken and the political approach to be adopted with regard to dominions that were expanding at an astonishing pace, giving rise to extremely difficult problems at the political, religious and human levels. Between 1514 and 1535 the entire Central American isthmus had been overrun and joined up with the territories won from the Aztec empire in the constituted viceroyalty of New Spain (Mexico), and the Pacific coast had been settled as far south as the central regions of present-day Chile, following the fall of the Inca empire.

The period 1515-1519 was marked by the struggle that Las Casas and the religious orders — above all the Dominicans — was waging against those close to the court who sought to protect the land grantees. These were difficult moments in the political life of a great monarchy: King Ferdinand was dead and a dual regency was being exercised by Cardinals Cisneros and Adrian of Utrecht (who shortly thereafter was elected Pope). Young Charles had recently arrived in Spain and was surrounded by Flemish courtiers ignorant of Indian issues but, in some cases, not of the profits that could be extracted from the Indies; this explains the promptness with which they placed their influence on the side of the land grantees. It was an arduous task to enforce the provisions already handed down by the Crown, the royal warrants introducing peaceful evangelization in certain parts of the continent without armed assistance, according to the wishes of those who upheld Indian rights, and the ban on further land grants. This struggle consumed much energy and at times achieved exceptional significance, as during the dispute which arose in the Emperor's presence between Las Casas and Juan de Quevedo, the Bishop of Darién, at Molins del Rey while the court was in Catalonia. It was the first time the Emperor had seen the spokesman for the Indians and heard him arguing in favour of Indian liberties against a representative of those who advocated the contrary on the basis of Aristotle's theory of natural servitude.

Unfortunately, the first attempt at peaceful evangelization produced tragic results which demonstrated not the impossibility of the exercise itself but the criminal irresponsibility with which many colonists were acting, often with the connivance of the authorities. This led to the martyrdom of many clerics and the wasting of priceless opportunities for establishing peaceful relations with the natives. It even led Las Casas himself to enter religious orders; in his retirement (1522-1530) he began writing some of his most important works, particularly the *History of the Indies*, which he continued to work on almost to the end

of his days. In his "History" he left us a singularly important account of all that had happened in the New World up until the mid-sixteenth century, from the standpoint of someone who had witnessed many of the events reported.

Meanwhile, the process of revision had arrived at a stage where there was a direct need to review the very existence of the land grant system. The situation was particularly difficult in New Spain (Mexico), and it was there that an initiative was launched, the expression of an earlier desire, seeking a pronouncement by the head of the Church on the freedom of the Indians and their ability to receive the faith, one which by its very authority would prevail over those who insisted on ignoring Indian rights. Thus it was that Bernardino de Minava, the Prior of the Dominicans in Mexico, sailed for Spain in the hope of securing an audience with Pope Paul III, for whom he was carrying a letter from Brother Juan Garcés, the Bishop of Tlaxcala and a fellow Dominican, explaining the whole painful situation and its causes. The Emperor was away from Madrid, but he persuaded Queen-Empress Isabella of Portugal to give him a letter for the pontiff. Once he had it he set off on foot for Rome where he handed it to the Pope immediately on arrival. As a result of his efforts, three documents were handed down (June 1537) in connection with the religious situation in the New World, the most important being the bull "Sublimis Deus" in which the Church proclaimed as dogma the rationality of the Indians and their ability to receive the faith and the sacraments.

The circumstances that arose once the documents had been obtained were embroiled by those who feared the consequences of so momentous a pronouncement. They attempted to delay their publication and even, though in vain, to get Charles V to repeal them; in this they succeeded only in respect of the brief "Pastorale Officium" which accompanied the main document.

Meanwhile in Peru events were unfolding which brought about the collapse of the Inca empire and shortly thereafter started the civil wars that caused such concern in Spain and determined the evolution of Spanish colonization in that important part of the New World. Conversely, events in Guatemala took a very different turn: Las Casas skilfully reached a peaceful settlement with the Indians of Tuzulutlan, in what was known as "the Land of War" because it had proved indomitable despite successive armed expeditions.

The combination of these factors, namely the encouraging developments in Guatemala, which confounded the forecasts of his detractors, the moral support offered by the papal proclamation and the alarming news of what was happening in Peru, decided Las Casas to sail for

Spain and there fight the final battle that would lead to a total ban on land grants, which he saw as the root of all the trouble.

Concentrating their energies on this matter, Las Casas and those who went with him to Spain (the Dominican friar Rodrigo de Ladrada and the Flemish Franciscan friar Jacob of Testelt, a relative of the Emperor) hoping for an audience with Charles V, who was in Germany, secured various royal warrants in favour of the mission work in Tuzulutlan. They also requested and were granted by the theologians at Salamanca, including Francisco de Vitoria himself, an opinion endorsing their view of certain missionary and pastoral problems. Moreover, they sharpened their arguments on the issues they had to discuss with the Emperor: the inadequacy of legislation for the Indies and plans for remedying it, and denunciation of abuses and corruption on the part of judges and officials alike, both in America and in the very Council of the Indies and the *Casa de Contratación* (Chamber of Commerce).

They were fully successful in their petitions. The Emperor arranged a visit to the Council, which he opened in person, and decided to expel or punish those found guilty, starting with its Chairman, the powerful friar Garcia de Loaysa. The legislative reform led swiftly to the drafting of the New Laws, promulgated in Barcelona on 20 November 1542, which provided for an end to the conquests, the abolition of the land grant system and establishment of a trusteeship to ensure proper treatment of the Indians.

The theologians of Salamanca intervene

During those same years there came into play another factor which was to prove decisive and whose consequences would later have worldwide implications.

The founder of the School of Salamanca, friar Francisco de Vitoria, was not in Spain during the years when the process of revision started. In 1510 he had been sent to Paris to study and later teach at the Sorbonne. It was there that he learned of the first attempts to interpret the New World conquests, which naturally had Europe agog. So far as we know, it was in Paris that for the first time a professor expressed a doctrinal opinion as to the legitimacy of the conquest: he was the Scotsman John Major, Professor of Logic at Montaigu College which was dominated by the influence of the great thinker John Standock. Vitoria learned of the assemblies at Burgos and Valladolid only upon his return to Salamanca in 1523; but St. Steven's Monastery,

where he lived with other theologians from the University, was a good place to hear what was happening, for many of the clerics bound for the Indies left from there and often returned.

Vitoria's death in 1546 also prevented him from experiencing the final phase of the process on which he had brought his wisdom and balance to bear.

In his early treatise entitled *De potestate Ecclesiae prior* he stated as a certainty that the universal rule of the papacy could not be affirmed, explaining that infidels were the true and legitimate owners of their own lands and property. During the regular courses he gave between 1534 and 1535, he touched on many points connected with Indian affairs and denied that force could legitimately be used to compel acceptance of the faith. In *De temperantia* (1537) he discussed the legal implications of armed intervention against barbarians who engaged in inhumane practices (cannibalism and human sacrifice). And in January 1539 he delivered his *De indis*, which dealt directly with the whole issue of the legality or otherwise of the conquest of the New World. Six months later (18 June) he turned his attention to the law of war in *De jure belli.*

Vitoria spoke in a context in which certain entitlements were being invoked to justify the occupation of the Indies, and when Spain's conduct vis-à-vis the natives was giving rise to concern and condemnation. His response was to demolish the false claims which for centuries had supported a dominant belief of theocratic or Caesarist inspiration and, after affirming the freedom of the Indians and the rights they enjoyed as human individuals, to point to ways in which relations between Spaniards and the natives could be maintained in keeping with morality and justice, even in the event of war.

The essential novelty of his contribution lay in the fact that his entire system, an extension of principles already affirmed, rested on a conception of the world which necessarily postulated the existence of a legal order peculiar to the international community as a universal fellowship made up of peoples and men of all races.

That view, which was valid for all time and had necessarily to be projected into the future, was made possible only by the historic opportunity created by a few events which, because of their scale and the weight of all that had happened in the course of human history, together with the spiritual and moral climate prevailing in Spain at the time, were bound to lead to the process under discussion.

The great controversy between Sepúlveda and Las Casas

The intensity with which the disputes over developments in the New World were followed in Spain in the mid-sixteenth century can be gauged by the violence of reaction to the New Laws. To the perplexity of Charles V, the order to apply them raised such protests in New Spain and Peru that in the latter territory it cost the head of the man who arrived with the order under his arm, demanding its enforcement. The land grantees sent emissaries to Spain — one of them was Bernal Diaz del Castillo, the protagonist of so many incidents during the first great conquests — to demand not only that the laws be repealed but also that the land concessions be granted in perpetuity. Las Casas, who had returned to his diocese in Chiapas following the promulgation, watched with horror as his triumph melted away, especially when he learned that the Emperor had reversed his position and, from Malines on 20 October 1545, revoked Law 35 which prohibited the granting of new concessions.

Given the circumstances, the Council of the Indies felt duty bound to convene a meeting of theologians and jurists to discuss these matters, which had become so serious that they were weighing heavily on the imperial conscience. On 16 April 1550, the Crown decided for the second time that all further conquests should be suspended until a group of leading advisers and theologians decided what was to be done. Las Casas and Juan Ginés de Sepúlveda, the Emperor's chronicler, offered to attend and, on the Emperor's instructions, the Council resolved that they should propound their conflicting views the same year in Valladolid, so that the Emperor and his advisers could make the necessary decisions in accordance with just doctrine.

Lewis Hanke has claimed that probably never before nor since has a powerful emperor — and in 1550 Charles V was, as Holy Roman Emperor, not only the most powerful ruler in Europe but also master of a great empire overseas — ordered that wars of conquest be halted while it was decided whether or not they were just.

In August and September 1550, and again in April and May of the following year, the two men faced each other to defend their opposing concepts of mankind and political power, relations between peoples and between individuals of different races and diverse levels of development, from the standpoints of Christian doctrine and reason.

The idea had been that in the light of so singular a dialectical argument the assembly would be able to decide what was the best, most humane and fairest way of efficiently spreading the faith. In

point of fact the two opponents became so carried away by the strength of their desire to uphold their respective positions that the discussion degenerated into a dispute as to whether or not force could be used to evangelize the Indians.

At that stage of the process this truly exceptional controversy was a mind-clearing exercise, a new approach to tackling the New World issues that for so long had burdened the Crown and aroused so much passion in Spain.

The new approach was to lead a few years later to the drafting of the Laws on the Discovery, Resettlement and Pacification of the Indies, which Philip II handed down in Segovia on 13 July 1573. The new laws officially halted the system of conquest and ushered in a policy consisting essentially of pacification based on co-existence between the inhabitants, both Spaniards and natives. This was to become the cornerstone of Spain's rule throughout Spanish America henceforth until the American provinces eventually secured political emancipation from the monarchy.

Fernando Murillo Rubiera

ANNEX

MILESTONES IN THE DEFENCE OF DIGNITY AND BASIC HUMAN RIGHTS IN AMERICA

20 July 1500	Royal decree addressed to the King's retainer ***Pedro de Torres***, ordering the release and repatriation of Indians brought to Spain from Hispaniola. The historian Altamira considered this document as the "first acknowledgement of the respect due to the dignity and freedom of all men, however ignorant and primitive they may be".
30 November 1511	Fourth Sunday in Advent. Sermon delivered by Friar ***Antonio de Montesinos*** in the church on the island of Hispaniola, in the presence of ***Diego Columbus*** and other island authorities, denouncing the land grantees' inhumane treatment of the

	Indians. He expressly proclaimed the Indians' human dignity and their intrinsic rights as rational and free beings.
27 December 1512	Laws of Burgos adopted by the special assembly convened by King ***Ferdinand the Catholic*** following information given by Friar Montesinos to the monarch in person. These texts contained the first legal provisions regarding proper treatment of Indians.
17 November 1526	Laws providing for humane treatment of Indians and regulating new conquests ratified by Emperor ***Charles I*** in Granada.
May/June 1537	Promulgation by Pope ***Paul III*** of the bull *Sublimis Deus*, together with the bull *Altitudo divini consilii* and the papal brief *Pastorale officium*, in which the Church proclaimed the rationality of the Indians and their ability to receive the faith and the sacraments.
January/June 1539	***Francisco de Vitoria***'s two *relectiones* on the Indians delivered at the University of Salamanca: the first, *De indis prior* (around 1 January) dealt with the issue of the legality or otherwise of the conquest of the Indies; the second, *De jure belli* or *De indis posterior* (19 June), the rules governing the law of war.
20 November 1542	Promulgation in Barcelona by the Emperor of the New Laws, which provided for the abolition of the land grant system and proper treatment for the Indians.
August/September 1550	Assembly of Valladolid, with the debate between ***Bartolomé de las Casas*** and ***Juan Ginés de Sepúlveda.*** The two opponents had been summoned by the Emperor following adverse reaction to the New Laws, in order to determine the principles and rules governing the propagation of the faith in the Indies ("whereby the Catholic faith was to be preached in

the New World and the peoples brought under the authority of the Crown").

13 July 1573 — Laws on the Discovery, Resettlement and Pacification of the Indies, handed down by King ***Philip II*** in Segovia. These represent the culminating point in the development of Spanish policy since the question of treatment of the Indians first arose in Burgos.

18 May 1680 — Promulgation by King ***Charles II*** of a collection of material on the Kingdoms of the Indies. This marked the completion of the compilation started in 1560 through the initiative of the then Visitor, later President of the Royal and Supreme Council of the Indies, ***Don Juan de Ovando.*** The work comprised nine books containing all material relating to Indians or natives, and included references to the laws on natives found in other chapters and sections of the text. The entire body of law concerning the Indians could thus be found in one place.

