HUMAN DIGNITY AND HUMANITARIAN LAW
THE ROLE OF RELIGIONS

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Human Dignity and War: Christian Churches Perspective

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Your Excellencies,

Your Eminences,

Friends,

Introduction

Human dignity has been at the centre of debates in most international spheres for quite some time. The adoption of the Universal Declaration of Human Rights (UDHR), in the aftermath of the Second World War, was a decisive milestone with regard to the protection and promotion of human dignity, human rights and fundamental freedoms. This Declaration finds its roots in the strong desire for peace of the Member States of the United Nations, and has been commonly adopted despite their differences in ideologies, political systems, religious and cultural backgrounds. In its Preamble, the Declaration starts by recognising that the "inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world" and links human dignity to the recognition of fundamental rights towards which every human being aspires – the right to life, liberty and security of individuals, the right to seek and to enjoy in other countries asylum from persecution, the right to freedom of opinion and expression, the right to freedom from torture and degrading treatment, etc. to name only a few. Fifty years after its adoption, the Declaration still remains the Magna Carta for all humanity. Although it is not a legally binding document, it has been the source of inspiration for many human rights instruments which together have created a benchmark for state conduct regarding human rights and humanitarian protection.

The topic under study – namely "Human dignity and war" – being quite broad, I will limit this presentation to the particular aspect of the protection of vulnerable civilian populations and their human dignity in situations of armed conflicts. But before going into further discussions, let me briefly present you the organisation I am representing today. The World Council of Churches (WCC from now on) is a fellowship of over 340 member churches all around the world, representing over 600 million people in more than 115 countries. It is composed of several Christian denominations such as most of the Protestant churches (Lutherans, Methodists, Baptists, Mennonites, Quakers, Reformed, etc.), churches of the Orthodox family and the Anglican Church. Some denominations such as the Pentecostal movements are not represented in the WCC.

As a result of the changing geopolitical patterns in the late 1980s – early 1990s, characterised by the end of the cold war, an increasing number of domestic wars (Somalia, Rwanda, Bosnia, Kosovo, etc.), the erosion of sovereignty, the need to contain refugee flows resulting from these civil wars, the need to protect internally displaced people, etc., the debate on protection and on humanitarian intervention for assistance purposes interventions for humanitarian purposes became a burning topic of the international community, especially when foreign aid to populations in real humanitarian need was blocked for political reasons in several countries.

After a long and fruitful process of international negotiations, on 8 December 1988, the General Assembly (GA) of the United Nations adopted resolution 43/131 on "Humanitarian assistance to victims of natural disasters and similar emergency situations". This resolution was shortly followed on 14 December 1990 by GA resolution 45/100 which introduced the concept of relief corridors, concept that became a key element in the evolution and development of the normative process of international law pertaining to humanitarian intervention. These two resolutions form the initial legal cornerstone of humanitarian intervention and assistance to populations in need.

However, their approach being mainly from the perspective of the intervening State, they often created uneasiness on the side of the intervened peoples, notably because the

language of the "right" or "duty to intervene" is intrinsically more confrontational. After a long series of consultations and negotiations among the various actors of the international community, the new concept of Responsibility to Protect was introduced by the International Commission on Intervention and State Sovereignty (ICISS) in its December 2001 report. The ICISS report is a landmark document, because it introduced a significant normative change regarding the protection of civilians. The change in perspective operated by the concept of Responsibility to Protect ("R2P", as it is commonly referred to) is that sovereignty is redefined as a duty-bearer status, rather than as an absolute power. In other words, states can no longer hide behind the pretext of sovereignty to perpetrate human rights violations against their citizens and live in total impunity. Rather, sovereignty has been reconceived in such a way that states have an obligation to protect their citizens and ensure them their basic rights by preserving their dignity, well-being and safety.

