

BRIEF NOTES ON THE “JUST WAR”’S THEORY ACCORDING TO FRANCISCO SUÁREZ

Algunas notas sobre la teoría de la “guerra justa” en Francisco Suárez

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Abstract

This paper analyzes the principal themes concerning the doctrine of just war (*bellum justum*) in the thought and the writings of Francisco Suárez, who, as is well known, has contributed significantly to the birth of jurisprudence inter nationes characteristic of the modern period. The deeper study of this author can offer important points for the drawing up of a response to the question today whether there can be a “just war”, and whether “a humanitarian war” can or even must be conducted. In his writings Suárez, in fact, carefully dealt among other things with the theme of the “licity” and necessity or otherwise of a preventive military offensive to come to the aid of the innocent, as well as the question of the possibility of an eventual “just” war for both sides in the conflict. Within the Christian tradition the reflection concerning war and its “licitness” could already draw upon the fundamental contributions offered by the various “classics” of thought, among whom Augustine, Isidore of Seville and Thomas Aquinas. Nevertheless, in the sixteenth century both Francisco de Vitoria and Francisco Suárez were called upon to develop their reflections in a new context, characterized by an international situation in profound transformation, with which the “traditional” doctrine of war had to come to grips. A new political scenario was already emerging on the European scene in which the “modern State” was establishing itself irresistibly, and the nations were no longer disposed to submit themselves to the judgment of the Emperor or the Pope in order to determine who among the contending parties was waging a truly “just” war. In this context, the thought of the Jesuit theologian took shape and found expression above all in the *disputatio De bello*, of which, after situating it in its context, this paper presents the principal elements.

Keywords

Philosophy of politics, right, international right, war, Suárez.

Suggested citation format: Mantovanni, Mauro (2017). Algunas notas sobre la teoría de la “guerra justa” en Francisco Suárez. *Sophia: colección de Filosofía de la Educación*, 23(2), pp. 229-252

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Resumen

Este estudio analiza los principales temas relativos a la doctrina de la guerra justa (*bellum justum*) en el pensamiento y en la obra del teólogo jesuita español Francisco Suárez que, como se sabe, ha contribuido notablemente al nacimiento del derecho *inter nationes*, característico de la edad moderna. La profundización de este autor –por medio del análisis de las fuentes y su hermenéutica comparada– puede, en efecto, ofrecer importantes trazos para elaborar también una respuesta a la pregunta actual de si puede existir una “guerra justa” y si puede o debe darse una “guerra humanitaria”. Este autor afrontó con gran atención en su producción filosófica, entre otros, el tema de la licitud o deber, o no, de la intervención bélica preventiva para socorrer a los inocentes, además de la cuestión de la posibilidad de una eventual guerra que sea “justa” para ambas partes en conflicto. Dentro de la tradición cristiana, la reflexión sobre la guerra y sobre su licitud podía ya valerse de las contribuciones fundamentales ofrecidas por diversos “clásicos” del pensamiento, entre los cuales están Agustín, Isidoro de Sevilla y Tomás de Aquino, aunque tanto Francisco de Vitoria como Francisco Suárez en el siglo XVI fueron llamados a desarrollar su reflexión en un contexto nuevo, caracterizado en cualquier caso por una situación internacional que se estaba transformando notablemente, y con cuya doctrina “tradicional” sobre la guerra debía entenderse. Se estaba ya en un escenario político en el que sobre la escena europea se estaba afirmando imparablemente el “Estado moderno” y las naciones no estaban ya dispuestas a someterse al juicio del emperador o del papa para saber cuál de los contendientes llevaba una guerra verdaderamente “justa”. En tal contexto se desarrolló el pensamiento del teólogo jesuita, que se manifiesta sobre todo en la *disputatio De bello*, de la cual, tras haber presentado algunas notas de contexto, este estudio ofrece los principales elementos.

Palabras clave

Filosofía política, derecho, derecho internacional, guerra, Suárez.

Introduction

In 2017, the fourth centenary of the death of Francisco Suárez (Granada, January 5, 1548 - Lisbon, September 25, 2017) takes place, along with Francisco de Vitoria, Hugo Grocio and Alberico Gentili. “Founding fathers” of the modern *jus inter nationes*, and there is no lack of interest in the work of this well-known Jesuit author¹ who in his writings has facilitated “a complex and complete juridical treatise that addresses the decisive themes of the doctrine of *bellum justum* as it was forming in the nascent *inter nationes* law of the modern age” (Cassi, 2014, XXVIII).

In this contribution² we intend to offer some notes, without pretension of completeness or exhaustiveness, relating to the subject of Suárez’s theory of “just war”, an argument on which the Spanish teacher continues to be highly studied, even in comparative terms³. We are, on the other hand, in a moment in which, notwithstanding the constant progress of mankind in knowledge and technological development, not only wars continue to happen, but they seem to be accentuated, creating a situation that Pope Francis several times has described as a “crushed” world in which a “third world war in pieces⁴” is being fought. In his Discourse in

Assisi on September 20, 2016, for example, the Pontiff solemnly recalled that “God’s name can never be used to justify violence. Only peace is holy. “Only peace is holy, not war” (Francis, 2016a) ⁵.

The study and deepening of Francisco Suárez, who was a theologian, jurist and metaphysical philosopher, can offer for this some important points even today to try to answer the question of whether there can be a “just war”, and if it can or should be given a “humanitarian war”. With “investigative scruple and argumentative zeal” (Cassi, 2014, XIX) faced the issue of legality and the necessity or not of preventive warfare to help the innocent, as well as the question of the possibility of an eventual “Just” war for both sides of the conflict.

Within the Christian tradition, reflection on war and its lawfulness accompanies the history of thought, it is enough to recall -among the “classics”, and just to name a few- authors such as Augustine, Isidore of Seville, Thomas Aquinas, Francis of Vitoria, etc., and also the tradition of the social and political doctrine of the Church, and in particular the teaching of the most recent pontiffs since the Second Vatican Council, are very rich in indications and deliberations of the subject of war⁶.