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Charter of rights of the Indians according to the School of Salamanca*

by Luciano Pereña Vicente

1. Denunciation of the Requirements Act

The discovery of America, first seen as an encounter, soon degenerated into a clash between two worlds. It is said that the invasion of the Americas by Europeans started in 1492. The conquering Spaniards overran the recently discovered lands by force of arquebus and disease, their most effective allies being the bacteria and viruses they carried with them.

The shock of conquest caused depopulation, exploitation and even oppression, as witness the decimation of the Indians in Hispaniola, the slaughter of Mexicans at the feast of Toxcatl and Nuño de Guzman's repression in Mexico's northern provinces. These were shameful events. The reaction of Spanish missionaries and moralists brought about Spain's first national crisis of conscience.

Indeed, Spaniards were the first to denounce and condemn the abuses and cruelties of the initial conquest of America. This was unprecedented in Renaissance Europe: the Spaniards criticized their own conquest. The self-criticism in university halls and governing councils sparked new concepts, new ideals and new approaches to the

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* This article has served as the basis for many symposia and seminars which I personally have conducted in European and American universities in 1992 as the School of Salamanca's contribution to the quincentenary of the discovery of America. In the midst of the polemics, between black and white legend, the message of Francisco de Vitoria has helped to shed light on a highly manipulated historical event which has stirred so much political passion. We are grateful for this opportunity to make public the message of Francisco de Vitoria, the founder of modern international law. Our introduction is followed by his basic text on the "Rights and obligations of Indians and Spaniards in the New World". It was his finest contribution to the law of peace, one which paved the way for reconciliation between Spain and America. The paper closes with a list of references and a bibliography.

Americas throughout the reign of Charles I (the Emperor Charles V), King of Spain and Emperor of the West Indies.

The Middle Ages gave way to modernity and new foundations for "America Nostra" were laid. At the centre stood Francisco de Vitoria, a professor at Salamanca and founder of an entire school of thought. The impulse was given by the conquest of Peru by Francisco Pizarro pursuant to the Requirements Act. The constitutional document of the New America was the *Relectio De indis* of 1539, the first declaration of rights and obligations of Indians and Spaniards in the New World.

Francisco de Vitoria began by denouncing the Requirements Act, which until then had legitimized the initial conquest of America. The Act was dialectically dismantled through a slow process of investigation and theological reflection which eventually invalidated the papal theocracy being revived in Pope Alexander's bulls.

The Pope had no political power over the Indians. By neither natural law, positive law nor the law of nations could it be demonstrated that he was lord of all the Earth or that he had acquired such power in the course of history, so it was hard to see how he could transmit that power to the kings of Spain. But even assuming that the Sovereign Pontiff had political power over all the world, the fact is that he would not have had the authority to transmit it to the kings of Spain.

Nor was Emperor Charles V lord of all the Earth; and he had not acquired sovereignty over the Indies by Papal delegation. His title did not authorize the King of Spain to establish his rule in America, remove its former rulers, install new kings or impose new taxes. The conquistadors unjustly commandeered the Indians and forced them to recognize and obey the Pope and the Emperor. Their ascendancy and seizure of power could not be justified on natural grounds.

In short, even if the "required" Indians were unwilling to recognize or denied the sovereignty of the Emperor or Pope, their reluctance could not serve as a fair or lawful reason for making war on them and confiscating their property and lands. In all justice, the Indians were entitled to defend themselves and wage war on the Spaniards.

All that has been said suggests that the Spaniards had no just cause for declaring war on the Indians, whether their claim to legitimacy was based on the fact that the Pope **gave** their territories to the Emperor or on the alleged universal power of a Pope the Indians chose not to recognize.

Francisco de Vitoria concluded that when they first sailed to the Indies, the Spaniards carried no warrant for taking over the territories.

The Indians had their own rights of sovereignty even before the Spaniards landed.

Criticism of the Requirements Act took Francisco de Vitoria on to conclusions that were definitive for the philosophy of American history. It called into question the policy of colonial repression. In the interests of peace and human solidarity, his reinterpretation of Alexander's bulls was to gain ground from that historic moment onward.

Meanwhile, Emperor Charles V passed instructions to his ambassadors to the courts of Europe not to urge the "papal gift" as the sole and overriding justification for the legitimacy of the conquest of America. Canon lawyers, colleagues and disciples of Francisco de Vitoria at Salamanca, decided to ask the Holy See to revoke Alexander's bulls or specify the meaning of "papal gift" in accordance with Vitoria's new interpretation.

In 1556 the synod of Santafé agreed to appeal to the Council of Trent and to His Majesty's Royal Council of the Indies. And so it was that Juan del Valle, a professor and disciple at Salamanca, left for the Council with the points approved by the synod of Popayán in 1558. The criticism and revision of the Requirements Act was certainly of the utmost service to historical truth and to the democratic awareness that was beginning to take shape. The School of Salamanca had set in motion the first programme of claims.

2. The programme of claims

The programme of claims was based on five assumptions or basic principles: first, that Indians and Spaniards were fundamentally equal as human beings; second, that although the Indians were equal and free, their backwardness was largely ascribable to lack of education and to barbarous customs; third, that the Indians owned their property in the same way as Christians, and could not be dispossessed of it on grounds of ignorance; fourth, that the Indians could be placed under the trusteeship and protection of the Spaniards while in a state of underdevelopment; and fifth, that in the final analysis mutual consent and free choice on the part of the Indians constituted the primary justification for Spain to intervene and rule.

To the Master of Salamanca, the Indian peoples were autonomous communities and performed functions of sovereignty. They owned their national property and had rights of sovereignty over natural resources for the benefit of their own people. Only in terms of free choice of citizens, and to uphold and protect the basic rights of Indians

and Spaniards alike, did Vitoria justify Spain's intervening and remaining in the newly conquered Indies. The laws and the administration of Charles V would have legitimacy only insofar as they were designed to advance the natives in solidarity and cooperation with the Spaniards. For the Indians, too, had duties of solidarity and cooperation.

Recognition and application of this Constitutional Charter of the Indians formed the basis for the colonial reconversion demanded by Francisco de Vitoria and put into practice down to its final consequences by the School of Salamanca.

Francisco de Vitoria and his School started by claiming the "humanity of the Indians" at a time when their condition as human beings was being questioned by historians and politicians alike. Doctrinal recognition of their fundamental freedom led to the condemnation of theologists and jurists who upheld before the Council of the Indies the Spanish King's right to enslave the recently discovered Indians.

Questioning the system of slavery to which the natives had been reduced by the first conquistadors, Vitoria claimed their fundamental social and political freedom and demanded that the Crown recognize and proclaim that freedom and intervene to free the Indians; this resulted in the official abolition of slavery throughout the Indies.

Being fully alive to the policy of repression and exploitation, Vitoria claimed for the Indians freedom from violence on the part of the conquistadors, freedom from the greed of the land grantees, freedom from repression by the governors, freedom from injustice on the part of the judges and courts, freedom from the tyrannies of the caciques and native rulers and freedom from the outrages of priests and gospel pedlars, thus causing a genuine liberation theology to be implemented on the Indians' behalf.

He claimed the right of Indians to peace and coexistence, to the protection of their national identity, to education and social advancement, to just and equitable services and taxes, to freedom of employment and fair wages, to justice and proper treatment. And by dint of theological reflection and pressure of conscience he imposed ethical criteria that did much to advance the cause of freedom. It was by the work and grace of the School of Salamanca that so many royal ordinances and canonical rulings were issued in favour of Indian freedoms.

Through its disciples — missionaries and theologians — the School critically oriented its charter of claims to persuade the Crown to find ways of guaranteeing those freedoms; through pressure of conscience it strove to train the Indians in greater awareness and

defence of their rights and obligations, for their primordial right to human status also carried the obligation to humanize themselves and rid themselves of their barbarous customs and certain atavistic instincts.

On the basis of its charter of claims, the School of Salamanca defined the objectives and aims of Spain's intervention in America and ultimately typified and determined the Crown's presence as a political protectorate at the service of conquered Indians politically subject to Spanish sovereignty. Vitoria's disciples recognized the Spanish King-Emperor's right to intervene in those parts of the Indies where the kings and chiefs of some recently discovered peoples were known beyond doubt to be tyrants who governed despotically; provided, however, that such victims of repression could be liberated solely by armed intervention and could enjoy their right to human coexistence only if the tyrants were overthrown.

The School of Salamanca recognized Spain's right to remain in the territories and towns of the New World, but only when their kings and rulers proved recalcitrant. To make them give up their crimes against humanity and free their victims from cannibalism and treatment that was an affront to human dignity, it recognized the Emperor's legal right to take over government and remain there until such horrendous crimes and repressive regimes were brought to an end.

The Spanish King-Emperor held or could hold some sort of dominion, sovereignty or jurisdiction over the inhabitants of the West Indies and over subject Indian princes and caciques, but only if the Indian peoples — sovereign in their own right — fully agreed to it or if the world community so ruled in order to protect innocent beings.

Any kind of power over America that could be held by the Crown of Castile would ultimately find its legitimacy in the free will of the Indians who made up its community of peoples. Even the powers of the viceroys and other authorities who were delegated by Charles V to govern the different Indian territories derived from the power granted by the Indian peoples over their own subjects and vassals.

3. The Spanish protectorate

Vitoria's principle of respect for sovereign will was largely developed by Alonso de Veracruz, a disciple of Vitoria and professor at the University of Mexico. The sovereign Indian peoples under the protectorate of the Crown of Castile were becoming a genuine community of peoples based on mutual respect for political liberties, the effective

solidarity of mutual responsibility and the responsible coordination of limited sovereignty. That was the first condition for the political protectorate.

Application of the protectorate at that historic turning point of colonial reconversion suggested Europe's first attempt at reconciliation between winners and losers, conquerors and the conquered. The model advocated by Vitoria's School could have brought forward American independence by several centuries had the pragmatism of economic interests not eventually prevailed.

While Francisco de Vitoria proclaimed the fundamental rights of the Indians, even in relation to Spaniards when the latter acted unjustly, he also justified Spain's intervention in America on grounds of human solidarity and advancement. The Spanish kings had assumed the burden of a mandate to prepare the natives of the Indies for integration in the community of civilized peoples on the basis of equal rights.

In the interests of the subjects in those newly discovered lands, the kings of Spain had the right to take over administration, appoint governors and even replace the indigenous rulers if necessary for the advancement and development of their peoples. Colonization thus developed into a right of protection primarily for the benefit of the protected peoples. This was the second condition for the political protectorate.

The overseas kingdoms had not been conquered so that their riches should contribute to the development of the metropolis or that their inhabitants should be subordinated exclusively to Spanish interests. For, Alonso de Veracruz argued, it would be unjust to think that the chief aim of the Spanish government was to perpetuate the Crown's rule in the Indies rather than secure the welfare of the inhabitants. He believed that the exploitation, repression and annihilation of the natives would soon come to an end.

Vitoria certainly claimed the right to transfer and share property. And by virtue of those two provisions of the law of nations, Spain intervened and occupied the Indian territories to help and defend the Indians: it was entitled to keep what it held, but only as long as its presence was essential for promoting the advancement of the Indians and preparing them politically.

The protector State assumed the duty of regenerating the protected communities by sending them suitable governors to administer them, missionaries to evangelize them and teachers and settlers to educate them and improve their lands with farming implements.

Vitoria implicitly recognized the right of the Indian peoples to national integrity, the right to sovereignty over their territory, and the fundamental right to manage their natural resources. Being free and sovereign, the Indian peoples could in all justice forbid the Spaniards to take gold from their mines or pearls from their rivers. And in all justice they could limit or ban the immigration of aliens bent solely on engaging in business or trade, if their activities harmed or threatened the natives of the country. That was the third condition for the political protectorate.

In conclusion, the Spanish Crown maintained its sovereign rule over many Indian kings and peoples. Its imperial power had to be compatible with the sovereignty of the Indian peoples and nations. There were mutual rights and obligations which mutually conditioned and limited the two sovereignties — Indian and Spanish — which were shared in the territories of the New World. In the final analysis, Vitoria's School saw the right to intervene in America as being legally founded on a pact of collaboration, a mandate to protect and uphold human rights. However, the resulting subjection or servitude in no way implied the curtailment of political freedom. The protectorate could and should be the means for Latin America's protection and social development.

The ultimate goal of colonial reconversion was to be independence. Colonization could pave the way to self-government. Time-limits were even set for the protective mandate. As a result, the Crown had to restore the Indian peoples to the full development of their traditional attributes and grant them independence if at some future date the native rulers achieved a level of civic culture which gave serious grounds for thinking that they would rule in a just and Christian manner. For the time being, Francisco de Vitoria expressly ruled out that contingency, considering it more likely that the Indians would revert to their inveterate paganism and despotism.

However, he did admit the possibility of self-government, which the natives or Indians under Spanish protection might claim once they had the knowledge, ability and will to exercise it. It remained a matter for their free will, always on the assumption that they developed sufficiently to use their political freedom in a humane manner. The Crown assumed the obligation gradually to foster the development of the peoples under its trusteeship until they reached political maturity.

The former local rulers of the Indian peoples would eventually be restored fully to the powers and authority of which they had been divested, provided this did not hamper proper government of the natives or interfere with their cultural and spiritual development.

Colonial reconversion transformed the old land grants into a genuine system of social advancement more for the benefit of the expropriated Indians than for that of the Spanish land grantees. The grants ceased to serve as a means of exploitation and social slavery.

The economic output of the Indies was to be invested on a priority basis in meeting the Crown's commitments to christianize and civilize, given that the papal "gift" and international mandate were primarily designed to bring about the conversion of the Indians; the King had no right to divert Indian property for the benefit of other kingdoms to the detriment of the protected peoples.