At the same time and on another level, the World Council of Churches (WCC), in its 2001 study paper on "The Protection of Endangered Populations in Situations of Armed Violence: Toward an Ecumenical Ethical Approach", expressed reservations regarding the concept of "humanitarian intervention" and argued in favour of re-shaping and clarifying the terms of the debate "in a way that would emphasise the fundamental ethical issues at stake". This lead the WCC to focus its work on the "protection of endangered populations", with a particular emphasis on prevention and just peace-making.

In a meeting held in New York City in 1999, UN General Secretary Kofi Annan asked the WCC General Secretary, Rev. Dr. Konrad Raiser, to contribute to the international debate on "humanitarian intervention" by bringing a theological and ethical perspective on the issue of intervention for humanitarian purposes. In April 2005, the Commission of the Churches on International Affairs (CCIA) of the WCC organised a high-level seminar aimed at advising the WCC on this issue both from a theological and ethical stand, as well as from political perspectives. The outcome of this event has been compiled in a publication entitled "The responsibility to protect: ethical and theological reflections".

The use of force for humanitarian purposes has been quite a controversial issue among the WCC member churches. Given their different history and backgrounds, while some may

argue that in particular cases, and when a number of criteria are met, the use of force may be justified – the "just war" theory, others strongly oppose any argument justifying the resort to the use of force. These different perspectives will be briefly developed at a latter stage of the presentation.

Our reflection today will therefore firstly attempt to focus on the redefinition of sovereignty as implying responsibility (I), and will then, in a second part, develop more on the different elements constituting the R2P concept (II).

I-   An extensive definition of sovereignty as responsibility

The concept of the Responsibility to Protect (R2P) holds that national governments clearly have the primary and sovereign responsibility to provide for the safety of their people. State sovereignty implies responsibility, and the primary responsibility to protect and serve the welfare of people lies with the state itself. However, when there is egregious failure to carry out that responsibility, whether by neglect, lack of capacity, or direct assaults on the population, the international community has the duty to assist peoples and states, and in extreme situations, to intervene in the internal affairs of the state in the interests and safety of the people.

Hence, other than a shift of terminology from rights to responsibilities, from intervention to protection, and from the interests of states to the concerns of the people, R2P proposes a new interpretation of sovereignty that reflects the broadening of the concept of human rights. The ICISS report has therefore successfully overcome the principle of non-intervention (art. 2.7 of the UN Charter), which had for a long time blocked the efforts of the UN to provide effective security for all peoples in dire humanitarian need. In so doing, the issue of humanitarian assistance is analysed mainly from the viewpoint of those seeking support, rather than the State.

In this globalised world in which we live, threats to human security have multiplied and are more and more interdependent; thus many can no longer be addressed effectively through the efforts of individual states and governments acting on their own. "Since (…) the threats to human security – and by implication also to state security – extend beyond the borders of

individual states and their capacity for responsible action, the responsibility to protect becomes an obligation for the international community as a whole. The threats of poverty, infectious disease and environmental degradation, as well as the threats of terrorism, the proliferation of small arms, of human trafficking and organized crime require transnational cooperation within the framework of a collective security strategy as advocated by the HLP. In this perspective development is to be considered as the indispensable foundation for a collective security system that takes prevention seriously[1]".

It should be stressed that R2P finds its full meaning when dealing with vulnerable populations at risk that have become the victims of non-international armed conflicts, and are caught up within the borders of the State. The first victims of internal conflicts are often unarmed civilians – especially women and children, elderly people, people with disabilities who cannot flee away from the conflict, minority groups persecuted because of their ethnic, religious or national affiliation refugees and internally displaced people (IDPs). When the State can no longer provide protection to these groups of people, the principle of non-intervention mentioned earlier yields to the responsibility of the international community to protect them.

The responsibility to protect is concept that encompasses three fundamental elements: the responsibility to prevent, the responsibility to react and the responsibility to rebuild.