Francisco Suárez obviously developed his thinking and his reflection in a context very different from the present one, characterized in any case by an international situation that was being transformed remarkably, and to which the “traditional” doctrine on war had to be faced.

It was then an inter-nation scenario where, as Cassi wrote, the protagonists:

They were already sovereign nations, or ‘*non superiorem recognoscetes*’. Papacy and Holy Roman Empire represented the architrave of the European *Respublica Christiana*, but its political and military role was already weakened: in the European scene irresistibly was affirming the ‘modern State’. The nations were no longer willing to submit to the judgment of the emperor or the pope to know which of the contenders led a ‘just’ war (Cassi, 2014, XVI).

We will see, in fact, how in the naturalistic debate the question of the configurability of a “just war” for both belligerents becomes a crucial issue. We will show that Suarez does not accept the possibility of a just war at the same time for the two belligerents.

Using as a methodology mainly the analysis of the sources and their comparative hermeneutics, we will present in these pages the thought of Suárez with some context notes (1) and then presenting first (2 and 3)

and then summarizing (4) the main elements of its *disputatio De bello*, to finally finish with some conclusive notes.

Context Notes

Francisco Suárez is an author of notable interest in various points of comparison between scholastic thought and that of modernity and the influence he has exerted on later authors. It is for theology, metaphysics, ethics and also for legal-political reflection, including the subject of war. Thus writes A.A. Cassi:

If, in fact, the pages of Suárez ‘metaphysical’ constituted a point of reference with which modern and contemporary thought has been constantly related, from Cartesio to Leibniz, from Wolff to Heidegger, Suarez ‘political’ and ‘jurist’, beyond his involvement in the ‘hunt for the precursor’ of modern international law and contemporary democracy, marked a fundamental curve in the course of modern iuspolitical and historical-legal thinking, and one may think that there will still be awaited for a long time and wished for ‘re-readings’ and ‘returns’ to the work of Doctor eximius (Cassi, 2014, XXIX).

The Jesuit theologian, who has set out his ideas on the community of peoples and on the law of the people in his famous work *De Legibus*,⁷ has specifically addressed the theme of war in the *De charitate* treatise concluding the exposition of the theological virtues, precisely in the *disputatio XIII*, with title *De bello* (Suárez, 1858, pp. 737-763, Suárez, 1956). This text, as well as the entire treatise on the three theological virtues, was first published in Coimbra in 1621, posthumously, four years after Suarez’s death, and is the result of the classes given by the Spanish teacher in Rome in the academic year 1583-1584.

There is a notable discussion among scholars on this subject and its theoretical implications (Faraco, 2013, pp. 29-39) and it would be interesting to be able to dwell more fully on the whole of the fundamental aspects of the positions of the Spanish theologian in reference to the subject of war: here we will focus mainly on the just war. Regarding the text of the *De Bello* suicioncianan lessons, Cassi writes that these move:

On the ridge that divided since then theologians and scientia juris, which, however, was not so neat in the Salamanca of the preceding century, as the jurists seemed to gain ground constantly [...]. Also in connection with this, these lessons fell in the following centuries into a kind

of no man's land: too theological for the jurist, too legal for the theologian (Cassi, 2014, XIX).

Obviously, all that Suárez expresses about this subject is associated with all his metaphysical, anthropological and ethical vision⁸. The human person, by its rational nature, is endowed, according to our author, with a political goal that can be fully achieved only within a peaceful order of relations between States, with a view to an ultimate goal that goes beyond these. The interaction between people and States nevertheless takes place historically within a situation of corruption linked to the presence of sin, which works so that the human passion is directed to possession and dominion.. In these conditions, both privately and publicly, the defense of one's own assets, starting with that of one's own life, represents in Suárez a natural right that must be recognized by and to all citizens. And in this sense, even in the case of an explicitly "confessional" reflection, the perspective of recourse to the norms of a natural justice goes in the direction of indicating universal principles that must be obligatory for all, both for Christians and for all types of "infidels".

The main references to Suarez, on the question of just war, are the figures of Augustine and Thomas Aquinas, cited precisely where one speaks of the requirements that make a war just. For the Jesuit theologian, the first represents a sure guide to make the human phenomenon of war historically intelligible, especially in reference to the theological interpretation of several fragments of Sacred Scripture and the challenge of capturing its authentic political meaning. The Angelic Doctor represents a constant and valuable reference, although the interpretation of the Thomist texts by Suárez, as for other fundamental themes, will be in any case more free and creative. As we know, it will be afterwards in the final part of the sixteenth century, when authors of great notoriety will appear that will also be applied in the commentary of the q. XL of II-II of the *Summa Theologiae*: besides Suárez, several figures, among which we find Domingo Báñez, Luis de Molina, Roberto Bellarmino, Gabriel Vázquez, Leonardus Lessius and Gregorio of Valencia.

The *disputatio suareciana De bello* is organized in nine sections, within which the Jesuit theologian asks: 1) if it is intrinsically evil (*Utrum bellum sit intrinsece malum*); 2) who holds the legitimate power to declare war (*Apud who sit legitima potestas indicendi bellum*); 3) if clerics are allowed to declare war (*Apud who sit legitima potestas indicendi bellum*); 4) what are the just titles of war according to natural reason (*Quis sit justus titulus belli, stando in ratione naturali*); (5) if Christian princes hold a just title of war, except that which dictates natural reason (*Utrum princi-*



pes christiani habeant aliquem justum titulum belli praeter eum que ratio naturalis dictat); 6) what certainty is demanded regarding the just cause of war, so that the war is effectively just (Qua certitudine constare due to just cause belli ut illud justum sit); 7) what is the right way to wage war (Quis sit debitus modus gerendi bellum); 8) if sedition⁹ is intrinsically evil (Utrum seditio sit intrinsece mala); 9) if private war, or duel, is intrinsically evil (Utrum privatum bellum seu duellum sit intrinsece malum).