While in these circumstances Charles V could not legally abandon the Indian kingdoms, it was difficult for the Crown to meet its obligations of protection without the presence of Spanish troops and settlers, and without exploiting precious metals, cultivating the land and encouraging trade with the kingdoms of Spain. Nonetheless, the Spanish kings lacked any competence to dispose of or transfer Indian territories as they saw fit.

To sum up, there were not supposed to be more Spaniards in America than was necessary to "sustain the territory", support evangelization, establish justice and rationally exploit the land. Disciples of the School of Vitoria asked the Crown to screen passengers to the Indies with a view to preventing an excessive preponderance of aliens and ensuring that those territories did not become republics of day-labourers, wage-earning Indians hiring themselves out or performing forced labour in mines or on estates and farms, to the exclusive advantage of the Spaniards.

As early as 1560 the inspector Tomás López proposed that the Indians gradually be made responsible for their own government; and late in the sixteenth century the American-born Zapata y Sandoval, professor at the University of Mexico and Bishop of Guatemala, demanded that the peoples of America be governed by Americans. The natives — Indians, American-born whites and people of mixed race — were capable of governing themselves and should be given preference over Spaniards born outside the Indies and arriving from the Peninsula.

Nobody knew their own affairs better than those born in the American nations: they had a greater interest in and love for their countries, a greater ability and willingness to accept sacrifices and provide services for the benefit of their own people, and a greater concern for solving the problems and conflicts of the Indians.

Such were the broad lines of Francisco de Vitoria's plan for colonial reconversion, which the School wanted implemented down to its last consequence. Did the plan remain a pipe dream? Did the Crown even attempt to apply it politically?

The masters of the School of Salamanca, professors and advisers, demanded that the colonial authorities show respect for the human

condition of the Indians and for their potential and capacity for development, and show tolerance for their historic and religious traditions, however backward, while promoting and guiding their advancement. They demanded that the King of Spain promulgate progressive laws in that respect so that the Indians should learn the benefits of Christian faith and civilization. That programme of claims culminated in an official declaration of freedoms. The School of Salamanca's guidelines appeared to have gained political acceptance.

On 26 November 1542, in Barcelona, Emperor Charles V promulgated the New Indies Acts. He was responding to the Cortes and authorities of the kingdom who had asked the monarch to remedy the abuses and cruelties committed by the conquistadors in America. Those fundamental laws ended with a new proclamation of freedoms.

That is what many Americans wish to celebrate on the quincentenary of the discovery and evangelization of America: this message of pacification and reconciliation, of rehumanization and the enshrinement of human dignity, of solidarity and the sharing of property, of denunciation of and rebellion against social injustice; in other words, the message bequeathed by Francisco de Vitoria. They want to celebrate that cultural and social, legal and political message so dynamically conducive to the understanding and joint advancement of our peoples, in the service of world peace and harmonious coexistence. They regard any other version or interpretation as a betrayal of the American conscience and a falsification of history. Some groups belonging to the so-called mixed-race elite, frustrated and burdened by an uneasy conscience, are now trying to evade their historical responsibilities.

4. Basic text

THE RIGHTS AND OBLIGATIONS OF INDIANS AND SPANIARDS IN THE NEW WORLD ACCORDING TO FRANCISCO DE VITORIA**

I. The Indians are human beings

1. Every Indian is a man and thus is capable of attaining salvation or damnation (*CHP* 5, 87).

** As a contribution to the celebration of the quincentenary of the discovery of America in 1992, Dr. Luciano Pereña, coordinator of the *Cátedra V Centenario*, has reconstructed the "Rights and Obligations of Indians and Spaniards in the New World according to Francisco de Vitoria", largely on the basis of texts published in the collection *Corpus Hispanorum de Pace* (vols. 5, 6 and 17; hereinafter cited as *CHP*).

2. Every man is a person and is the master of his body and possessions (*De iustitia* I 228).
3. Inasmuch as he is a person, every Indian has free will and, consequently, is the master of his actions (I II 203).
4. By natural law, all men are born equal. Legal slavery is a product of the law of nations and thus can be abolished, when nations so will, in the interests of peace and human progress (*De iustitia* I 77).
5. Consequently, the position of those theologians who maintain in the *Consejo de Indias* that the King can enslave the newly discovered Indians is iniquitous (*De iustitia* I 53).
6. By natural law, all men are free. In the exercise of this fundamental freedom, the Indians freely organize themselves in communities and freely elect and establish their own rulers (*CHP* 5, 39).
7. On account of this political freedom, the Indian rulers elected by their people may legitimately impose taxes and new economic charges (*De iustitia* I 228-232).
8. The power to rule, or political superiority, was given to certain men by the consent or free choice of the community or by the majority of its members (*De iustitia* I 77-79).
9. The right that a man has to his possessions derives from the fact that he is in the image of God; he cannot lose this dominion on account of his infidelity or sins of idolatry (*De iustitia* I 106-108).
10. The Indians do not lose the right to the goods they possessed publicly or privately prior to the arrival of the Spaniards on account of their infidelity or idolatry (*CHP* 5, 25).
11. The Indians may not be deprived of their goods or powers on account of their social backwardness, nor on account of their cultural inferiority or lack of political organization (*CHP* 5, 30).
12. The Indians may not be expropriated, nor may their lands be occupied, if these actions are not based on the law that is common to Christians and non-Christians alike (*CHP* 5, 141).
13. The obligations placed upon the Indians cannot exceed their natural endowments (*CHP* 5, 118-120).
14. Every man has the right to truth, to education, and to all that forms part of his cultural and spiritual development and advancement (*CHP* 5, 87).
15. The Indians' current social and political situation stems largely from their bad and barbaric education, or from their deficient or limited human advancement (*CHP* 5, 30).
16. By natural law, Indian children are subject to their parents and, subsidiarily, to the State for their education and sustenance (I II 208-212).

17. By natural law, every man has the right to his own life and to physical and mental integrity (*De iustitia* I 109-110, 125-127).

18. Every man has the right to his personal reputation, honour, and dignity (*De iustitia* I 110).

19. The Indians are entitled not to be baptized and not to be forced to convert to Christianity against their will (*CHP* 5, 118-129).

20. The Indians have the right to be sufficiently educated and to be instructed in the Christian faith prior to being baptized (*CHP* 5, 158-164).

21. In defence of one's homeland and one's individual rights, it is legitimate to repel force with force within the limits of self-defence and even to endanger the life of the aggressor (*De iustitia* I 287-368).

22. No one may be condemned without having been heard by the competent public authority in accordance with the law (*De iustitia* I 284).

23. No innocent person may be sacrificed or put to death, even if he consents thereto or offers himself voluntarily (*De iustitia* I 299).

24. All things were created for the service of man (*De iustitia* I 267-270).

25. No one may be punished or penalized for resisting or refusing to convert or subject himself to the religion of the Spaniards (*CHP* 5, 129).

26. By natural law and the law of nations, men are entitled to have their mortal remains and those of their ancestors treated with dignity; wherefore Indians and Spaniards who persist in inhuman and barbaric customs may be punished to force them to stop (*CHP* 5, 111).

II. The Indian peoples are sovereign

1. The Indian communities are sovereign republics and, thus, are not properly subordinate to Spain, nor do they form part of Spain (*CHP* 5, 113-140).

2. The Emperor or King of Spain would act unjustly if he were to permit the exploitation of the Indians' sources of wealth or the removal of gold from the Indian territories to the detriment of the development and progress of the natives (*CHP* 5, 113).

3. Nor is it just for the King of Spain to prohibit the Indians from minting their own currency, if they find this beneficial to their commerce and social advancement (*CHP* 5, 113).

4. The Indian rulers, whether natural or elected, enjoy the same fundamental rights as any Christian or European prince (*CHP* 5, 113).

5. The Indian peoples may freely change their political regime and subject themselves to a different sovereign in order to defend themselves from oppression and to rid themselves of a tyrant (*De legibus* 82).

6. For the common good and in order to achieve greater harmony and peace among the people, the ruler may licitly tolerate laws and customs that go against natural law (*De legibus* 82).
7. The Indian communities are not the personal possessions of their caciques or rulers, and the latter may not arbitrarily use or dispose of their subjects' goods or the goods of the other inhabitants of their territory (*De legibus* 83).
8. According to natural law, a non-Christian cacique or king does not lose his dominion or jurisdiction on account of his infidelity or idolatrous practices, and even Christian subjects are obliged to obey him (*CHP* 5, 132-133).
9. The Indian peoples may defend themselves with arms and may rebel against foreigners who unjustly seize their territories or who govern the republic to their own advantage or to the advantage of their own people (*CHP* 6, 281-285).
10. By natural law and the law of nations, all the goods of the earth exist principally for the common good of humanity, and the natural resources of every nation should also serve this end (*CHP* 5, 83).
11. In principle, all peoples, Indians as well as Spaniards, have the right to defend themselves by force of arms against the unjust aggression of infidels or Christians, and they have the right to resort to war in order to deter aggressors from endangering their national integrity or security (*CHP* 5, 105-107).
12. Without reasonable cause, the Indians may not reject their own rules in order to recognize and submit themselves to foreign kings; nor may the caciques legitimately do this without the people's consent (*CHP* 5, 73).
13. God made all things in common for the service of all humanity, and by natural law man is the primary holder and recipient of these things. Thus, the division of goods and territories was introduced solely by the law of nations, which is positive and revocable, to meet the exigencies of peace and human progress (*De iustitia* I 74-80).
14. By natural law, dominion or ownership over all goods belongs principally to the entire human community, wherefore any individual man may use these goods when necessary so long as he does not prejudice others in so doing (*De iustitia* I 74).
15. Just laws are binding in conscience and are valid even when they have been issued by a ruler or political leader who has seized the realm by force, provided that such a tyrant be tolerated by the community (*De iustitia* I 54).
16. The Indian caciques may oblige their subjects to abandon the rites and sacrilegious customs of eating human flesh or offering human sacrifices (*CHP* 5, 103).

17. If an Indian prince converts to Christianity, and even if he does not convert, he commits no injustice against his subjects by abolishing idolatry and other practices that go against natural or divine law. Indeed, he is obliged to do this, if he can do so in a prudent manner and without scandal or detriment to the common good, the peace and the well-being of his people (*CHP* 5, 103-105).
18. If an Indian chief should become a Christian, he may promulgate laws in accord with the Gospel, obliging his subjects to abide by those laws, to listen to Christian teaching and to abandon their rites and religious superstitions, without this implying any attempt to force them to convert to Christianity (*CHP* 5, 105-106).
19. Indian princes who have converted to Christianity may oblige their non-Christian subjects to abandon customs and rites that go against natural or divine law, but only provided that by doing so they do not provoke scandal and that this does not result in a worse situation than would prevail were they to tolerate such pagan rites (*CHP* 5, 107).
20. Consequently, pagan or non-Christian rites may be tolerated on account of the common good in a specific political community (*CHP* 5, 107).
21. The Indian peoples, who have spontaneously and freely subjected themselves to Christian princes on condition that they not be obliged to believe in the Christian religion, may not be forced to convert by the Emperor or King of Spain, and agreed religious freedom should be respected (*CHP* 5, 127).

III. The Indian peoples form part of the international community

1. On account of natural human solidarity and by the law of nations, all men, Indians and Spaniards, have equal right to communication or exchange of persons, goods, and services, with the sole proviso that justice and the natives' rights be respected (*CHP* 5, 77-87).
2. By reason of natural sociability, the Spaniards have the right to travel through Indian territory and to establish residence there on condition that by so doing they neither prejudice nor injure the natives (*CHP* 5, 77).
3. Spaniards have the right to trade with the Indians just as the Indians have with the Spaniards. Spaniards may export the goods that the Indians need and may import gold and silver in which the Indies abound, provided, however, that this is not prejudicial to the Indians and that this exchange is conducive to their advancement (*CHP* 5, 81).
4. For the same reason, Spaniards have the right to take gold from the mines and fish from the waters that are common to all and have no owners, always provided that the inhabitants and natives are not thereby prejudiced and that the laws of the land do not burden the Spaniards in a discriminatory way with respect to other foreigners (*CHP* 5, 81).

5. By natural law, Spanish children born in the Indies have the same rights as the natives. Moreover, those foreigners who wish to establish residence in the Indies may do so by contracting marriage or by any other means whereby foreigners attain nationality. They thus incur the same rights and duties as the Indians (*CHP* 5, 83).
6. In defence of these natural and common rights, which by natural law and the law of nations belong to all men, the Spaniards may have recourse to war and may take all the necessary security precautions after having tried to show the Indians with words and deeds that they want to live with them in peace and to cause them no harm, and after the Indians have attacked them violently, prohibiting them from exercising their rights as emigrant foreigners (*CHP* 5, 85).
7. However, recourse to war and such security measures may never serve as a pretext for slaughter, or for sacking or occupying the towns of the Indians, who are by nature fearful and humble, and who have more than sufficient reason for distrusting the Spanish conquistadors, whose ways are strange to them and who are armed and much more powerful than themselves (*CHP* 5, 85).
8. The Spaniards may justly defend themselves against such Indians as long as they stay within the limits of self-defence; but they may not use victory as an excuse for seizing the Indians' towns or for enslaving their inhabitants; a properly defensive war does not justify conquest when the Indians innocently believe, on account of ignorance, that they are justly defending their property (*CHP* 5, 85).
9. If after having sufficiently demonstrated by words and action that they do not intend to disturb peaceful coexistence with the Indians, and that it is also not their intention to interfere in the Indians' internal affairs, and if after all peaceful means have been exhausted the Indians persist in their ill-will and plan to destroy the Spaniards, then, and only then, may the Spaniards justly act against the Indians as declared enemies, conquer them in application of the law of war, and punish them in proportion to the gravity of their crimes and offences (*CHP* 5, 85).
10. Human solidarity constitutes a valid reason for armed intervention on condition that this intervention occurs without fraud or unnecessary injury and that it does not serve as a pretext for taking possession of the defeated people's goods and territories (*CHP* 5, 87).
11. This same right of intervention is also justified in the case of military support provided to allies, on condition that the belligerent party that receives such support is truly the victim of aggression and that the Spaniards are first called in by the Indian peoples who have been unjustly attacked (*CHP* 5, 95).
12. The Spaniards may not intervene in the Indies out of desire to enhance the glory or prestige of the monarchy, nor out of ambition to increase the power or territory of the empire, nor may they use these reasons to seize

the Indians' territories and enslave or exploit their population (*CHP* 6, 123-125).