II-   Elements of the Responsibility to protect

R2P is a three-fold concept which include the following:

A.   <u>The responsibility to Prevent</u>

Prevention is the minimum common denominator that the WCC member churches have agreed upon. For WCC member churches, prevention of severe threats to human security is the primary form of exercising the responsibility to protect. In the medical profession, it is often said that prevention is better than cure. The same can be said in the case of the

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[1] Rev. Dr. Konrad Raiser, "The ethics of protection", in " The responsibility to protect: ethical and theological reflection", WCC publication, 2005, p.12

international political arena. Hence, from the WCC perspective, prevention is the primary and most important dimension of R2P.

Effective prevention means targeted action on grass-root causes that can precipitate to internal conflict, before they put civilian populations at risk. Prevention implies that special sensitivity and understanding of the needs of people should be developed, and that early warning mechanisms should be coordinated at all levels – local, national, regional and international. At the local level, civil society, UN and its specialized agencies, the media, churches and other faith communities which are rooted in the daily spiritual and physical realities of people, etc. ought to work together to detect and prevent elements of fragility that could subsequently lead to putting populations in danger. At the national level, governments should self-monitor emerging threats, alert authorities and agencies of such emerging threats, collaborate with civil society and faith communities at large in assessing conditions of insecurity, engage in national dialogues – including with non-state actors, deal with emerging problems by searching for solutions, and develop national action plans.

To quote the WCC statement on the Responsibility to Protect that was adopted on February 2006 at its 9th Assembly in Porto Alegre, "the key elements of human security are economic development (meeting basic needs), universal education, respect for human rights, good governance, political inclusion and power-sharing, fair trade, control over the instruments of violence (small arms in particular), the rule of law through law-biding and accountable security institutions, and promoting confidence in public institutions. On the other hand, the more immediate preventive attention to emerging security crises must include specific measures designed to mitigate immediate insecurities and to instil the reliable hope that national institutions and mechanisms, with the support of an attentive international community, will remain committed to averting a crisis of human insecurity"[2].

However, without effective political will to act before a crisis breaks out, all these measures will remain *lettre morte*. There must be effective and meaningful political will to apply these measures. Hence, preventive efforts require adequate resources, competence and commitments for their full realisation. National policies, as well as regional and international

measures, should integrate conflict prevention measures. It is only then that the mindset of the international community will move to a culture of prevention.

B.   The responsibility to react

It is only when prevention has failed that the responsibility to react to cases of acute and compelling humanitarian crisis steps in. It is essential to underline here that not all forms of reaction involve the use of force. As much as possible, coercive measures short of military action, such as for instance sanctions (political, economic or diplomatic), arms embargoes, ending military cooperation, international prosecution, sending of unarmed observers, etc. should be first tried. Economic sanctions must be carefully designed to target decision makers, and not add the burden on innocent civilian populations. Diplomatic sanctions can take the form of travel restrictions for specific leaders, expulsion of diplomatic representatives, etc.

It is only in extreme cases and in last resort that military intervention for humanitarian purposes should be considered, after a number of pre-defined criteria have been met. The ICISS report explains that "military intervention for human protection purposes must be regarded as an exceptional measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

A. large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation, or

B. large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape[3]".

In addition, the ICISS report lists five precautionary criteria to be met cumulatively at the onset of an intervention. In other words, if one of these criteria is not met, the armed intervention will not be legal.

-    **Right intention:** "The primary purpose of the intervention (…) must be to halt or avert human suffering.[4]" The primary objective of an intervention should be the protection of

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[2] « The responsibility to protect. Vulnerable populations at risk », WCC Statement adopted on February 2006 at its 9th Assembly in Porto Alegre

[3] "The responsibility to protect", ICISS report, 2001, page XII

the populations at risk. The aim is not to defeat and to liquidate an enemy, but rather to stop the atrocities and protect those who have no means of protecting themselves (refugees, IDPs, and notably women, children, elderly and disabled people). The resort to force should be aimed at restoring peace and justice, and must never become an end in itself.