The definition of true and proper war is facilitated by Suarez at the beginning of the dispute: unlike the simple seditio, rixa or duellum, external conflict (external struggle), “which opposes external peace” is indicated as that” which is established between two sovereigns or between two states “(Suarez, 1956, p.47)¹⁰. Faraco and Buzzi argue that the question of the war for Suarez refers more to the ethical-juridical-political aspect than to the expressly theological one, so that the consideration of the external struggle is more linked to positions of natural law, moral philosophy, social and policy of the Aristotelian stamp than to theological evaluations (Faraco, 2013, p.35, Buzzi, 2007, pp. 118-120). In any case, the first issue that the Jesuit thinker must confront in the sectio prima is the question of the intrinsic evil or not of war.

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If war, according to Suárez, is inherently evil

To the question *Utrum bellum sit intrinsece malum* Suarez responds above all that, in matters of faith, “war as such is not intrinsically evil, nor is it forbidden to Christians” (Suarez 1956: 52)¹¹ and that “war is not contrary to an honest peace, but to a petty peace, since it means the best means to obtain a just and stable peace” (Suárez, 1956, 54)¹².

For the Spanish theologian, therefore, there is not necessarily a contradiction between starting a war and seeking an honest peace, so that war can be identified almost as a “lesser evil” that allows access to a situation of greater justice and therefore of more stable peace. A little earlier, Suarez had quoted, in answer to the fourth objection, the teaching of St. Augustine (*De Civitate Dei*, 19th century, chapter VII), stating that:

San Agustín replies [...] to arguments deduced by reason: they only prove that war should be avoided as much as possible; and should only be tried in case of extreme necessity, when there is no other remedy; war is absolutely not an evil, since the evils that follow it are accidental to its nature; and there would be even greater inconveniences if it were never allowed (Suárez, 1956, p.54)¹³.

Obviously it is fundamental to immediately raise the distinction between *bellum difensivum* and *bellum aggressivum*. Prevailing in the Jesuit thinker the consideration of the function of the authority to guarantee and ensure the common good, it is obvious that the war of a defensive character is always considered lawful as an expression of legitimate defense for the affected political community: regarding the war of aggressive aim, it will be fundamental to examine with attention all the circumstances that come into play.

For Suarez, therefore, “defensive warfare is lawful and sometimes even compulsory” (Suarez, 1956, 54)¹⁴, precisely because in its perspective the right to exist is inseparable from the right to use force. Even if these are essentially different, it seems clear that force is the condition for the effective application of the law, so that an offended State can and should claim the right to resort to force when threatened. In this perspective, war is nothing more than a historical relationship between State and State within which each of them must in each case preserve the common good safeguarding the whole of their rights.

The first legitimation of war, according to Suarez’s thought, comes from its defensive character: in this sense, it is not only not opposed to peace, love of enemies and forgiveness of injuries, as we have seen, but its legitimacy or, sometimes, even its obligatoriness, is based - for the Spanish theologian on the fact that:

Not only is this thesis valid for public officials, but also for simple individuals. All codes concede that it is lawful to repel force by using force. [...] The reason is that the right to self-defense is natural and necessary. [...] Sometimes it may be obligatory to defend oneself, at least by a law of charity [...]. For example, there is an obligation to defend the homeland, especially for those who are responsible for this duty (Suárez, 1956, pp. 54-55)¹⁵.

Turning now to examining the aggressive war (*bellum aggressivum*), Suarez states, first of all, that the latter, “even aggressive, is not intrinsically evil, but can be honest and necessary” (Suarez 1956: 55)¹⁶. It is understood, therefore, that war will never be an end in itself and can only be a means to a just and stable peace, but it may be necessary. According to him, for the State to undertake an aggressive war “To avoid unrighteousness and to repress perverse enemies; that without this the States could not live in peace.” The recourse to the war for Suarez is therefore legitimized by natural law and, consequently, “also by the law of the Gospel, which in no way repeals the natural law, nor does it contain new divine rights, except those referring to the faith and the sacraments” (Suárez, 1956, p. 56)¹⁷.





In arguing for his answer to this question, Suarez also calls Martin Luther’s cause, criticizing him severely¹⁸ and asserting - in connection with the difference between a defensive war and an aggressive war - that one must take into account the fact that sometimes that which might seem like a defensive fact is revealed instead as a real and own aggression. The Spanish theologian warns to this end that “injustice can be action that is practically being carried out or action already finished, whose reparation is attempted through war.” And adds: “In this second case the war is aggressive; in the former, it has all the characteristics of a defense, provided that it is done with the moderation of which it protects itself without exceeding its rights” (Suárez, 1956: 57)¹⁹. For the Spanish Jesuit the offensive war then, even if legitimate, is only as ultima ratio: “recourse to the Pope or to international arbitration,” warns A. Simoncini- should have tried to avoid the prevalence of the law of the strongest “(Simoncini, 13).

As for the general principles underlying Suarez’s theory of the just cause of war and the nature of offensive war, Regout notes that:

With clarity and firmness Suárez enunciates the principle to be found in all successive theories: there is no just cause other than an injustice committed by the adversary if it cannot be repaired or avenged by any other means and its gravity is provided to the calamities that will derive from the war (Regout, 1934, p.195).

Suarez concludes the first section of the *disputatio De bello*, stating that “certain conditions must be fulfilled for the war to be lawfully made,” and in listing them, he directly takes up the tradition of Thomas Aquinas (*Summa Theologiae*, II-II, XL, Article 1) indicating the lawfulness of the declaration and of the performance of the war where there is present the concomitance of three elements, which he originally interprets. These are: “first, legitimate power to make war; second, a just cause or a legal title; third, that a dignified manner and equity be observed at the beginning of the struggle, during the hostilities and after the victory” (Suarez, 1956, pp. 57-58)²⁰. Each of these conditions is then studied by our author in the successive sections of the *disputatio*.