13. In the interests of peace and the good of all peoples, it is lawful to take action to punish criminals who, by means of repression or tyranny, oppress innocent people and disrupt the tranquillity of humanity or the community of nations (*CHP* 6, 109).
14. It will be lawful for Indians and Spaniards to resort to war on account of a very grave injustice, but only on the assumption that the atrocities, devastation and deaths that would logically result from the use of force would be proportional to what would occur if the injustice were tolerated (*CHP* 6, 133).
15. Although the war against the Indians might have been declared for a just reason, this does not permit the use of any means whatsoever, nor the application of any possible sort of sanction. However, everything that is truly necessary for purposes of defence and the guarantee of future peace may indeed be done (*CHP* 6, 132).
16. By natural law and the law of nations, Spaniards may lawfully seize those goods of the Indians that are necessary for covering the costs of a just war and, consequently, they may demand compensation for the injuries that the enemy has unjustly inflicted upon them. Moreover, for the peace and tranquillity of everyone, they may, by means of sanctions or other types of pressure, deter the Indian caciques from committing similar aggression in the future (*CHP* 6, 137).
17. Consequently, any republic, Indian or Spanish, has the right to take military action against a real and present aggression; however, when the need for self-defence has passed, there is no further reason for war, and all occupied territories must be abandoned (*CHP* 6, 117).
18. If war is waged against the Indians in order to free them from their inhuman and barbaric customs, when this aim has been reached the "protector-State" cannot prolong its intervention; nor may it, on the pretext of defending innocent people, be permitted to occupy Indian territories indefinitely (*CHP* 5, 111).
19. The "protector-State" has the right to remain in the conquered territory only as long as its presence is necessary for ending the unjust situation and for ensuring future peace (*CHP* 5, 111).
20. Spain's right to remain in the Indies with the intention of overseeing and governing the natives is acceptable only because of the need for change there and only on condition that this reform and protection be carried out for the benefit and development of the indigenous people (*CHP* 5, 98).
21. In conclusion, the Kings of Spain have the right to remain in the Indies, and may lawfully take the Indians under their tutelage and protection while the latter exist in a state of dependence and underdevelopment, on condition that their occupation and rule tend more to the good and utility

of the Indians than to the benefit of the Spaniards, so that the Indians' situation might improve and not become worse than it was previously (*CHP* 5, 98).

22. By virtue of prescription and more than forty years of *bona fide* possession, the Spaniards have the right to remain in the Indies and are even bound to do so, because of the need of newly converted Christians to be defended from the persecution and repression of their caciques, who might, by means of force or terror, try to make them return to idolatry (*CHP* 5, 98-99).
23. On the premise that a large number of Indians have converted to Christianity (regardless of whether their conversion was free or forced, just or unjust) and that these converts are now living as true Christians, and fear, not without reason, that they might apostatize owing to the repression and threats of their pagan political chiefs, in defence of the legitimate rights of these Christian Indians, and in order to free them from such risks and almost certain danger, the King of Spain has the duty not to abandon them and to remain in the Indies as long as necessary for their security (*CHP* 5, 89-92).
24. Additionally, out of human solidarity and in defence of innocent Indians who are still sacrificed to idols or are killed that their flesh might be eaten, the Spaniards cannot abandon the Indies until the necessary political and social changes have come about that will put an end to that regime of terror and repression (*CHP* 5, 93).
25. Finally, in exercise of the right of self-determination and by the free choice of the majority of Indians who have seen the moderation and political prudence of the Spaniards, the caciques and their peoples may freely choose to avail themselves of Spain's protection in order to be governed and administered by the Crown for the benefit of their own land and the advancement of its inhabitants (*CHP* 5, 95).

Conclusions
The responsibilities of government

1. The kings of Spain should feel themselves obliged, albeit reluctantly, to resort to war, but should not seek occasions or pretexts to seize the Indians' territories or to subjugate their populations. For wars are not waged to exterminate people, even though the latter might have been the aggressors, but rather for the defence of law and the establishment of peace. It will be possible to guarantee the peace and security of the Indians only through relations marked by moderation, understanding, and tolerance. The controversy regarding the Indies should thus be guided by these principles of moderation and desire for peace (*CHP* 6, 195).
2. On the sole basis of the law of war, it would be difficult to justify the conquest and occupation of the Indies, if not as a means of just compensation, in order to punish war criminals or out of a grave necessity for

peace and security. Moreover, the conquest and occupation must always conform to the principles of proportionality and equity, and there is always an obligation to return the conquered territory when peace is established and the reasons for the occupation no longer exist (*CHP* 6, 195).

3. Consequently, the King of Spain is obliged to seek the utility and development of the Indian people above all else, and cannot allow them to suffer so that Spain might benefit. The monarch and his counsellors are responsible for ensuring that this does not happen, and they will have to answer for this when the time comes (*CHP* 5, 113).

4. It is not sufficient for the King of Spain to promulgate sound laws, appropriate to the capacity and development of the Indians; he is also obliged to install competent governors who are willing to enforce such laws against those who exploit the Indians or attempt to plunder them and seize their goods (*CHP* 5, 113).

5. Although it is certain that, in principle, the King of Spain, as Emperor of the Indies, has the competence to make laws that aim to abolish idolatry and pagan rites and to introduce Christianity more successfully in the New World, it is appropriate that this legislative function be carried out with prudence and tolerance and without violence or inconvenience to the new Indian vassals or subjects (*CHP* 5, 114).

6. Political prudence and freedom of conscience require that the Emperor and King of Spain promulgate progressive laws in favour of Christianity, which shall provide the opportunity and the means for Indians to be educated and sufficiently instructed about the errors of their religion and pagan rites, with the aim of convincing them and attracting them to listen to Christian truths so that they might willingly and freely decide to convert (*CHP* 5, 114-116).

7. The King of Spain can lawfully employ a certain moderate and gradual coercion, possibly including even the legal prohibition of idolatry and the destruction of idols, in order to persuade the Indians to abandon their religious rites. However, a policy of coercion and force to make the Indians abandon their ancestral religion, by violent means rather than by persuasion, would be intolerable and morally unacceptable (*CHP* 5, 114).

8. Nonetheless, the King has the duty to examine the extent to which his laws and religious policy are aimed at the true, and not simply apparent, conversion of the Indians, since he would have to reject that religious policy if he feared that the laws under consideration would lead to resistance, persecution, pretexts for thievery, and intolerable repression, to the detriment of peace and the common good of the Indians (*CHP* 5, 115).

9. Religious tolerance is a principle of political prudence that occasionally requires one to countenance certain pagan customs and laws, the abolition of which, even though they might be illicit in principle, would nonethe-

less be a crime against social peace and the conscience of the majority of Indians (*CHP* 5, 114-16).

10. However legitimate the Emperor's power over the Indians might be, he may not burden them more than his Spanish subjects by imposing greater taxes upon them, taking away their freedom, or castigating them with any other type of levy or financial charge (*CHP* 5, 112).
11. In the current controversy over the conquest of the Indies, it is not sufficient for the King of Spain to believe that justice is on his side; rather, he is obliged in conscience to examine diligently and to make his counsellors examine the grounds for war that are advanced by the parties to the dispute, and he has the duty to pursue the debate in accordance with the criteria of justice and law (*CHP* 6, 141).
12. The governors and members of the *Consejos*, the political advisers, and the military chiefs are also bound in conscience to examine the reasons for the wars of conquest, to inform the king and the *Consejos* faithfully, and to dissuade them from undertaking any war that they consider unjust or in which they must refuse to take part on the grounds of conscientious objection (*CHP* 6, 143).
13. Likewise, ordinary soldiers may not lawfully enlist in wars of conquest that they know or believe to be unjust, and they are not excused in this matter by their duty to obey, by culpable ignorance, or by an error made in bad faith. But if no evidence of injustice is given and if there are no clear indications of the injustice of the conquests, then ordinary soldiers who have no other responsibilities may take part in war with an easy conscience (*CHP* 6, 141).
14. The Emperor and King of Spain, who is the *bona fide* owner thereof, is not obliged to abandon the conquered territories in the Indies on account of the Indian question or the controversy regarding the legitimacy of the wars of conquest, but he does have the duty to examine the reasons for his ownership of these territories and to listen peaceably to the evidence and claims of the litigating parties (*CHP* 6, 147).
15. In the controversy or claim regarding the restitution of territories, the claimants or litigating parties have the duty to pursue the debate and to study the arguments and evidence that is adduced, and they are obliged to accept the solutions of distribution or equal compensation that might result from political negotiations and arbitration, even though one of the parties involved might be more powerful than the other and would have sufficient strength to occupy the entire territory by force of arms (*CHP* 6, 149).
16. Restitution must be made to the Indians for all the goods and territories that have been taken from them as the result of unjust wars, and the amount of restitution for goods so confiscated should exceed the necessary compensation due for damage caused by the losers in a just war (*CHP* 6, 235-237).

17. However, if the soldiers who participated in an unjust war and in the distribution of the gold and silver gained thereby thought the war was just and did not greatly enrich themselves through the booty thus acquired, or if they have completely used up the gold distributed to them, then those soldiers are not obliged to make restitution because they acted in good faith; nor are princes who were deceived by their counsellors obliged to make restitution (*De iustitia* I 177).
18. The governors and other delegated authorities have the duty to make restitution to the Indians for new taxes imposed without the King's authorization or in opposition to established laws and for taxes that exceed the limits of justice and equity (*De iustitia* I 230-231).
19. If the particular owner of goods taken in an unjust war is unknown, and presuming that owing to the passage of time heirs or direct owners no longer exist, then the value of these goods should be given to the community for the benefit of public institutions at the discretion of its rulers (*De iustitia* I 169).

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The ICRC and the conflict in the former Yugoslavia

Since June 1991 the ICRC has, in accordance with its mandate, been running large-scale and diverse programmes for the victims of the conflict in the former Yugoslavia. Its activities focus on providing protection for prisoners and for civilians affected by the fighting, tracing missing persons and arranging for the exchange of news between the members of separated families, distributing food and other aid to displaced people and vulnerable groups, providing medical and surgical assistance to the warwounded; and of course spreading knowledge of international humanitarian law, especially among armed forces of all parties to the conflict.

In addition to its daily work, the ICRC has acted as a neutral intermediary in the midst of the conflict. On no fewer than six occasions it brought together in Geneva, around the same table, plenipotentiary representatives of the parties involved in the conflict in Croatia, and more recently in the conflict in Bosnia-Herzegovina, to work out practical solutions to questions of humanitarian concern. These meetings, and the work of *ad hoc* commissions set up to deal with the tracing of missing persons and the release of prisoners, have led to tangible results in favour of the victims.

However, in recent months the situation in Bosnia-Herzegovina has steadily deteriorated. Mounting insecurity has prevented humanitarian organizations from reaching all the victims of the conflict. The ICRC has also been forced to recognize that breaches of international humanitarian law and of human rights have become almost commonplace, especially as regards the civilian population, despite numerous public appeals and confidential approaches at all levels and to all the parties. As the President of the ICRC pointed out in his statement at the opening of the International Meeting on Humanitarian Aid for Victims of the Conflict in the former Yugoslavia, convened on 29 July 1992 by the United Nations High Commissioner for Refugees: "There is no doubt that the vicious circle of hatred and reprisals erodes basic humanitarian values more and more each day, although these values are universally recognized. The humanitarian message must be

heard and understood in its entirety, it must ring out loud and clear to reach all those concerned and suppress rumour, propaganda and disinformation. As we all know, it is first and foremost up to the States and their governments to respect and ensure respect for the basic rules of humanitarian law.

It is at this point that humanitarian action reaches its limits. Despite the immense efforts made by UNHCR, the ICRC and other humanitarian agencies, and despite the dedicated work of local Red Cross organizations, it has become increasingly clear that humanitarian activities, which have gained sudden prominence in the past year, will not be able to resolve the problems generated by a crisis that continues to spread and gather momentum."

In view of the gravity of the situation, the ICRC spoke out with force and conviction: in a solemn appeal issued on 13 August 1992 it called upon the parties to the conflict to put into immediate effect their commitment to comply with the rules of international humanitarian law and to disseminate knowledge of them among their combatants, to refrain from taking illegal measures against the civilian population, to improve the conditions of detention, to notify the ICRC of all places of detention in Bosnia-Herzegovina and of all persons held there, and to take the action necessary to ensure that delegates can work effectively and rapidly in acceptable security conditions.

The appeal ended by emphasizing the collective responsibility of the States party to the Geneva Conventions, which have undertaken not only to respect those Conventions but also to ensure respect for them.

The complete text of the appeal is given below.

The ICRC has also supported the various initiatives taken by the international community and has expressed its views during conferences and meetings convened to examine the problems of humanitarian concern caused by the war, to facilitate the work of humanitarian organizations and to try to find a political solution to the conflict.