-       **Last resort:** It is only when all other non-military options for the prevention and peaceful resolution of the crisis have been exhausted that the use of force can be considered. By all means, the resort to force must be and must remain and extraordinary and exceptional measure.

-       **Proportional means:** "The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question[5]." The likely outcome and costs of the intervention should not be higher than the value of what is being defended.

-       **Reasonable prospects:** "There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction[6]." The aim is to stop the harm, not to intensify the conflict or worsen the situation. The armed forces should adopt a defensive and protective stance and must minimize the risk of escalation of the conflict.

-       **Right Authority:** "There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has. Security Council authorization should in all cases be sought prior to any military intervention action being carried out.[7]" In other words, any unilaterally decided armed intervention, be it for humanitarian purposes, that has not been validated by the Security Council (SC) is not legal. Hence, if one member State of the SC decides to put its veto on the decision to resort to force, then the intervention cannot take place. This means that the SC serves as a security check for any excessive and *hors-la-loi* use of force, as much as it can become an obstacle when the resort to force can be really necessary.

Basically, the responsibility to react is not about defeat or victory: it should take the form of an international police force that will intervene to stop the harm caused on innocent

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[4] Ibid. 3
[5] Ibid. 3
[6] Ibid. 3

civilian populations in dire need. In other words, it should have the form of a pre-emptive war, meaning a war that will prevent further atrocities. If it goes beyond this mandate, the intervention will lose its original meaning – i.e. to rescue populations facing atrocities. At this stage, it is crucial to distinguish between preventive and pre-emptive wars. Pre-emptive wars are designed to respond to very close threats. A preventive war alludes to distant and speculative threats, whereas a pre-emptive war refers to an imminent, close and near threat that should be dealt with. Distant dangers can be avoided by diplomacy, mediation, or other peaceful means of conflict resolution.

However, it should be noted that among the WCC member churches, the resort to force, even for humanitarian purposes is not a commonly shared idea. While some churches believe that the resort to force can be justified when it can alleviate or stop large-scale human rights violations, others can only support intervention by creative, peaceful and non-violent means. This controversy among the WCC's constituencies has prevailed since the early beginnings of the Ecumenical Movement. During the 1948 WCC first Assembly in Amsterdam, the Assembly restated the opposing positions:

"a) There are those who hold that, even though entering a war may be a Christian's duty in particular circumstances, modern warfare, with its mass destruction, can never be an act of justice.

b) In the absence of impartial supra-national institutions, there are those who hold that military action is the ultimate sanction of the rule of law, and that citizens must be distinctly taught that it is their duty to defend the law by force if necessary.

c) Others, again, refuse military service of all kinds, convinced that an absolute witness against war and for peace is for them the will of God, and they desire that the Church should speak to the same effect."

With regard to the "just war" theory, the original intent of this doctrine was to limit and reduce the recourse to war as a legitimate means of resolving inter-state conflict. It "is a body of ethical reflection on the justifiable use of force which aims at *limiting* the resort to force by clarifying *when* force may be used (*jus ad bellum*) and *restraining* damage done by military forces during war (*jus in bello*). In other words the just-war tradition begins with a strong presumption

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[7] Ibid. 3

against the use of force and establishes the conditions when this presumption may be overridden for the sake of preserving the kind of peace which protects human dignity and human rights. The name is misguiding. It sounds like a 'licence to kill'. It should rather be named something like 'tradition on legitimate or justifiable use of coercive power in international affairs'[8]."