The remaining sections of the *disputatio De bello*

The second section addresses the question of who legitimately possesses power - in the case of aggressive warfare, since all have the power to de-

fend themselves against an unjust aggressor - to declare war. This legitima potestas, for Suarez, belongs only to the sovereign who, endowed with potestas jurisdictionis is the only one who competes the iustitia vindicativa, or the duty to punish the wrongdoers, a power that is extremely necessary in the political community. Precisely for the sake of this type of authority, for the Jesuit theologian “as the head of the state can punish his own subjects when they harm another, he may also take revenge on another sovereign or state that is subject to him by reason of a crime” (Suárez, 1956, p.60)²¹. Moreover, if the sovereign prince did not do so, by his negligence he might also be deprived of his own authority of the political community²².

After considering the position of Francisco de Vitoria and having confirmed that the principles he put forward “are equally valid for Christians and for infidels because they are based on natural law” (Suarez, 1956, p. 65)²³ on the question of whether or not the Pontiff should judge the political issues that affect the concrete life of a kingdom, as he had already done in the *De legibus* and the *Defensio fidei*, treating it nonetheless in our dispute according to specific perspective of the evaluation of a just war (Suárez, 1858, pp. 740-741, Suárez, 1956, pp. 69-73). C. Faraco writes about this:

The Jesuit tries to clarify how the Pontiff is substantially a spiritual authority unable to intervene in all political matters that concern the more practical life of a kingdom. However, potestas indirecta allow the head of the Church a power to judge whether the moral ends pursued by a sovereign with the search for the bonum commune of his people are in conformity with the values of the Church. Therefore, the Pontiff can hardly judge a war as just if it is undertaken between two Christian kings, although ‘unusual’ might even happen to be aligned in favor of one of the two involved, but will always be aligned against the infidels. It is evident that the Jesuit could not have been more attentive and appropriate to the times and to the role played (Faraco, 2013, p.37).

The Jesuit theologian, in the fourth section, shows that the problem of the juridical order calls for the necessary distinctions between the right to war and the law concerning war. What are the right titles of war according to natural reason (just cause, et titulus). In the path of his predecessors, including Francisco de Vitoria, the Spanish teacher finds again as the only “just cause and sufficient reason for war... a serious and already consummate injury that cannot be avenged or repaired in any other way” (Suárez, 1956, p75)²⁴. Suarez therefore states very clearly that no war can be just if it does not have a legitimate and necessary cause, and



this cause is a *gravis injuria illata*, quae alia ratione vindicari aut reparari nequit. It states, however, that there are no mistakes in the interpretation of this principle, according to circumstances and situations. Indeed, in the case of “*absurdissimum*”, in which both contenders are simultaneously offended and in the right to defend themselves, it is not possible to speak of a just cause, since “two contrary rights cannot be just simultaneously” *duo enim contraria jura non possunt esse justa*) (Suárez, 1858, p. 744; Suárez, 1956, p. 76)²⁵ and therefore must be deepened the various elements that determine a real injury suffered, and that our author examines.

If the just cause for war is a *injuria illata*, and therefore an injustice suffered, which may consist of a brutal aggression against territory, people and property, defensive war is precisely opposed to all this and that - as is has been said - in addition to being allowed may sometimes become mandatory. Regout warns that for the Jesuit theologian this is of such evidence that “he dedicates nothing more than a few words” (Regout, 1934, p. 196)

The injustice suffered may also have another form of violation of the law. And against this one can, for our author, carry out an aggressive war, on which Suárez focuses his attention here.

Several kinds of “insults”(injury), says the Spanish theologian, are a cause of just war; these can be grouped into three chapters. First, when a prince seizes the property of another and does not want to restore them. Second, when, without reasonable cause, it denies the common rights of peoples, such as the right of transit through the public highway and international trade. Third, a serious injury to reputation or honor (Suárez, 1956: 77)²⁶.

Regout notes to this purpose that Suarez:

He submits a thorough analysis of the aggressive war, and in the path of the medieval writers and of Vitoria, takes a position on two points. On the one hand: the independent prince has the undisputed right to resort to aggressive warfare in certain specific cases. On the other hand: it should not use this right if it has been satisfied as rigorously required. Here we find again as a basis the two guiding ideas that govern the Suarezian doctrine of the law of nations: supremacy and at the same time limitation of sovereignty through higher law: each state forms an independent set but at the same time is part of a community of peoples (Regout, 1934, pp. 196-197).

And Faraco adds to this purpose that “in this way the Jesuit re-launches a legal-economic approach, indicating precisely the violation of these fundamental rights of commerce and transit, ethical-political factors that had been inaugurated at the dawn of Spanish Scholastics” (Faraco, 2013, p.38).

Suarez also attributes, as Francisco de Vitoria, a punitive character to the offensive war, but according to his doctrine, as Regout emphasizes:

The war made with the intention of reappropriating, after a period of time, an own good, must be considered as a war both aggressive and punitive. One might think that here the idea of revenge is pre-eminent. Numerous, on the contrary, are the steps in which Suarez indicates that ‘to recover’ as a legitimate legitimate cause of war. The first and most natural motive that, according to Suárez, justifies the war, must be found, in our opinion, in the need for each to keep the integrity of their rights intact ‘*ut quisque se conservet indemnem*’ (Regout, 1934, pp. 199-201)²⁷.

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Following the disputatio, Suárez presents the list of titles for which it is legitimate for the sovereign to declare war, among which are also - as it was already expressed in the *De legibus* and the *Defensio fidei* - the defense of rights of the citizens violated by other sovereigns, and the discrepancy between faithful and infidels²⁸. We then proceed to consider the third condition of the just war, that is, the modalities of its development, and it follows the treatment of later technical aspects of the war, in which we do not stop later than to consider - in section V - the question of *defensio innocentium*, which Suarez recognizes as the only cause (together, obviously, to insult) of just war: “*Christianus princeps non potest indicere bellum nisi vel ratione injuria vel ob defensionem innocentium*” (Suárez, 1858, p. 748)²⁹. In the N. 1 of the same section Suarez had already recognized that it would always be permissible to declare a war to defend innocent children (“*Et confratur... semper liceret indicere tale bellum propter tuendos innocuos parvulos*”) (Suárez, 1858, p. 87), considering the title of *bellum contra inhumanos* as not exclusive to Christian rulers: “this title, if it exists, is not exclusive to Christians, but is valid for any king who wishes to defend natural law, which is, after all, the origin of this title” (Suárez, 1956, p.89)³⁰.