On 10 August, a special joint meeting in Brussels of various committees of the European Parliament (Committee on Foreign Affairs and Security, Committee on Social Affairs, Employment and the Working Environment, Committee on Civil Liberties and Internal Affairs, and the Delegation for Relations with the Republics of Yugoslavia) was addressed by the ICRC representative, Mr. Paul Grossrieder, Deputy Director of Operations, who stressed the need for the institution to have access to all places of detention and to receive the necessary security guarantees allowing its delegates to travel in the field.

During the special session of the Commission on Human Rights held on 13 and 14 August in Geneva to discuss the situation in the former Yugoslavia, the ICRC, represented by Mr. Claudio Caratsch, Vice-President, called on the parties to the conflict to give practical effect to the rules of international humanitarian law and instruct their combatants accordingly, to refrain from abuses against the civilian population and detainees, to improve conditions of detention, grant humanitarian organizations free access to all places of detention and find a political solution to the conflict.

Following the special session, the Commission adopted a resolution by consensus. The resolution's main points are:

— a call for the release of all persons detained arbitrarily,

— a demand for immediate and unimpeded access for the ICRC to the various places of detention,

— the need for the free passage of humanitarian aid,

— a reminder to the parties to the conflict that they are bound to comply with the provisions of international humanitarian law,

— the nomination of Mr. Tadeusz Mazowiecki, former Polish Prime Minister, as Special Rapporteur.

This resolution takes up the terms of those adopted by the UN Security Council on 13 August.

The first of these (770) focuses on delivering humanitarian aid to Bosnia-Herzegovina. The Security Council "calls upon States to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery [...] of humanitarian assistance.

The second (771) is concerned more specifically with respect for international humanitarian law by all the parties to the conflict, especially as regards detained persons.

In both resolutions, the Security Council demands that the ICRC be granted immediate, unimpeded and continuous access to all places of detention.

In addition, the UN General Assembly, at a special session held on 24 and 25 August in New York to discuss the situation in Bosnia-Herzegovina, adopted a resolution which *inter alia* takes up the terms of the above-mentioned Security Council resolutions 770 and 771. During the session, the new head of the ICRC delegation in New York, Mr. Peter Küng, strongly reaffirmed the ICRC's position by calling on the States party to the Geneva Conventions to respect and

ensure respect for humanitarian law. He also stressed that humanitarian assistance could in no way replace a political settlement.

Lastly, as an invited observer with the right to speak at the Special Conference on the Former Yugoslavia (London, 26-28 August 1992), the ICRC, through its President, emphasized its inability to assume such a momentous responsibility alone in the face of such a challenging situation, and the need for the international community to assume its responsibilities fully. He furthermore called on the leaders of the various parties concerned to urge their combatants to respect international humanitarian law.

At the end of the conference, several decisions were adopted. They were designed to promote a negotiated solution to the conflict and related in particular to a cessation of hostilities, assistance to victims, the return of refugees to their homes, the release of detained persons and the role of the international community. A Steering Committee composed of 22 members will be responsible for following up these decisions.

The chairman of the conference also negotiated a plan of action centred on humanitarian issues with the leaders of Bosnia's Croat, Serb and Moslem communities (see also "Missions by the President", p. 495).

At all these meetings and in the course of the numerous contacts with permanent missions in Geneva and in New York, the ICRC has made a point of expressing its deep appreciation for the many initiatives taken to support its efforts. It has also reiterated the fact that although a moral threshold exists beyond which the ICRC's silence would become reprehensible, the confidentiality and independence necessary for its effective action can on no account be called into question.

BOSNIA-HERZEGOVINA

ICRC'S SOLEMN APPEAL TO ALL PARTIES TO THE CONFLICT

On 13 August, the International Committee of the Red Cross appealed to the belligerents — Serbs, Croats and Muslims alike — urgently calling on them to respect international humanitarian law. The text of the appeal is given below.

"Following the visits its delegates have conducted during the last few days to places of detention in Bosnia-Herzegovina, it is evident to the International Committee of the Red Cross (ICRC) that innocent civilians are being arrested and subjected to inhumane treatment. Moreover, the detention of such persons is part of a policy of forced population transfers carried out on a massive scale and marked by the systematic use of brutality. Among the long list of methods used are harassment, murder, confiscation of property, deportation and the taking of hostages — which reduces individuals to the level of bargaining counters — all in violation of international humanitarian law.

With regard to living conditions in these places of detention, it is imperative that urgent measures be taken to guarantee the physical and moral integrity of the detainees in accordance with the provisions of the Third and Fourth Geneva Conventions, which must be observed in their entirety.

ICRC delegates have had only limited access to the republic's various regions and, despite repeated approaches made in this respect, they have still not received comprehensive lists of places of detention controlled by the various parties to the conflict or been notified of persons captured, and are thus unable to bring help to all the victims. The ICRC has had access to only a very limited number of prisoners of war, while the places of detention are crowded with innocent and terrified civilians.

The ICRC wishes to draw attention once again to the fact that the parties to the conflict in Bosnia-Herzegovina bear full responsibility for all acts committed by their respective combatants.

After several weeks of intense activity in the field and in places of detention in an attempt to protect and come to the aid of the victims of this conflict, the ICRC notes that the parties to the conflict are not complying with

the provisions of the Geneva Conventions, despite their commitment in this respect.

In these circumstances, and especially in view of the pressing need to clarify the situation in all places of detention in Bosnia-Herzegovina, the ICRC hereby solemnly appeals to all parties concerned to:

(a) put into effect their commitment to comply with international humanitarian law, in particular the Third and Fourth Geneva Conventions;

(b) instruct all combatants in the field to respect captured persons, civilians, medical establishments, private and public places, and the Red Cross emblem;

(c) refrain from carrying out forced transfers and taking other illegal measures against the civilian population;

(d) take immediate steps to improve living conditions in all places of detention in Bosnia-Herzegovina, in accordance with the recommendations made in respect of places already visited by the ICRC;

(e) notify the ICRC immediately of all places of detention in Bosnia-Herzegovina, and supply accurate lists of all persons held in such places;

(f) take the action necessary to ensure that ICRC delegates can work effectively and rapidly in adequate conditions of security.

The ICRC earnestly hopes that implementation of the above measures by all parties to the conflict in Bosnia-Herzegovina will at last enable it to bring protection and assistance to all victims of the conflict, in line with its humanitarian mandate. The entire community of States party to the Geneva Conventions bears a collective responsibility in this regard, having undertaken not only to respect but also to ensure respect for those Conventions in all circumstances".

MISSIONS BY THE PRESIDENT

In July and August 1992 ICRC President Cornelio Sommaruga went on several missions as part of the intense diplomatic activity that developed with regard to the conflict in the former Yugoslavia. (See also "The ICRC and the conflict in the former Yugoslavia", pp. 488-491.) In addition, he paid an official visit to Poland and spoke at the inaugural session of training courses at two institutions. On both occasions his address served to convey the ICRC's humanitarian message.

1. Lectures in Locarno and Strasbourg (6 July)

In Locarno, Mr. Sommaruga delivered a lecture on respect for international humanitarian law and on the activities of the ICRC during the Gulf war to participants in a course given by the Swiss Civic Society *(Schweizerische Staatsbürgerliche Gesellschaft)* on the subject of "Democracy and Solidarity".

In Strasbourg, at the invitation of Mrs. Denise Bindschedler-Robert, honorary member of the ICRC and President of the International Institute of Human Rights, Mr. Sommaruga gave an address entitled "The ICRC and the protection of human rights" at the opening of the Institute's 23rd teaching session. The ICRC has been taking active part for many years in these sessions and did so again from 27 to 30 July, when members of the Legal Division gave introductory courses on international humanitarian law to some 400 participants. The courses, which lasted eight hours in all, were given in English, French, Spanish and Arabic.

2. Budapest (6-7 August)

On 7 August the ICRC President chaired a meeting between the Prime Minister of Croatia, Mr. Franjo Gregurić, and the Prime Minister of Yugoslavia, Mr. Milan Panić. The purpose of the meeting was to settle practical procedures for implementation of the agreement

in principle signed in Geneva on 29 July and concerning the overall exchange of prisoners held by both sides in the conflict between Yugoslavia and Croatia.

The agreement signed in Budapest by the two Prime Ministers subsequently led to the release on 14 August of 1,131 prisoners, held by either Croatia or Yugoslavia, on the basis of lists drawn up by the ICRC.

In addition, President Sommaruga used the meeting as an opportunity to give the parties present a firm reminder of their responsibility for ensuring respect for international law in Bosnia-Herzegovina, calling upon them to bring all their influence to bear on the belligerents.

While in Budapest, the President also had discussions with the Chairman of the Hungarian Red Cross, Dr. Laszlo Andics, about the Society's reorganization.

At government level, Mr. Sommaruga met the Minister for Foreign Affairs, Mr. Geza Jeszensky, and the Prime Minister, Mr. Jozsef Antall. He did so first in the presence of the Croatian Prime Minister and then in the presence of the Serbian Prime Minister, in order to stress the ICRC's neutral stance as regards the purpose of the Budapest meeting. After the agreement had been signed, President Sommaruga had a lengthy private discussion with the Hungarian Prime Minister which, amongst other things, was concerned with the role of the Antall family in the Hungarian Red Cross.

3. Poland (16-18 August)

At the invitation of the President of the Polish Republic, Mr. Lech Walesa, the ICRC President visited Warsaw from 16 to 18 August; he was accompanied by Mr. Dieter Pfaff, regional delegate for Central Europe, and Mr. Nicolas Borsinger, of the Cooperation-Dissemination Division.

In the course of his discussions with Mr. Walesa, Mr. Sommaruga stressed the duty of States not only to respect but also to ensure respect for the provisions of international humanitarian law, remarking that in this connection Poland could play an active role in the protection of minorities.

Mr. Walesa responded that he was most willing to support the ICRC, not only on the diplomatic level but also by setting up an association of former detainees visited by the ICRC. Mr. Mazowiecki, Mr. Geremek and he himself had received such visits in 1982.

The President met Mrs. Hanna Suchocka, the Polish Prime Minister; he told her that the ICRC would like to see Poland, and indeed all members of the Warsaw Pact, withdraw their reservations to the Geneva Conventions.

Mrs. Suchocka stated that Poland had just signed the declaration provided for in Article 90 of Protocol I and concerning the International Fact-Finding Commission. She also said that Poland was prepared to give refuge to child victims of the conflict in Bosnia-Herzegovina.

At the Ministry of Foreign Affairs, Mr. Sommaruga met the acting head, Mr. Byczewski, together with Mr. Tadeusz Mazowiecki, former Prime Minister of Poland and recently appointed Special Rapporteur to the UN Secretary-General for the territory of the former Yugoslavia. Discussions were centred mainly on the situation in the former Yugoslavia, especially the crisis in Bosnia and the problem of serious breaches of international humanitarian law committed by the parties to the conflict.

The President also had talks with Mrs. Sienkiewicz, Deputy Minister of Health, and Mr. Bronislaw Geremek, Chairman of the Parliamentary Foreign Affairs Committee.

The mission ended with a press conference and the inaugural address for the 10th Warsaw course on international humanitarian law.

4. London (26-28 August 1992)

The ICRC President, accompanied by Mr. Paul Grossrieder, Deputy Director of Operations, and Mr. Thierry Germond, Delegate General for Europe, participated in the Special Conference on the former Yugoslavia, co-chaired by Mr. Boutros Boutros-Ghali, UN Secretary-General, and Mr. John Major, the British Prime Minister.

The ICRC had been invited as an observer with the right to address the meeting, which was attended by representatives from the twelve countries of the European Community, the permanent members of the Security Council, all the countries bordering on the former Yugoslavia, an *ad hoc* group of countries (Canada, Japan, Saudi Arabia, Turkey), the Organization of the Islamic Conference and the Conference on Security and Co-operation in Europe (CSCE), together with the various States resulting from the break-up of the former Yugoslavia. (See above, "The ICRC and the conflict in the former Yugoslavia", p. 491).

During the conference Mr. Sommaruga met, amongst others, the leaders of the Croatian, Serbian and Muslim communities in Bosnia-Herzegovina. In his discussions with them he underscored the need for arrangements to be made to evacuate detainees with serious medical problems; he also stressed the importance of respecting the emblem, the protected status of ICRC staff and the commitments made in the agreement of 22 May 1992 (to exchange lists of persons detained by the various parties; to allow access by the ICRC and other humanitarian organizations to groups of civilians who are cut off, in danger or particularly vulnerable; to allow and facilitate, without discrimination, the passage of humanitarian relief supplies for the victims of the conflict, and to guarantee the convoys' safety).

REGULATIONS FOR THE EMPRESS SHÔKEN FUND

(Approved by the 16th International Conference of the Red Cross, London, 1938, and revised by the 19th International Conference, New Delhi, 1957, the 25th International Conference, Geneva, 1986, and the Council of Delegates, Budapest 1991)[1]

Article 1 — The sum of 100,000 yen in Japanese gold presented by H.M. The Empress of Japan to the International Red Cross on the occasion of the Ninth International Conference (Washington, 1912) to promote "relief work in time of peace", was increased to 200,000 yen by a further gift of 100,000 yen from their Majesties The Empress and The Dowager Empress of Japan, on the occasion of the Fifteenth International Conference (Tokyo, 1934). The Fund was further increased by a gift of 3,600,000 yen from H.M. The Empress of Japan, on the occasion of the Red Cross Centenary in 1963, and by successive contributions from the Government of Japan since 1966, and from the Japanese Red Cross Society. This fund shall be entitled: "The Empress Shôken Fund".

