



SALA STAMPA DELLA SANTA SEDE
BOLLETTINO

HOLY SEE PRESS OFFICE BUREAU DE PRESSE DU SAINT-SIÈGE PRESSEAMT DES HEILIGEN STUHLS
OFICINA DE PRENSA DE LA SANTA SEDE SALA DE IMPRENSA DA SANTA SÉ
دار الصحافة التابعة للكرسى الرسولي BIURO PRASOWE STOLICY APOSTOLSKIE

N. 0543

Mercoledì 26.09.2012

INTERVENTO DELLA SANTA SEDE ALLA 67a SESSIONE ORDINARIA DELL'ASSEMBLEA GENERALE DELL'ONU SULLO STATO DI DIRITTO

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Pubblichiamo di seguito l'intervento che il Segretario per i Rapporti con gli Stati e Capo Delegazione della Santa Sede, S.E. Mons. Dominique Mamberti, ha pronunciato lunedì 24 settembre nella sede delle Nazioni Unite a New York, nel corso di una riunione sullo Stato di Diritto a livello nazionale e internazionale alla 67^a Sessione Ordinaria dell'Assemblea Generale dell'ONU:

• **INTERVENTO DI S.E. MONS. DOMINIQUE MAMBERTI**

Mr President,

As the Secretary-General's Report (A/66/749, 1) rightly notes, humanity currently faces a situation full of challenges and difficulties. On the one hand, there is always surprising and rapid scientific progress, such as greater access for many to education and to economic well-being, as well as the emergence of new actors and world powers; on the other hand, the world financial crisis, which is worsening some humanitarian and environmental emergencies, does not seem yet to be over, and may even herald new and dangerous conflicts. In this context, the effective spread of the rule of law by every means becomes a particularly urgent task for a just, equitable and effective world governance.

Echoing the preamble of the Universal Declaration of Human Rights, where it is stated that, "It is essential [...] that human rights should be protected by the rule of law", the Secretary-General's Report and the Declaration adopted this morning by this Assembly start from the fundamental affirmation that all physical persons, private and public institutions, states and international organizations must be subject to law that is "just, fair and equitable" (Declaration). These documents reaffirm the unbreakable link between the rule of law and respect for human rights, while underlining at the same time that, in order to govern lawfully, constitutional rules regarding legislative activity, the judicial control of laws and of executive power are necessary, as well as transparency in acts of governance and the existence of public opinion capable of expressing itself freely. Following this broad tendency, the application of the rule of law regards all spheres of social life.

While expressing its own appreciation of these affirmations, the Holy See wishes above all to underline the need to go beyond a simple fixation on procedures which will guarantee a democratic origin for norms and a basic consensus on the part of the international community, in order to bring up-to-date and make effective the substantial principles of justice sanctioned by the preamble of the United Nations Charter and by the Universal Declaration of Human Rights. Here we ought to list: the inalienable dignity and value of every human person, prior to any law or social consensus; the equality of the rights of nations; and respect for treaties and other sources of international law. Formal respect on its own is insufficient to guarantee an effective national and international rule of law. Only by going beyond such a fixation can national and international institutions avoid being manipulated or coerced into interfering in the lives of individual citizens.

The growing complexity of daily life also determines, almost inevitably, a proliferation of norms and procedures, susceptible in their turn to multiple applications and interpretations even to the point of contradicting each other and placing the certainty of law itself in jeopardy. Such an outcome empties the rule of law of any practical consistency. The fragmentation of juridical phenomenology sometimes then becomes a mirror and a symptom of partial or excessively analytical anthropological visions which make weaker and less certain the unified and integral concept of the person. Juridical disorder on the one hand and anthropological reduction on the other compromise the ultimate and essential goal of all law: to promote and to guarantee the dignity of the human person.

Where there is a lack of objective criteria as a basis and guide for legislative activity, the affirmation of the rule of law is reduced to a sterile tautology, to a mere "rule of rules" (cf. BENEDICT XVI, *Speech at the Bundestag*, 22 September 2011); and the creation of new laws, although produced by systems which may be described as democratic, may easily become an expression of the will of a few. In order to avoid such perilous deviations, the rule of law must be based upon a unified and comprehensive vision of man, appreciative of the complexity and the richness how people relate to each other, and granting certainty and stability to juridical relationships created within communities by means of a broadly harmonic ensemble of rules and institutions.

The rule of law is also put at risk when it is equated with a legalistic mentality, with a formal and uncritical adherence to laws and rules, in an attitude which can even paradoxically degenerate into a means of abusing human dignity and the rights of individuals, communities and states, as happened during the totalitarian regimes of the 20th century.

Furthermore, in the phrase "rule of law", the concept "law" should be understood as "justice" – what is just, what is a just thing, an element which is proper and inalienable to the nature of every human being and of fundamental social groups, like the family and the state. So how should what is "just", or a "just thing", be understood? In terms of the many underlying anthropological issues, what is right and may be given the force of law is no longer self-evident. The question of how to recognize what is truly right and thus to serve justice when framing laws has never been simple, and today in view of the vast extent of our knowledge and our capacity, it has become still harder (*ibid.*). The achievements and declarations on human rights, in particular those enshrined in the Universal Declaration of Human Rights, offer us important points of reference in that direction, but they are not of themselves sufficient unless they are read in the spirit in which they were formulated and in their historical context.