It may be interesting to note, finally, that in the seventh section, devoted to the just way of conducting a war, Suarez will assert that “continuation, as a principle of war, must be imposed by necessity” (Suarez, 1956, p. 106)³¹ and that “the right of war is an odious right, and its application means a most severe punishment; then we must restrict it as

soon as possible “(Suárez, 1956, p. 106)³² The use, therefore, of the “right of war”, which is defined by Suárez here as “odiosum”, is in any case one of the greatest evils of humanity. And n. 17 of section V Suárez deals with the subject of the innocent and of the lawfulness of their sacrifice in order to the victorious conclusion of the war affirming that:

Sometimes this punishment is allowed for the enormity of the crime committed or for the punishment of other cities; and because then it is possible to distinguish the innocent from the guilty, if it is not by sex or age. It is generally given authorization to kill others, while the combat lasts, but not after the fight is over or after victory is achieved. [...] The one who has the right to the end of the war, absolutely with parley, also has to those means; in this case the death of the innocent is not attempted as such, but is followed indirectly [...]. Otherwise it would be impossible to end the war. For the same reason a pregnant woman can apply a medicine that is necessary to preserve life, even though she knows that it causes the death of the child. From these arguments it is concluded that only in the time of need is the death of the innocent allowed (Suárez, 1956, pp. 116-117)³³.

Prosperi and Simoncini - commenting on the Suaretian theory - note that in our theologian:

What remains, for all intents and purposes, as a theorist of just war, is perhaps for the first time the idea of the unity of the inhabitants of the earth [...] united by the obligation of reciprocal benevolence and by commercial and political relations, and therefore needed to regulate their own coexistence through diplomacy and shared norms on war and commerce. On the same basis, in a second moment of his reflection, the Jesuit theologian will come to maintain that, precisely because the war ends inevitably by damaging at least part of the unity of the human race, it is in any case unjust. But, except for the last Suarez, it will be precisely the Jesuit casuistry that will crumble and cancel without residue the religious rigidity of the command not to kill. The logic of a just war will be relaunched not only in the American wars, but also in the struggles against the Ottoman Empire and in the civil wars of religion which, between XV and XVI centuries, will bloody Europe (Simoncini: 13; cf. also Prosperi, 2005, pp. 81-82).

For Suárez, the true quintessence of the law of war is therefore in the need of each to preserve his own right when there is an unjust offense, behind which opens the broader perspective that each should obtain what it corresponds and that justice must dwell intangibly. The obstinacy by the adverse party in the injustice is for our author justification of the war. Objective in-

justice is in this sense, for the Jesuit theologian, the fundamental reason, and is always considered as guilty. Thus, war, which in principle is proposed to defend, maintain and restore the right, may also include the motive of punishment as a vengeance of the moral order. This right of penal application completely transforms the war into a war of sanction. Thus, in addition to safeguarding its own right, Suarez recognizes in princes the right to wage war to assist the innocent as well as the foreigners (Regout, 1934, 203).

General look at the Suaretian perspective, and open questions

We start with some synthetic elements of what we have presented, from the final point relative to the Suaretian theory on the war of intervention for aid of a “humanitarian” character. Thus, Regout summarizes:

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1. The right of defensive war to come to the aid of innocent strangers is not denied. [...] 2. A punitive war is permitted at the request of the offended State, by way of relief. 3. That Suárez be indignant at the principle that ‘one should not interfere in the affairs of others’ is undoubtedly linked to the conduct in the ‘Indies’ by the Spaniards (and others), who saw in the ‘crimes’ of the natives a motive for the punitive war and that, by virtue of the ‘right of revenge’, occupied the conquered nations. 4. And it may be Suarez’s good sense that he has made him understand what grave danger it implies, given the weakness of human nature, also among rulers, the right to go and repress injustice somewhere in the world, a danger that, although to a lesser extent, is also linked to the right to ‘go and defend the innocent’ without being asked. 5. That an exactly determined right of revenge can be strongly valued within a well-organized international society, and that consequently one must tend to it as an ideal, nothing seems to us to be fairer than this (Regout, 1934, 204 -205, see also Cassi, 2014, XXIII-XXVII).

Obviously, this theme, which is so current, is linked, as we have seen, to the deepening of the question, faced by Suárez with particular attention, of the right of war in case of dubious claims (of the “just war” for both parties and the possibility of applying the probability of the doctrine of war (Regout, 1934, pp. 206-230, Cassi, 2014, XX-XXIII).

And if we concentrate later on the question of the fundamentals, it is central to understand to our author also the consideration of the concept of law, and in particular of “natural law.” R. Campa writes for this purpose:

The Spanish theological current [...] recognizes in reason the foundation of the human condition in its manifold manifestations. The law - in the Spanish theological current - continues to be, according to the Thomist conception, an *ordinatio rationis*. The constitution of the State can therefore be the result of the evolution of reason or a contract, stipulated among the members of a community system in the exercise of their freedom. Be it the budget, so to speak, evolutionary genetic, or the voluntarist budget, do not contrast between them in that they concur to make consistent the aspiration of the human community to consider general - and therefore to share - the purpose expressed by a single individual or by a group of individuals in the interpretation of the common good. This conviction preordains the glossa that Francisco Suárez makes of the *Summa Theologiae* Thomista and the doctrine of Vitoria (Campa, 2010, pp. 45-46).

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However, for the Spanish teacher, it is already a *ratio legis* different from that of Aquinate (Bastit, 1990).