As for the Orthodox Christian families, there is no unique position on the use of force. There is a strong pacifist stance which identifies itself with a non-violent response to aggression with Christ's voluntary assumption of suffering and non-retaliation in the face of his torture and execution. "Co-existing with this pacifist tradition is another perspective which too has roots in the pre-Constantinian church, and which developed in the context of the life of the church of the Byzantine Empire. The so-called "justifiable war" tradition acknowledges the occasional necessity of war (especially for defensive purposes), and of the necessity of the participation of Christians in the armed forces of a state. At the same time, this tradition also recognizes the evil of war, and requires penance of any Orthodox responsible for killing another human being. There is no question here of a "just" war, much less any kind whatsoever of "holy war." Rather, war is seen as the evil it is, and the occasion for great sin[9]".

With regard to the Historic Peace Churches, the resort to force is by no means justifiable. All non-violent means to resolve a conflict should be used. At this stage, it is important to note that during the 9th Assembly of the WCC, the WCC member churches agreed on the following point: "In calling on the international community to come to the aid of vulnerable people in extraordinary suffering and peril, the fellowship of churches is not prepared to say that it is never appropriate or never necessary to resort to the use of force for the protection of the vulnerable." In other words, the use of force for humanitarian purposes cannot be totally excluded.

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[8] Dr. Sturla J. Stålsett, "Notes on the just war tradition", in " The responsibility to protect: ethical and theological reflection", WCC publication, 2005, p.28

C.   The responsibility to rebuild

The responsibility to rebuild consists in re-establishing and strengthening rule of law and empowering those recognized as credible leaders in the community to rebuild a viable order and transfer the responsibility to them. Recovery, reconstruction and reconciliation are essential elements of the responsibility to rebuild. Perpetrators of human rights violations should be brought to justice, thus putting an end to impunity. It is important to set up new structures of accountability in the settlement of conflicts and disputes so as to avoid new confrontation. It is important to promote disarmament, demobilization and reintegration (DDR) programmes, and help in rebuilding new national police and armed forces.

With regard to development, economic growth and sustainable development have to be promoted. Local actors should actively participate in the economic recovery of the state. Economic growth and well-being bring along increased security for the people. The final aim is to improve the root causes that brought about the conflict, and restore good governance and stability. In so doing, international actors must encourage local ownership.

One aspect where the churches, in collaboration with other faith communities, civil society, etc. can play a decisive role is with regard to processes of reconciliation. Churches can play a great deal in maintaining sustained reconciliation processes that can avoid further revival of conflicts, and lead towards the eradication of the root causes of the conflict. Churches' role is decisive in healing the memories of the victims in order to help them cope up with their traumatic experiences, deal with their past and empower them (mentally and spiritually) to embrace their future with a more optimistic approach. Resilience is a key element for the rebuilding of a society.

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[9] Dr. Grant White, "Orthodox Christian positions on war and peace", in " The responsibility to protect: ethical and theological

Conclusion

I now come to the conclusion of this presentation with two questions: What can churches do? What is the way forward?

Churches, and to a large extent other faith communities, being rooted in the daily physical realities of people, can play a major role in trust-building and truth finding processes in many contexts of crisis, such as truth and reconciliation commissions, trauma-healing centres, providing safe meeting places for adversarial groups, etc. Churches have a responsibility to accompany people in need of protection in good as well as in bad times. Such ministry of accompaniment "does not begin when the community reaches a point of collapse, nor does it end after stability has been restored[10]". The local congregation being embedded in the community at the grass-root levels, it is logically the primary access point of the community, and is therefore expected to be the eyes and ears of the church when situations of crisis arise.

On another level, political will, be it at the domestic and the international levels, is a key factor for the effective application, implementation and survival of the Responsibility to Protect. Governments have to be able to go beyond their own political or national agendas to prevent and end human suffering. Also, it should be stressed that if conflicts can be successfully prevented on time before they escalate further, in the long run it would be less costly for all parties at stake, for reaction is more costly than prevention.

I thank you.

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reflection", WCC publication, 2005, p. 39
[10] Shirley DeWolf, "A responsibility to protect: some considerations for the church", in " The responsibility to protect: ethical and theological reflection", WCC publication, 2005, p. 111