Article 2 — The Fund shall be administered and its revenues distributed by a Joint Commission of six members chosen in their personal capacity. The Joint Commission shall be composed equally of three members appointed by the International Committee of the Red Cross and three by the International Federation of Red Cross and Red Crescent Societies; the quorum shall be four. The Chairman of the Joint Commission shall be on a permanent basis one of the representatives of the International Committee of the Red Cross whereas the International Federation of Red Cross and Red Crescent Societies shall provide the Joint Commission's Secretariat. The Joint Commission shall

[1] Following the postponement of the 26th International Conference, the ICRC submitted the text of the present Regulations to all the States party to the Geneva Conventions, inviting them to make any objections known within six months. As no proposed amendments were received by the deadline of 30 June 1992, the Regulations came into force on that date.

meet at Geneva, in principle at the headquarters of the International Federation of Red Cross and Red Crescent Societies.

Article 3 — The capital of the Fund shall remain intact. Only the revenues provided by interest on it shall be used for allocations awarded by the Joint Commission to meet all or part of the cost of the activities enumerated below, any balances not utilised being used to increase either the capital of the Fund or subsequent allocations:

(a) Disaster preparedness
(b) Activities in the field of health
(c) Blood transfusion services
(d) Youth activities
(e) First aid and rescue programmes
(f) Activities in the field of social welfare
(g) Dissemination of the humanitarian ideals of the Red Cross and Red Crescent
(h) Such other programmes of general interest for the development of the activities of the National Red Cross and Red Crescent Societies.

Article 4 — National Red Cross and Red Crescent Societies wishing to receive an allocation shall make the necessary application through their Central Committees to the Secretariat of the Joint Commission before 31 December of the year preceding that in which the allocations are to be made. Applications shall be supported by full details concerning the particular activity selected from among those specified in Article 3 above.

Article 5 — The Joint Commission shall examine the applications mentioned in the previous Article and shall make such allocations as it considers just and suitable. It shall each year communicate the decisions it has taken to National Red Cross and Red Crescent Societies.

Article 6 — National Red Cross and Red Crescent Societies which feel obliged by circumstances to put the allocations received to uses other than those specified in their applications for grants under Article 4 must ask for the Joint Commission's approval before doing so.

Article 7 — National Red Cross and Red Crescent Societies shall send to the Joint Commission, not later than twelve months after receipt of the allocations, a report on the use of the allocations received.

Article 8 — The announcement of distribution shall take place each year on 11 April, the anniversary of the death of H.M. The Empress Shôken.

Article 9 — A sum which shall not exceed twelve per cent of the annual interest on the capital shall be set aside to cover the cost of administering the Fund and of assisting the National Societies concerned in the realization of their projects.

Article 10 — The Joint Commission shall present to each International Conference of the Red Cross and Red Crescent a report on the current financial situation of the Fund, the allocations which have been made since the preceding Conference and the use made of those allocations by National Societies. The International Conference shall transmit this report to the Japanese Imperial Family through the intermediary of the Japanese Red Cross Society.

Recognition of the Saint Kitts and Nevis Red Cross Society

At its meeting on 27 August 1992, the International Committee of the Red Cross announced the recognition of the Saint Kitts and Nevis Red Cross Society (West Indies).

This recognition, which took effect the same day, brings to **152** the number of National Societies which are members of the International Red Cross and Red Crescent Movement.

The Yemenite Red Crescent Society[1]

The Yemenite Red Crescent Society, which was founded in early 1970, was officially recognized by Presidential decree No. 15 of 16 July 1970. The decree authorizes the Society to take up its duties immediately in conformity with its statutes and in its capacity as a voluntary and independent aid Society, auxiliary to the public authorities.

Recognized by the International Committee of the Red Cross on 22 April 1982 and admitted to the League of Red Cross and Red Crescent Societies[2] on 8 October 1983, the Yemenite Red Crescent Society is an integral part of the International Red Cross and Red Crescent Movement. It possesses legal status and is of indefinite duration. Based in Sana'a, the capital, it is active throughout the Republic of Yemen.

I. Structure and objectives

At the national level, the supreme authority of the National Society is the General Assembly, which is composed of representatives of the active members of the various local branches. It meets each year to approve the accounts, the provisional budget and prospective programmes.

There are also General Assemblies in the various branches. Their members are elected by secret ballot every four years or whenever it is deemed necessary.

The Executive Board, which is elected by the General Assembly, runs the Society. The Board has six subsidiary commissions:

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[1] This article was published in the original version in the Arabic edition of the *Review* (March-April 1992 issue, no. 24).

[2] Now known as the International Federation of Red Cross and Red Crescent Societies.

1. Culture and Information Commission

Its tasks are:

a) to promote the aims and objectives of the International Red Cross and Red Crescent Movement;

b) to disseminate knowledge of the Geneva Conventions and their Additional Protocols among the public in general and the army in particular;

c) to spread medical knowledge in order to improve the standard of living and health of the entire population;

d) to help develop a spirit of cooperation and solidarity among the people, encouraging them to participate in volunteer work and to donate blood;

e) to publish a bulletin, booklets, car stickers, etc., and to produce radio and TV programmes, slides, films, medals and badges to promote knowledge of the Society's work.

2. Relief and Social Services Commission

Its tasks are:

a) to help provide building materials for temporary housing, relief supplies and blood transfusion equipment, and be prepared to undertake relief operations in the event of a disaster. This includes providing emergency social and medical assistance for accident and disaster victims, transporting them to a safe place, giving them care, shelter and food and reuniting them with their families;

b) to help first-aid workers, social workers and relief teams;

c) to make periodical visits to social welfare institutions, reformatories and prisons, help provide the necessary medical and social services for detainees and serve as their intermediary to exchange correspondence both within Yemen and with the outside world;

d) to help prevent and control epidemics and communicable diseases.

3. Commission on Women's Activities

Together with the other commissions, it carries out the Society's tasks: collecting funds, organizing charity sales, organizing Red Crescent groups, improving health standards, increasing women's awareness of and preparing them for work in the home, first aid, sewing, embroidery and knitting. This Commission also visits hospitals, social welfare institutions and women's penitentiaries. It thus helps ease women's burdens, raises their level of education and improves their living conditions.

4. Youth Affairs Commission

a) It is in charge of organizing Red Crescent groups in schools, universities, institutes and sports clubs.

b) It develops programmes which are specially designed for young people in various areas, e.g. training them in first aid, in providing care during sports events and assistance in the event of disasters. The Commission also ensures that these programmes are implemented by the different local branches.

c) It coordinates youth activities in the various branches of the National Society and reinforces its ties with the Youth Department of the International Federation and with Youth Sections in other National Societies.

d) It helps to disseminate knowledge of humanitarian principles among the youth and to reinforce essential values such as selflessness, solidarity and generosity, respect for health and life, and community service.

e) It encourages the exchange of correspondence, stamps, gifts and albums and promotes the "International Friendship" programme by exchanging visits, organizing camps, participating in courses and seminars held in the region, in the Arab world or elsewhere and, lastly, organizing cultural events and artistic exhibitions which deal with the objectives of the Movement.

5. Finance Commission

Its tasks are to itemize, stock and distribute all relief supplies. It is also responsible for managing resources and for book-keeping.

6. Public Relations Commission

It receives and distributes mail of detainees, refugees and persons who are competent to cooperate with the ICRC. It is also in charge of welcoming the Society's guests, arranging the programme for their visit and ensuring their well-being. It also helps organize charity exhibitions and sales.

II. Activities

Several departments and services at *headquarters* help these various commissions. In the field of relief and social welfare, the Society has seven relief centres, seven clinics in prisons and seven sewing workshops in

womens' reformatories. The Society, in collaboration with the International Federation and the German Red Cross, also plans classes designed for instructors in disaster relief.

The Society is active in the field of primary health care, using varied methods such as the monthly bulletin *Al-Ithar*. It relies on volunteer members making their vehicles available for widespread vaccination campaigns. It also has a pilot hospital and runs medical and social centres in camps of Yemenites who have returned to the country after the Gulf crisis. The Commission, with the help of the International Federation and donor Societies, has drawn up a programme for the social reintegration of some 33,000 to 36,000 of these returnees. It also runs several small camps in the provinces of Al-Adain and Hazm-al-Adain, where 1,500 victims of the last earthquake have been housed.

At the local level, the various branches organize classes on first aid and sports, promote and disseminate knowledge of international humanitarian law (IHL) and teach sewing, embroidery, knitting and household management. Thus, they meet the needs of local communities and seek to improve the health and living conditions of people with small incomes. They help impoverished families by distributing food supplies provided by the European Community (EC) via the International Federation. These are the regular social activities of the Yemenite Red Crescent, without mentioning its activities in times of crisis.

In spite of the Society's limited resources and the many difficulties it faces, the five-year development programme it completed on 31 December 1991 was 95% successful. The Society has set up a new development programme for 1992-1996.

In conclusion, we would like to express our deepest gratitude to all who have joined us in undertaking to alleviate the suffering of victims through their efforts, financial help and advice, especially the International Federation, the ICRC and all the sister National Societies who have given real meaning to the words "international and humanitarian solidarity". These institutions have contributed to the development and growing success of our humanitarian movement in its efforts to eradicate human suffering and promote a sense of solidarity based on the Fundamental Principles and international humanitarian law, carried out in the spirit of love and peace.

Abdullah Hamoud Al-Khamissi
Secretary General

Declaration by the Republic of Bolivia

On 10 August 1992 the Republic of Bolivia made the following declaration regarding its recognition of the competence of the International Fact-Finding Commission:

"In accordance with Article 90, paragraph 2(a), of Protocol I additional to the Geneva Conventions of 12 August 1949, the Republic of Bolivia declares that it recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire into allegations by such other Party".

The Republic of Bolivia is the **thirtieth State** to make the declaration regarding the Fact-Finding Commission.

Accession of the Union of Myanmar to the Geneva Conventions

On 25 August 1992 the Union of Myanmar acceded to the four Geneva Conventions of 12 August 1949.

In accordance with their provisions, these instruments will come into force for the Union of Myanmar on 25 February 1993.

The Union of Myanmar is the **173rd State** to become party to the Geneva Conventions.

A FORM OF GRATITUDE

The Life of Angela Limerick *

Angela, Countess of Limerick, was a major figure in the British Red Cross and in the International Red Cross and Red Crescent Movement during the years following the Second World War. Vice-Chairman of the British Red Cross Executive Committee from 1946-63 and Chairman of its Council from 1974-76, Vice-Chairman of the then League of Red Cross Societies from 1957-65 and Chairman of the Standing Commission from 1965-73, Angela Limerick travelled regularly and extensively on Red Cross business, visiting nearly every region of the world, and played an increasingly important and influential role at international statutory meetings of the Movement for 27 years. The controversies and challenges facing the Red Cross and Red Crescent during that period were very much part of her life; in many respects, these same concerns - growing politicization, internal disunity and the need for the Movement to adapt to changing circumstances, remain relevant today, and are well reflected in this biography.

What kind of a woman was she? Perhaps it is obvious to say that Angela Limerick had a remarkable personality: purposeful and highly intelligent, yet compassionate, friendly, optimistic, devoted, courageous, with a great sense of humour. She lacked pretension and focused on the practical. She sought to adopt a professional, forward-looking approach, whilst at the same time holding steadfast to principle. Unfailingly courteous and hard-working, she inspired by her example.

The book is admirable since it reveals the whole person: for instance Angela could be highly critical of others (usually not without justification); although she could master a brief and cut to the centre of an issue, Angela was not an intellectual; her tireless work on behalf of the Red Cross and other causes posed the inevitable conflict between her family life and her career commitments, a struggle well-known to many Red Cross/Red Crescent devotees, voluntary and salaried. But it was Angela's stable and happy home life that enabled her to undertake so much of what she did for the Movement, and which gives the book its title: "A Form of Gratitude".

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* *A Form of Gratitude - The Life of Angela Limerick* by Donald Lindsay, Chid Press, East Crinstead, 1992, ix + 305 pp., £19.95 plus postage. Copies can be obtained by writing to the Britisth Red Cross.

The volume sets Angela Limerick's life in its historical context, a period of rapid social and other change in Britain and elsewhere. Born to an upper middle class English family in 1897, she lived as a child in Romania. She then served as a Red Cross nurse during World War I and was in charge of the London Branch of the British Red Cross during the bombing of London (called the "Blitz") in World War II. There is much material from diaries and personal correspondence, arranged in an interesting way, with numerous humorous and telling anecdotes. Sensitive matters are handled sympathetically but objectively; some parts, such as the separation of Angela's family during World War II and her husband's death much later, are quite moving. The cognoscenti might spot a factual error about the Geneva Conventions; others might quibble about the western or British view given of historical events, or question whether it is entirely correct to say that the work of the League had been suspended during the Second World War. However, these are minor matters and certainly do not detract from the overall story.

The life of Angela Limerick shows how the Red Cross/Red Crescent attracts people who become completely dedicated to what the Movement stands for; Angela herself served over 60 years. She believed that by upholding its Fundamental Principles, the Movement could continue to make a unique, worldwide contribution to humanity while at the same time changing its structures or activities to meet modern conditions. It was Angela's acknowledged impartiality respected by governments, her position as an official and a firm supporter of the League (now the Federation) and her understanding of the special role of the ICRC in relation to the Geneva Conventions that enabled her to provide strong and fair leadership as Chairman of the Standing Commission. She declined at the age of 76 to accept a third term in that position.