From the point of view of interpretation and development of doctrines, and in the questioning of the “fortune” after this treatise of the Jesuit theologian, the relationship between Suarez and the Dominican Domingo Báñez assumes a particular accent on which Regout notes:

We believe, albeit with reservations, that the theory of the war of Báñez and Suárez have no direct relationship. [...] It is incontestable, for example, that Lessius’s treatise on war, written in 1592, refers to Suarez, of whom Lessius had been a disciple in Rome. While Suárez is not mentioned by him, Báñez to the contrary, he is many times [...]. Chronologically comes Gregory of Valencia (1595). He certainly knew Báñez, and perhaps Suarez [...]. Finally, Vázquez (1598), in criticizing the doctrine of ‘some modern writer’, should have referred to Báñez, if not to Gregorio de Valencia; one can say with even greater probability that his criticism was directed mainly to Suarez [...]. One can argue to the point of knowing, between Báñez or Suárez, who corresponds to the historical primacy. We will attribute it to Suarez, for practical reasons: in fact, the opinions, which are often different from ours, which some recent writers have issued around Suarez, compel us to a closer examination of the Suaretian doctrine as attentively the author has exposed it (Regout, 1934, pp. 193-194).

In any case, this opposition between Báñez-Suarez and Vitoria-Molina also addresses the crucial issue to which we have referred earlier, that is, the discussion of whether war could be fair to both contending parties. In considering such a case, Regout notes again:

All authors of this period consider that an invincible error is detected in leading the two parties to consider war as subjectively justified. But

for Báñez, Suárez and Gregorio de Valencia, this truth is only theoretical [...]; on the contrary, Vitoria and Molina draw the consequences: the prince who knows and supposes that the adversary promotes a war of good faith, cannot, during and after the war, carry out more violence than is strictly necessary for the execution of his law; any penal capacity is expressly denied (Regout, 1934, pp. 269-270).

It is striking also that in Suárez we find the use of the expression “*justitia commutativa*” within the doctrine of the law of war, just when one enters into matter with regard to acts perpetrated during and after the war, also during and after a vengeful war, and therefore, whenever it is due to be attributed to someone what is strictly due to him; this case is presented in the situation of restitution or reparation. This expression is used for the first time, as it is, by Suárez, although:

The idea is familiar to all authors, not only those of the sixteenth century, but even more to those of the Middle Ages; in fact, all considerations about the right of recovery and the duty of restitution, where revenge is not involved, are based on the principles of commutative justice (Regout, 1934, p. 272)

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The reflection of the Spanish Jesuit theologian, on the one hand, presents some traces of evident originality, on the other hand, is fully inserted in the debate with the different authors, Jesuits and not, which was characterizing the cultural context of late scholasticism. In spite of the differences and originality that we have underlined, one could therefore affirm - with Danilo Zolo - about the discussion about the “just war”, which:

In the intentions of his scholastic ideologues, from Thomas Aquinas to Francisco de Vitoria to Francisco Suarez, the distinction [between just and unjust war] should contribute to limiting the war by imposing on Christian princes waging war justified by good moral reasons and combated with lawful means [...]. Only with the abandonment of the theological-moral and cosmopolitan premises of the medieval doctrine of *justum bellum*, would have been affirmed in Europe, from the seventeenth century onwards, ‘international inter-state law’. Given that it was already taken for granted that in the absence of a universal moral authority, all contenders would have considered fair war itself - *bellum utriusque justum* - inter-state (and not cosmopolitan) international law focused on the definition of exclusively formal and procedural rules (Zolo, 1995, pp. 98-99).

Suarez is right, as we have seen, in this fundamental “knot.”

Conclusion

The theme of “just war” and “war justice” has undoubtedly represented Francisco Suárez as an opportunity to address an ethical-juridical and ethical-philosophical and theological issue. The problem - considered as a whole - consists in determining the conditions that allow us to agree and not confront the theological virtues of faith, hope and, above all, charity, with the historical and political form of evil represented by war, a human phenomenon that proves to the Jesuit theologian the impossibility of the political and historical identification of morality and law.

Our author, continuing the reflection on international law and its principles in view of the regulation of war, follows the work of Francisco de Vitoria. The casuistic and academic trace of the production of the Spanish teacher found a quite favorable field in the consideration of a subject, that of the war, which in itself is rich in nuances, especially practical, as well as theoretical.

Through the stylus argumentandi of the scholastic tradition, our author - as we have seen - has facilitated in the *De bello*:

An articulate ex-professed inquiry into the war, on the conditions of its lawfulness, on the obligations *sub specie juris* to which princes, military and subjects are subjected during their development, on the legal status of prisoners; reflection also conducted by the punctual examination of medieval and in argument contemporary doctrine (Cassi, 2014, XXVIII).

Faraco has written:

Suarez, analyzing reality, tries to regroup those who, in his opinion, are the events that can more easily happen both outside a political community and within it. The description not only of titles, but also of the causes and behavior to be followed in the midst of war - which must always have as a reference the weighing of violence with injustice suffered - is done, through a harmonious juridical and philosophical conscience, capable of clearly claiming the concepts of *prudencia* and *bonum commune*, where all Suarez’s political work will be inspired. Moreover, all of Suarez’s activity is marked by constant dialogue with its accredited teachers and their contemporaries, in order to project itself towards a new interpretation of topics that, little by little, are submitted to his attention to verify the existence of a solution as close as possible to reality (Faraco, 2013, p.39).

Regarding the question of whether war (offensive) must necessarily have a vengeful, and therefore penal, character, we have seen that Suárez's response (as well as of Báñez and Gregorio de Valencia) is undeniably positive, while Vitoria and later Molina expressly discusses the possibility of a just war that is lawfully carried out even after having recognized the good faith of the adversary (Regout, 1934, p.268). A fundamental issue to which a decisive answer is demanded, also to the philosopher of the politics of today.

Suarez has collected the heritage of thought that the previous authors gave him and has reworked it, confronted with the challenges of his time and tried to respond to them, addressing in particular the issues of "just war for both parties" and of the just war understood as a war-like intervention in favor of the innocent, then-and not only then-highly discussed subjects.

The principles it proposes are clear, but also present their limits. In its position "it is the reason, in its epistemological statute, that imposes the legal status of a *bellum iustum* that is such for one, and only one, of the parties" (Cassi, 2014, XXIII). Where the legitimized part of the recourse to war is undoubtedly identified, there should be no difference between believers and infidels, and this is indeed affirmed by our author, who still maintains the recognition of a specific mission of the Christian sovereigns.