Indeed, the preamble and the first article of the United Nations Charter, together with the Universal Declaration of Human Rights, are the result of a lengthy juridical and political process, which began with the encounter between the theoretical and philosophical reasoning of Greek culture and the juridical and practical reasoning of the Romans, to which were added other elements, such as Judaeo-Christian wisdom, the laws of other European peoples, canon law and its developments, the mediaeval and Renaissance work of Jewish, Arab and Christian philosophers and lastly contribution of the thinking of the Enlightenment and of the political developments due to the revolutions of the 18th century. Thus was created a statute of the fundamental rights of man, recognizable also by non-European and non-Mediterranean cultures, which, after the tragic wars of the 20th century, was adopted by the international community as a fundamental juridical touchstone for the recognition of the legitimacy of any juridical or political activity. It is only in the light of this complex, rich and intricate edifice, which is simultaneously historical, juridical and philosophical, that the inviolable and inalienable rights of the human person can and must be appreciated as the essence of the law, and to which the rules must

refer.

In its second paragraph, the preamble of the United Nations Charter underlines the need to "reaffirm faith in fundamental human rights". The word "faith" usually indicates the transcendent, something which does not depend on feelings, concessions, recognitions, or accords. It may however be grasped by philosophical reasoning, a process where we ask ourselves about the meaning of human existence and of the universe and about what offers a true and solid basis to the rule of law, insofar as we are capable of grasping the existence of human nature which is prior and superior to all social theories and constructions, which the individual and communities must respect and must not manipulate at will. Man is not merely self-creating freedom. Man does not create himself. He is intellect and will, but he is also nature, and his will is rightly ordered if he respects his nature, listens to it and accepts himself for who he is, as one who did not create himself. In this way, and in no other, is true human freedom fulfilled (*ibid.*), and it is only in this way that we can speak truly of the rule of law. Instead, as explained above, positivistic reasoning excludes and is unable to grasp anything beyond what is functional, and can at best give birth to the "rule of rules", a system of norms and procedures built merely upon pragmatic and utilitarian reasons; a tautology which, insofar as it is deprived of permanent values, is liable to manipulation. On the other hand, faith in the transcendental dignity of the human person, or better recognition of his transcendence, becomes the fundamental and indispensable key to understanding the rights codified in the founding documents of the United Nations and a sure guide for their effective care and promotion.

It is well known that, at the international level, there are interest groups present who, by means of formally legitimate procedures, are impacting on the policies of states in order to obtain multilateral norms which not only cannot serve the common good but which, under the guise of legitimacy, are in fact an abuse of norms and of international recommendations, as has been seen in the recent financial crisis.

Similarly, the attempt to promote, in the name of democracy, a materialistic vision of the human person united to a mechanistic and utilitarian vision of law, is also well known. It is here that, notwithstanding the apparent rule of law, the will of the powerful prevails over that of the weakest: children, the unborn, the handicapped, the poor, or as was seen in the financial crisis, those deprived of the right information at the right time.

On the contrary, the transcendent value of human dignity offers a secure basis to the rule of law because it corresponds to the truth about man as a creature of God's making; while at the same it allows the rule of law to pursue its true purpose, that is, the promotion of the common good. These conclusions lead to the unavoidable premise that the right to life of every human being – in all stages of biological development, from conception until natural death – be considered and protected as an absolute and inalienable value, prior to any state's existence, to any social grouping and independent of any official recognition.

To this basis of the rule of law should be added all the other components of human rights, without distinction, as envisioned by the principle of indivisibility, according to which "the integral promotion of every category of human rights is the true guarantee of full respect for each individual right" (JOHN PAUL II, *World Day of Peace Message 1999*, 3). This is a principle which in turn is linked to universality, thus making it possible to say that the integral promotion of all people, without exception as to time or place, is the true guarantee of the full respect for everyone.

All other fundamental human rights are evidently connected to human dignity, as the basic norm, and thus to the rule of law, including the right to a father and a mother, the right to establish and raise a family, the right to grow up and to be educated in a natural family, the right of parents to educate their children, the right to work and to equitable redistribution of the wealth generated, the right to culture, to freedom of thought and to freedom of conscience.

Among these rights, freedom of religion merits a particular mention. The response to the great questions of our existence, man's religious dimension, the ability to open oneself to the transcendent, alone or with others, is an essential part of each person and to some degree is identifiable with his or her very liberty. The "right to seek the truth in matters religious" (VATICAN COUNCIL II, *Dignitatis Humanae*, 3), without coercion and in full freedom of conscience, must not be treated by states with suspicion or as something merely to permit or tolerate. On the

contrary, the guarantee of such freedom, apart from its actual use, is an inalienable hinge of the rule of law for believer and non-believer alike.

Mr President,

Faced as we are by challenges old and new, the calling of the High-Level Meeting on the Rule of Law is an important opportunity to reaffirm the will to find political solutions applicable at the global level with the aid of a juridical order solidly based upon the dignity and nature of humanity, in other words, upon the natural law. This is the best path to follow if we wish to realize the grand designs and purpose of the United Nations Charter and the Universal Declaration of Human Rights, which remain relevant by means of various treaties on human rights, disarmament, and the codification of the great principles of international law and in the gathering and progress made in the norms of humanitarian law. It will be possible to advance if, as well as working through ever more specialized organs, including in economic and financial matters, the United Nations remains a central point of reference for the creation of a true family of nations, where the unilateral interest of the most powerful ones does not trump the needs of the weaker ones. Such will be possible if legislation at the international level is marked by respect for the dignity of the human person, beginning with the centrality of the right to life and to freedom of religion.

Thank you, Mr President.

[01228-02.01] [Original text: English]