The International Red Cross and Red Crescent Movement as it is today was built by the efforts of people like Angela Limerick. To understand her life can deepen one's understanding of the Movement. She believed passionately in what Red Cross/Red Crescent workers in the former Yugoslavia and elsewhere give their lives for. Her life could be an example to all those, perhaps especially young people, unsure of their values or goals in a time of what may be particular uncertainty.

Michael A. Meyer

"LOOK WHAT YOU STARTED HENRY!"

History of the Australian Red Cross Society 1914-1991

Leon Stubbings'[1] history of the Australian Red Cross Society is first and foremost the story of men and women who have forged and served the National Society between 1914 and 1991. Recalling his own memories and drawing information from tonnes of historical records and interviews with hundreds of people, the author tells us simply and familiarly of the Australian Red Cross volunteers — men and women in the midst of the action, in wartime and peacetime, in the national territory and beyond it. This is Leon Stubbings' intention: to place the main emphasis on people because, for him, "Red Cross **is** people".[2]

Like scenes from a play or a film, Leon Stubbings' book is laced with appealing and sometimes moving anecdotes of people who mean much to him — doubtless to make us feel more deeply the commitment of these men and women to the Red Cross, their enthusiasm, but also their difficulties and the hopes they held in vain.

The reader is carried along in space and time, vicariously experiencing, through their eyes, the First and then the Second World War, then action in several Asian and African countries before finally coming home. This long journey will have shown him how the Australian Red Cross Society, newly founded in August 1914, came through its immediate baptism of fire with flying colours, quickly getting organized to play its part as an auxiliary to the medical services of the Australian armed forces and engaging in extensive

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[1] Leon Stubbings, *"Look what you started Henry!"*, Australian Red Cross Society, Melbourne, 1992, 316 pp.

Mr. Leon Stubbings joined the Australian Red Cross Society in 1949 and was appointed Secretary-General six years later, a position he held until 1988. During his 38-year career, L. Stubbings went on many relief and development missions in Asia and Africa. He represented his country's National Society in the governing bodies of the League of Red Cross Societies (now known as the International Federation of Red Cross and Red Crescent Societies) and was a member of many of the Movement's committee and study groups. He participated in particular in the working group on the revision of the Movement's Statues from 1982 to 1985 and for ten years, in the Commission on the Red Cross, Red Crescent and Peace.

Honoured by seven National Societies, Leon Stubbings was awarded the Henry Dunant Medal in 1989, the highest distinction given by the Movement.

[2] *Ibid*, p. IX.

activities abroad for the benefit of Allied troops, in close collaboration with the Red Cross Societies of friendly countries.

In his account of the First World War, the author follows step by step the work of volunteers within Australia, of men and women who came forward of their own accord to collect warm clothes and money or to pack food parcels, to care for sick or wounded soldiers and give them moral support or run convalescent homes for them.

Eloquent anecdotes abound. On the Western front the Australian Red Cross helped the British Red Cross Society to establish a fleet of motor ambulances, which totalled 2,500 at the end of 1916. This service, which enabled the Red Cross to transport the wounded quickly to field hospitals or to hospital ships, was particularly efficient. The author writes that "On one occasion a soldier left for the front at 7 a.m. from Charing Cross [in London], reached Calais, was motored to the trenches, wounded within an hour and was back at hospital in England at midnight of the same day"![3]

Secure in the experience gained during the 1914-1918 war, the Australian Red Cross resolutely prepared to face the Second World War. "We must be ready for anything", said Mrs. Alice Creswick, the Principal Commandant of Red Cross Women's Personnel in 1940. "There is a job in the Red Cross for every man, woman and child in Australia and every one of us has a duty to do that job".[4] After large-scale recruitment of volunteers during the period between the two world wars and training them in first aid, home nursing and hospital visiting, in 1940 the Australian Red Cross extended its services; it provided assistance to captured enemy wounded being treated in military hospitals, created the Transport Corps of ambulances and trucks and the Red Cross Cycle Corps, responsible for delivering urgent messages and parcels, and set up social services. Thus when US servicemen left Australia in December 1945, leaving behind war brides and fiancées, the Australian Red Cross, at the request of the American Red Cross, provided assistance and moral support to these women and their children and eased their journey homeward.

These anecdotes should not obscure the important role played by the National Society in the various theatres of operations during the Second World War. The author shows, for example, the persistent efforts of the chairman of the Australian Red Cross Society, Dr. J. Newman Morris, to come to the aid of Australian prisoners in Japanese hands. Since the Japanese government refused to allow the Australian Red Cross to send food and medicines to Australian prisoners of war and internees, Dr. Morris negotiated with the government for long months, but to no avail. It was only via ICRC delegates and Swiss diplomats, to whom he sent money for the prisoners, that they were able to obtain the necessary supplies. During the war in the Pacific the selfless endurance shown by Australian Red Cross volunteers in field

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[3] *Ibid.*, p. 15.

[4] *Ibid*, p. 21.

hospitals in Malaysia and New Guinea was remarkable. The Society's nurses working at the hospital in Torokina were sometimes under considerable strain, fearing the attack of Japanese suicide squads at any moment. Yet this did not stop Lyn Davies and her colleagues from providing the hospital with an icecream-making machine and serving 12 gallons of ice cream per day to some 600 patients.

A large part of the book is devoted to the assistance given by the Australian Red Cross after the war to several Asian and African countries in situations of conflict or hit by natural disasters. During the Korean War, the Red Cross provided food, medicines and hospital supplies to several centres and helped in the exchange of prisoners. It was active in Malaysia in 1945-1946 during the Communist uprisings and organized village clinics, dispensaries and house-to-house visits for the benefit of the people in the communities. In 1957, when the Federation of Malaya Red Cross Society was established, Leon Stubbings was invited to review its organization and structure. Later, the Australian Red Cross gave considerable help to the National Society, meanwhile known as the Malaysian Red Crescent, in coping with the tremendous influx of boat people. The activities of the Australian Red Cross also extended to Nepal, where it set up a primary health care programme in 1980; to Kampuchea, where medical teams have been in place since 1988; and to Viet Nam, where the Red Cross had been providing assistance to the wounded and sick and organizing social services since 1962.

By describing the part played by the Australian Red Cross in a number of protection and assistance programmes undertaken by the ICRC and the League, the author revives memories of major events in the history of the Movement in the last thirty years and its response to them, for instance the Nigeria-Biafra conflict in 1967, the war and drought which hit Somalia in the 1980s, the internal disturbances in Uganda, and the drought in Ethiopia from 1973 to 1975. The extent to which the Australian Red Cross supported the international organizations of the Red Cross and sister National Societies is illustrated by the activities of its medical and surgical teams, its provision of medical supplies and equipment, its social services and intensive fundraising campaigns, not to mention its specific activities to foster the development of sister National Societies, for example in Nepal and Papua New Guinea.

The author devotes some 100 pages to the activities of the Australian Red Cross in the national territory. By alternating facts, anecdotes and statistics, Leon Stubbings draws a vivid picture of the work of the National Society in the fields of health (disease control, health education and hospital services, including such sophisticated services as beauty therapy and music therapy), welfare services, disaster relief and blood transfusion services. He also devotes two chapters to fundraising and to the Junior Red Cross.

The book does not draw to a close without an account of the two Red Cross organizations in Geneva, the League of Red Cross Societies and the ICRC, and the relations of the Australian Red Cross with them. He rightly mentions the important role played by some of its leading members in the

various bodies of the Movement and in the committees and study groups set up to reinforce its structures.

* * *

In this book the reader will not find in-depth analyses of the policy of successive directors of the National Society or learned statements on the development of its structures. Leon Stubbings does not claim to be a historian. He writes, first and foremost, as a Red Cross man — that is who he is; that is how he feels. He leaves the historian the task of writing the definitive history of the Australian Red Cross Society. Leon Stubbings' book is a forceful and fascinating portrayal of the history of an idea, namely that selfless assistance must be given to every suffering individual, and of the work of the volunteers of the Red Cross who have devoted themselves to this idea with verve and perseverance. At the turn of each page, the reader can feel how much Leon Stubbings cares for these volunteers, how fondly he speaks of them or makes their voices heard through excerpts of their correspondence or diaries, how delighted he is to show these photographs of men and women — smiling, caring and at peace with themselves.

The way in which he tells the story reminds us inevitably of Dr. Marcel Junod's *Warrior without Weapons*.[5] It illustrates what Jean-Georges Lossier wrote of solidarity: "So long as Red Cross-mindedness is maintained even the least Red Cross tasks are full of consolation and reward",[6] of personal commitment when we feel that "our acts of aid will take on the moral significance of active protest against violence, barbarity and injustice in every form".[7]

The book is therefore a message of hope. In his brief closing chapter on "The Future", the author relates the concern of some of the Society's leaders that the Australian Red Cross may come to see itself as a large corporate business and not a voluntary organization. But these fears are quickly dispelled by Leon Stubbings' confidence in the value of the Red Cross and the enthusiasm of its volunteers, those "ordinary people with a special ingredient".[8]

Jacques Meurant

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[5] Marcel Junod, *Warrior without Weapons*, ICRC, Geneva, 1982.

[6] Jean-Georges Lossier, *Fellowhip, The Moral Significance of the Red Cross*, La Baconnière, Neuchâtel, 1948, p. 42.

[7] *Ibid*, p. 50.

[8] Leon Stubbings, *loc. cit.*, p. 315.

ADDRESSES OF NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

AFGHANISTAN (Democratic Republic of) — Afghan Red Crescent Society, Puli Hartan, *Kabul*.

ALBANIA (Republic of) — Albanian Red Cross, Rue Qamil Guranjaku No. 2, *Tirana*.

ALGERIA (People's Democratic Republic of) — Algerian Red Crescent, 15 bis, boulevard Mohamed V, *Algiers*.

ANGOLA — Angola Red Cross, Av. Hoji Ya Henda 107, 2. andar, *Luanda*.

ARGENTINA — The Argentine Red Cross, H. Yrigoyen 2068, *1089 Buenos Aires*.

AUSTRALIA — Australian Red Cross Society, 206, Clarendon Street, *East Melbourne 3002*.

AUSTRIA — Austrian Red Cross, Wiedner Hauptstrasse 32, Postfach 39, A-1041, *Vienna 4*.

BAHAMAS — The Bahamas Red Cross Society, P.O. Box N-8331, *Nassau*.

BAHRAIN — Bahrain Red Crescent Society, P.O. Box 882, *Manama*.

BANGLADESH — Bangladesh Red Crescent Society, 684-686, Bara Magh Bazar, Dhaka-1217, G.P.O. Box No. 579, *Dhaka*.

BARBADOS — The Barbados Red Cross Society, Red Cross House, Jemmotts Lane, *Bridgetown*.

BELGIUM — Belgian Red Cross, 98, chaussée de Vleurgat, *1050 Brussels*.

BELIZE — Belize Red Cross Society, P.O. Box 413, *Belize City*.

BENIN (Republic of) — Red Cross of Benin, B.P. No. 1, *Porto-Novo*.

BOLIVIA — Bolivian Red Cross, Avenida Simón Bolivar, 1515, *La Paz*.

BOTSWANA — Botswana Red Cross Society, 135 Independence Avenue, P.O. Box 485, *Gaborone*.

BRAZIL — Brazilian Red Cross, Praça Cruz Vermelha No. 10-12, *Rio de Janeiro*.

BULGARIA — Bulgarian Red Cross, 1, Boul. Biruzov, 1527 *Sofia*.

BURKINA FASO — Burkina Be Red Cross Society, B.P. 340, *Ouagadougou*.

BURUNDI — Burundi Red Cross, rue du Marché 3, P.O. Box 324, *Bujumbura*.

CAMEROON — Cameroon Red Cross Society, rue Henri-Dunant, P.O.B 631, *Yaoundé*.

CANADA — The Canadian Red Cross Society, 1800 Alta Vista Drive, *Ottawa*, Ontario KIG 4J5.

CAPE VERDE (Republic of) — Red Cross of Cape Verde, Rua Unidade-Guiné-Cabo Verde, P.O. Box 119, *Praia*.

CENTRAL AFRICAN REPUBLIC — Central African Red Cross Society, B.P. 1428, *Bangui*.

CHAD — Red Cross of Chad, B.P. 449, *N'Djamena*.

CHILE — Chilean Red Cross, Avenida Santa Maria No. 0150, Correo 21, Casilla 246-V., *Santiago de Chile*.

CHINA (People's Republic of) — Red Cross Society of China, 53, Ganmien Hutong, *Beijing*.

COLOMBIA — Colombian Red Cross Society, Avenida 68, No. 66-31, Apartado Aéreo 11-10, *Bogotá D.E.*

CONGO (People's Republic of the) — Congolese Red Cross, place de la Paix, B.P. 4145, *Brazzaville*.

COSTA RICA — Costa Rica Red Cross, Calle 14, Avenida 8, Apartado 1025, *San José*.

CÔTE D'IVOIRE — Red Cross Society of Côte d'Ivoire, B.P. 1244, *Abidjan*.

CUBA — Cuban Red Cross, Calle Prado 206, Colón y Trocadero, *Habana 1*.

THE CZECH AND SLOVAK FEDERAL REPUBLIC — Czechoslovak Red Cross, Thunovskà 18, *118 04 Prague 1*.

DENMARK — Danish Red Cross, Dag Hammarskjölds Allé 28, Postboks 2600, *2100 København Ø*.

DJIBOUTI — Red Crescent Society of Djibouti, B.P. 8, *Djibouti*.

DOMINICA — Dominica Red Cross Society, P.O. Box 59, *Roseau*.

DOMINICAN REPUBLIC — Dominican Red Cross, Apartado postal 1293, *Santo Domingo*.