Also the principle of military intervention made just by the evil or inhuman behavior of the adversary against the innocent, especially if they are children, finds many - too many - delimitations when it is transferred to the operational sphere. And there remains the problem of who is actually innocent, and whether it is sacrificial when it is inevitable to end the war, when finally a case of *extrema ratio* occurs. We have seen how Suárez proposes in section VII the example of the mother who during pregnancy can take medicine necessary to save her life despite being aware that she will seek the death of a child: for the Jesuit theologian, as Cassi comments:

It is the same *charitas* that seems to ask for it: to end the war represents the measure of fair beauty that descends from the *ordo Charitatis*. The principle of Charity, relevant and decisive for the discipline of the war *extrema ratio*, contemplates the hypotheses, from the pregnant woman to the soldier, who justify death in favor of a superior good (Cassi, 2014, XXVII).

In the Spanish teacher we find, therefore, the relation between the medieval and the modern, not only from the point of view of a specific



subject to discuss, but also from the point of view of the “form” of rationality employed. M. Pacioni warns:

The political definition of the human essence on the part of Suárez induces to consider with more charge the political foundation of the interchange between anthropology and law, exchange today versed by the technical-economic neutralization of the government that depoliticizing the human, it induces to surrender to exclusionary and aggressive identity-rims (Pacioni, 2015).

In this sense also the deepening of the doctrine on the “just war” of a Jesuit theologian who has left the scene of this world four centuries ago can be a stimulus to live, with healthy realism, as builders of peace and to transmit the passion for justice and solidarity fraternity.

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Notes

- 1 With regard to Suárez in general, I here only mention some useful studies, referring also to the abundant online Bibliographies offered by Scholasticon (http://scholasticon.ish-lyon.cnrs.fr/Information/Suarez_fr.php) and by S Penner (<http://www.sydneyenner.ca/bib.shtml>). See also: Prieto López, 2006; [Links] Coujou, 2010; Sgarbi, 2010; Hill and Lagerlund, 2012; Schwartz, 2012; Pistacchini Moita, 2014; Novák, 2014; Salas and Fastiggi, 2015.
- 2 Some of these reflections have already been presented in the French language (Notes sur l’apport de Francisco de Vitoria et de Francisco Suárez à la théorie du droit de la guerre) during the Journées d’étude “La Guerre et le Droit” 11 and 12 of March of 2015 in Paris in the Académie des Sciences morales et politiques, and that they are in the process of publication. Also in Italian language, a broader text titled La dottrina della “guerra giusta” in Francisco Suárez is being published for the Salesianum magazine. I thank Professor Mercedes López Sánchez for her help and advice for this work in Spanish, which also includes the translation of several texts that are not yet in the Spanish language.
- 3 See, for example, various texts from the classics (Rolland, 1914, Torres Campos, 1917, Regout, 1934, pp. 194-230, Guerrero, 1948) to the more recent ones (Kremer, 2012; Murphy, 2012; Reichberg, 2012; Vauthier Borges de Macedo, 2012; Faraco, 2013; Medina, 2013; Cassi, 2014: IX-XXII). The interesting contributions of M. González Fernández and E. Lacca, presented in the Convention “Between the Renaissance and Modernity: Francisco Suárez (1548-1617)” developed in Salamanca on 30-31, should be added as soon as they are published. March 2017.
- 4 Cf. Francisco, 2016b; Francisco, 2017.
- 5 And in his last encyclical, *Laudato si’*- Pope Francis, referring to the lukewarmness of international reactions to the degradation of the human and natural environment, and to the growth of planetary iniquity, states: “War always causes serious damage the environment and the cultural richness of populations, and the risks are heightened when one thinks of nuclear weapons and biological weapons. For ‘despite the fact that certain international agreements prohibit chemical, bacterio-

- logical and biological warfare, in fact laboratories are still being investigated for the development of new offensive weapons capable of altering natural equilibria'. Policy requires greater attention to prevent and resolve the causes that may lead to new conflicts. But the power connected with finance is the one that is most resistant to this effort, and political designs are not usually broad-minded. What is the purpose of preserving today a power that will be remembered for its inability to intervene when it was urgent and necessary to do so? "(Francisco, 2015: 57).
- 6 And we could immediately indicate other authors such as Gabriel Vázquez, Domingo Báñez, Leonardus Lessius, Gregorio de Valencia, Luis de Molina, Hugo Grocio. Cf. by the way, among the numerous volumes that could be cited, Segura Etxezarraga, 1991; Bobbio, 1992; García Caneiro, and Vidarte, 2002; Pontifical Council for Justice and Peace, 2004: nn. 437-438 and 497-517; Walzer, 2004; Bellamy, 2009; Allman and Winright, 2010; Allhoff, Evans, and Henschke, 2013; Aznar Fernández-Montesinos, 2013; Possenti, 2014; Winright, 2015; Possenti, 2017.
 - 7 Cf. Suárez, 1856b. See in particular book II (*De lege aeterna et naturali, ac jure gentium*), chapters 18 (*An jus gentium aliquid praecipiat, vel prohibeat, aut potius solum concedat, vel permittat*, V, 163-166) and 19 (*Utrum jus gentium distinguatur a naturali tanquam simpliciter positivum humanum*, V, 166-170). Also, in the *De Legibus*, the Suarezian affirmations according to which every State has full power to ensure its conservation and the common good, in book III (*De lege positive human secundum se et prout in pure hominis natura spectari potest quae lex etiam civilis dicitur*), chap. 30 (*Utrum lex human et civilis possit obligare ad sui observationem cum periculo cujuscumque nocimenti temporalis, etiam mortis*), n. And that this imperative prevails over any eventual individual consideration (just as it may be, in the case of the Republic of Austria, then, in paragraph 11: *Satisfit argumentis contrariis*, V, 296).
 - 8 Suárez confronts in the last fine hominis the theme of the rational determination of the principles that govern human actions, and also the theme of just war finds its adequate placement only within this ethical-anthropological framework. Cf. Suárez, 1856a: Proemium, XIII-XIV.
 - 9 Suarez defines sedition as a kind of civil war, "any collective struggle that occurs within the same State. It can be established between two parties or between the sovereign and his people." Suárez, 1956, p. 125. Cf. Suárez, 1858, p. 759. As is well known in the case of the sedition referring to the revolt of the body politic (*respublica*) against the prince, when the latter, behaving like a tyrant is an aggressor of the political community, Suárez in the third and sixth book of *Defensio fidei catholicae* will justify its deposition. Cf. Suárez, 1859: I. III (*De summi Pontificis supra temporal reges excellentia et potestate*, 202-351) and I. VI (*Of fidelitatis oaths Angliae*, 660-735).
 - 10 "Outer conflict, quae exteriori paci repugnat, tunc proprie bellum dicitur, when it is between princes, two republics" (Suárez, 1858, p.737).
 - 11 "Bellum simpliciter nec est intrinsece malum, nec Christianis prohibitum" (Suárez, 1858, p. 737).
 - 12 "Unde ad confirmationem, negatur bellum that contrarium honestae paci, sed iniquae; est enim potius medium ad veram et tutam pacem obtinendam" (Suárez, 1858, p.738). The Jesuit theologian goes on to say that the lawful war "is not opposed to the love of enemies; because one does not hate people who legitimately do the war, but the actions to just punishes by means of arms. The same is true of the forgiveness of insults, mainly because this is not a precept that does not admit ex-