ECUADOR — Ecuadorean Red Cross, calle de la Cruz Roja y Avenida Colombia, *Quito*.

EGYPT (Arab Republic of) — Egyptian Red Crescent Society, 29, El Galaa Street, *Cairo*.

EL SALVADOR — Salvadorean Red Cross Society, 17C. Pte y Av. Henri Dunant, *San Salvador*, Apartado Postal 2672.

ETHIOPIA — Ethiopian Red Cross Society, Ras Desta Damtew Avenue, *Addis Ababa*.

FIJI — Fiji Red Cross Society, 22 Gorrie Street, P.O. Box 569, *Suva*.

FINLAND — Finnish Red Cross, Tehtaankatu, 1 A. Box 168, *00141 Helsinki 14/15*.

FRANCE — French Red Cross, 1, place Henry-Dunant, F-75384 *Paris*, CEDEX 08.

GAMBIA — The Gambia Red Cross Society, P.O. Box 472, *Banjul*.

GERMANY — German Red Cross, Friedrich-Erbert-Allee 71, *5300, Bonn 1*, Postfach 1460 (D.B.R.).

GHANA — Ghana Red Cross Society, National Headquarters, Ministries Annex A3, P.O. Box 835, *Accra*.

GREECE — Hellenic Red Cross, rue Lycavittou, 1, *Athens 10672*.

GRENADA — Grenada Red Cross Society, P.O. Box 221, *St George's*.

GUATEMALA — Guatemalan Red Cross, 3.ª Calle 8-40, Zona 1, *Ciudad de Guatemala*.

GUINEA — Red Cross Society of Guinea, P.O. Box 376, *Conakry*.

GUINEA-BISSAU — Red Cross Society of Guinea-Bissau, rua Justino Lopes N.º 22-B, *Bissau*.

GUYANA — The Guyana Red Cross Society, P.O. Box 10524, Eve Leary, *Georgetown*.

HAITI — Haitian National Red Cross Society, place des Nations Unies, (Bicentenaire), B.P. 1337, *Port-au-Prince*.

HONDURAS — Honduran Red Cross, 7.ª Calle, 1.ª y 2.ª Avenidas, *Comayagüela D.M.*

HUNGARY (The Republic of) — Hungarian Red Cross, V. Arany János utca, 31, *Budapest 1367*. Mail Add.: *1367 Budapest 51. Pf. 121.*

ICELAND — Icelandic Red Cross, Raudararstigur 18, 105 *Reykjavik.*

INDIA — Indian Red Cross Society, 1, Red Cross Road, *New Delhi 110001.*

INDONESIA — Indonesian Red Cross Society, Il Jend Gatot subroto Kar. 96, Jakarta Selatan 12790, P.O. Box 2009, *Jakarta.*

IRAN — The Red Crescent Society of the Islamic Republic of Iran, Avenue Ostad Nejatollahi, *Tehran.*

IRAQ — Iraqi Red Crescent Society, Mu'ari Street, Mansour, *Baghdad.*

IRELAND — Irish Red Cross Society, 16, Merrion Square, *Dublin 2.*

ITALY — Italian Red Cross, 12, via Toscana, 00187 *Rome.*

JAMAICA — The Jamaica Red Cross Society, 76, Arnold Road, *Kingston 5.*

JAPAN — The Japanese Red Cross Society, 1-3, Shiba-Daimon, I-chome, Minato-Ku, *Tokyo 105.*

JORDAN — Jordan National Red Crescent Society, P.O. Box 10001, *Amman.*

KENYA — Kenya Red Cross Society, P.O. Box 40712, *Nairobi.*

KOREA (Democratic People's Republic of) — Red Cross Society of the Democratic People's Republic of Korea, Ryonhwa 1, Central District, *Pyongyang.*

KOREA (Republic of) — The Republic of Korea National Red Cross, 32-3Ka, Nam San Dong, Choong-Ku, *Seoul 100-043.*

KUWAIT — Kuwait Red Crescent Society, P.O. Box 1359 Safat, *Kuwait.*

LAO PEOPLE'S DEMOCRATIC REPUBLIC — Lao Red Cross, B.P. 650, *Vientiane.*

LATVIA — Latvian Red Cross Society, 28, Skolas Street, 226 300 *Riga.*

LEBANON — Lebanese Red Cross, rue Spears, *Beirut.*

LESOTHO — Lesotho Red Cross Society, P.O. Box 366, *Maseru 100.*

LIBERIA — Liberian Red Cross Society, National Headquarters, 107 Lynch Street, 1000 *Monrovia 20*, West Africa.

LIBYAN ARAB JAMAHIRIYA — Libyan Red Crescent, P.O. Box 541, *Benghazi.*

LIECHTENSTEIN — Liechtenstein Red Cross, Heiligkreuz, 9490 *Vaduz.*

LITHUANIA — Lithuanian Red Cross Society, Gedimino Ave 3a, 232 600 *Vilnius.*

LUXEMBOURG — Luxembourg Red Cross, Parc de la Ville, B.P. 404, *Luxembourg 2.*

MADAGASCAR — Malagasy Red Cross Society, 1, rue Patrice Lumumba, *Antananarivo.*

MALAWI — Malawi Red Cross Society, Conforzi Road, P.O. Box 983, *Lilongwe.*

MALAYSIA — Malaysian Red Crescent Society, JKR 32 Jalan Nipah, off Jalan Ampang, *Kuala Lumpur 55000.*

MALI — Mali Red Cross, B.P. 280, *Bamako.*

MAURITANIA — Mauritanian Red Crescent, B.P. 344, avenue Gamal Abdel Nasser, *Nouakchott.*

MAURITIUS — Mauritius Red Cross Society, Ste Thérèse Street, *Curepipe.*

MEXICO — Mexican Red Cross, Calle Luis Vives 200, Col. Polanco, *México 10, Z.P. 11510.*

MONACO — Red Cross of Monaco, 27 boul. de Suisse, *Monte Carlo.*

MONGOLIA — Red Cross Society of Mongolia, Central Post Office, Post Box 537, *Ulan Bator.*

MOROCCO — Moroccan Red Crescent, B.P. 189, *Rabat.*

MOZAMBIQUE — Mozambique Red Cross Society, Caixa Postal 2986, *Maputo.*

MYANMAR (The Union of) — Myanmar Red Cross Society, 42, Strand Road, *Yangon.*

NEPAL — Nepal Red Cross Society, Tahachal Kalimati, P.B. 217, *Kathmandu.*

NETHERLANDS — The Netherlands Red Cross, P.O. Box 28120, *2502 KC The Hague.*

NEW ZEALAND — The New Zealand Red Cross Society, Red Cross House, 14 Hill Street, *Wellington 1* (P.O. Box 12-140, *Wellington Thorndon*).

NICARAGUA — Nicaraguan Red Cross, Apartado 3279, *Managua D.N.*

NIGER — Red Cross Society of Niger, B.P. 11386, *Niamey.*

NIGERIA — Nigerian Red Cross Society, 11 Eko Akete Close, off St. Gregory's Rd., P.O. Box 764, *Lagos.*

NORWAY — Norwegian Red Cross, P.O. Box 6875, St. Olavspl. N-0130 *Oslo 1.*

PAKISTAN — Pakistan Red Crescent Society, National Headquarters, Sector H-8, *Islamabad.*

PANAMA — Red Cross Society of Panama, Apartado Postal 668, *Panamá 1.*

PAPUA NEW GUINEA — Papua New Guinea Red Cross Society, P.O. Box 6545, *Boroko.*

PARAGUAY — Paraguayan Red Cross, Brasil 216, esq. José Berges, *Asunción.*

PERU — Peruvian Red Cross, Av. Caminos del Inca y Av. Nazarenas, Urb. Las Gardenias — Surco — Lima (33) Apartado 1534, *Lima 100.*

PHILIPPINES — The Philippine National Red Cross, Bonifacio Drive, Port Area, P.O. Box 280, *Manila 2803.*

POLAND (The Republic of) — Polish Red Cross, Mokotowska 14, 00-950 *Warsaw.*

PORTUGAL — Portuguese Red Cross, Jardim 9 Abril, 1 a 5, 1293 *Lisbon.*

QATAR — Qatar Red Crescent Society, P.O. Box 5449, *Doha.*

ROMANIA — Red Cross of Romania, Strada Biserica Amzei, 29, *Bucarest.*

RUSSIAN FEDERATION — Red Cross Society of the Russian Federation, Kuznetski Most 18/7, 103031 *Moscow* GSP-3.

RWANDA — Rwandese Red Cross, B.P. 425, *Kigali.*

SAINT KITTS AND NEVIS — Saint Kitts and Nevis Red Cross Society, Red Cross House, Horsford Road, *Basseterre*, St. Kitts, W. I.

SAINT LUCIA — Saint Lucia Red Cross, P.O. Box 271, *Castries St. Lucia*, W. I.

SAINT VINCENT AND THE GRENADINES — Saint Vincent and the Grenadines Red Cross Society, P.O. Box 431. *Kingstown.*

SAN MARINO — Red Cross of San Marino, Comité central, *San Marino.*

SAO TOME AND PRINCIPE — Sao Tome and Principe Red Cross, C.P. 96, *São Tomé.*

SAUDI ARABIA — Saudi Arabian Red Crescent Society, *Riyadh 11129.*

SENEGAL — Senegalese Red Cross Society, Bd Franklin-Roosevelt, P.O.B. 299, *Dakar.*

SIERRA LEONE — Sierra Leone Red Cross Society, 6, Liverpool Street, P.O.B. 427, *Freetown.*

SINGAPORE — Singapore Red Cross Society, Red Cross House 15, Penang Lane, *Singapore 0923.*

SOLOMON ISLANDS — The Solomon Islands Red Cross Society, P.O. Box 187, *Honiara.*

SOMALIA (Democratic Republic of) — Somali Red Crescent Society, P.O. Box 937, *Mogadishu.*

SOUTH AFRICA — The South African Red Cross Society, Essanby House 6th Floor, 175 Jeppe Street, P.O.B. 8726, *Johannesburg 2000.*

SPAIN — Spanish Red Cross, Rafael Villa, s/n, (Vuelta Ginés Navarro), El Plantío, 28023 *Madrid.*

SRI LANKA (Dem. Soc. Rep. of) — The Sri Lanka Red Cross Society, 106, Dharmapala Mawatha, *Colombo 7.*

SUDAN (The Republic of the) — The Sudanese Red Crescent, P.O. Box 235, *Khartoum.*

SURINAME — Suriname Red Cross, Gravenberchstraat 2, Postbus 2919, *Paramaribo.*

SWAZILAND — Baphalali Swaziland Red Cross Society, P.O. Box 377, *Mbabane.*

SWEDEN — Swedish Red Cross, Box 27 316, *102-54 Stockholm.*

SWITZERLAND — Swiss Red Cross, Rainmattstrasse 10, B.P. 2699, *3001 Berne.*

SYRIAN ARAB REPUBLIC — Syrian Arab Red Crescent, Bd Mahdi Ben Barake, *Damascus.*

TANZANIA — Tanzania Red Cross National Society, Upanga Road, P.O.B. 1133, *Dar es Salaam.*

THAILAND — The Thai Red Cross Society, Paribatra Building, Central Bureau, Rama IV Road, *Bangkok 10330.*

TOGO — Togolese Red Cross, 51, rue Boko Soga, P.O. Box 655, *Lomé.*

TONGA — Tonga Red Cross Society, P.O. Box 456, *Nuku' Alofa, South West Pacific.*

TRINIDAD AND TOBAGO — The Trinidad and Tobago Red Cross Society, P.O. Box 357, *Port of Spain,* Trinidad, West Indies.

TUNISIA — Tunisian Red Crescent, 19, rue d'Angleterre, *Tunis 1000.*

TURKEY — The Turkish Red Crescent Society, Genel Baskanligi, Karanfil Sokak No. 7, 06650 Kizilay-*Ankara.*

UGANDA — The Uganda Red Cross Society, Plot 97, Buganda Road, P.O. Box 494, *Kampala.*

UNITED ARAB EMIRATES — The Red Crescent Society of the United Arab Emirates, P.O. Box No. 3324, *Abu Dhabi.*

UNITED KINGDOM — The British Red Cross Society, 9, Grosvenor Crescent, *London, S.W.1X. 7EJ.*

USA — American Red Cross, 17th and D Streets, N.W., *Washington, D.C. 20006.*

URUGUAY — Uruguayan Red Cross, Avenida 8 de Octubre 2990, *Montevideo.*

U.S.S.R. — The Alliance of Red Cross and Red Crescent Societies of the U.S.S.R., I, Tcheremushkinskii proezd 5, *Moscow, 117036.*

VENEZUELA — Venezuelan Red Cross, Avenida Andrés Bello, N.º 4, Apartado, 3185, *Caracas 1010.*

VIET NAM (Socialist Republic of) — Red Cross of Viet Nam, 68, rue Ba-Trièu, *Hanoi.*

WESTERN SAMOA — Western Samoa Red Cross Society, P.O. Box 1616, *Apia.*

YEMEN (Republic of) — Yemeni Red Crescent Society, P.O. Box 1257, *Sana'a.*

YUGOSLAVIA — Red Cross of Yugoslavia, Simina ulica broj 19, *11000 Belgrade.*

ZAIRE — Red Cross Society of the Republic of Zaire, 41, av. de la Justice, Zone de la Gombe, B.P. 1712, *Kinshasa.*

ZAMBIA — Zambia Red Cross Society, P.O. Box 50 001, 2837 Saddam Hussein Boulevard, Longacres, *Lusaka.*

ZIMBABWE — The Zimbabwe Red Cross Society, P.O. Box 1406, *Harare.*

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