- ceptions, because sometimes retaliation can be demanded using lawful procedures (Suárez, 1956, 54).
- 13 “Ad rationem, respondet Augustinus, 19 de Civit., capit. ult., bene probare, bellum, quoad fieri possit, esse vitandum, et solum in necessitate extrema, quando nullum aliud medium superest, tentandum; non vero esse prorsus malum, quia quod ex eo sequantur mala per accidens est, et majora sequerentur, si nunquam liceret” (Suárez, 1858, p. 738).
 - 14 “Bellum defensivum non solum est licitum, sed interdum etiam praeceptum” (Suárez, 1858, p. 738).
 - 15 “Prior pars sequitur ex prima conclusione [...] et habet locum non solum in publicis magistratibus, sed etiam in privatis personis; nam vim vi repellere omnia jura permittunt [...]. Ratio est quia jus propriae defensionis est naturale et necessarium. [...] Nam propria defensio interdum esse potest in praecepto, saltem ex ordine charitatis [...] item defensio reipublicae praecipue si ex officio incumbat”. Suárez, 1858: 738.
 - 16 “Dico tertio: bellum etiam aggressivum non est per se malum, sed potest esse honestum et necessarium” (Suárez, 1858, p. 738).
 - 17 “Ratio est, quia tale bellum saepe est reipublicae necessarium ad propulsandas injurias, et coercendos hosts, neque aliter possent respublicae in pace conservari. It is ergo hoc jure naturae licitum, even though it was lege evangelica, quae in nulla re derogat juri naturali, neque habet new divine praecepta, praeterquam fidei et sacramentum” (Suárez, 1858, p.738).
 - 18 “It is ridiculous, therefore, what Luther said that it was not lawful to resist divine punishment. God does not want these evils, but allows them; then does not prohibit that they can be avoided in all justice” (Suárez, 1956, p.56). “Quod vero Lutherus aiebat, non licere resistere castigationi Dei, ridiculum est: Deus enim non vult haec mala, sed permittit, unde prohibet quæ possint propulsari” (Suárez, 1858, p.738).
 - 19 “Quocirca notandum est an injuria sit in fieri moraliter, an facta jam sit et per bellum satisfactio intendatur. Quando se habet hoc secundo modo, bellum est aggressivum: primo modo habet rationem defensionis, dummodo fiat cum moderamine inculpatæ tutelæ” (Suárez, 1858, p. 739).
 - 20 “Primum, ut sit a legitima potestate. Secundum, ut justa causa, et titulus. Tertium, ut servetur debitus modus, et aequalis in illius initio, prosecutione, et victoria” (Suárez, 1858, p. 739).
 - 21 “Secundo, quia potestas indicendi bellum est quaedam potestas jurisdictionis, cujus actus pertinet ad justitiam vindicativam, quae maxime necessaria est in republica ad coercendum malefactores; unde sicut supremus princeps potest punire sibi subditos quando aliis nocent, ita potest se vindicare de alio principe, vel republica, quae ratione delicti ei subditur” (Suárez, 1858, p. 739).
 - 22 “Tunc enim posset tota respublica se vindicare, et privare ea auctoritate principem, quia semper censetur apud se retinere eam potestatem, si princeps officio suo desit” (Suárez, 1858, p. 739).
 - 23 “Quae omnia, cum in lege naturali fundata sint, communia sunt Christianis et infidelibus” (Suárez, 1858, p. 740).
 - 24 “Rursus, causa haec justa et sufficiens est gravis injuria illata, quae alia ratione vindicari aut reparari nequit” (Suárez, 1858, p. 744).
 - 25 A.A. Cassi comments on this regard: “The absurdissimum leaves no doubt, and it is not just a logical but also a legal absurdity; we could also say, on the number of interdisciplinary studies of the history of medieval logic, which absurd, under the logical profile, is absurdum also in puncto iuris. [...] In Suarez, in short, law does

- not renounce the judgment of 'just' or 'unjust' that this by definition implies; with greater reason, if the judgment refers to the iusta or iniusta nature of the bellum "(Cassi, 2014, p.21).
- 26 "Secundo advertendum est varia esse injuriarum genera pro justi belli causa, quae ad tria capita revocantur. Unum, si princeps res alterius occupet ac nolit restituere. Alterum, si neget communia jura gentium sine rationabili causa, ut transitum viarum, commune commercium, etc. Tertium, gravis laesio in fama, vel honore" (Suárez, 1858, p. 744).
- 27 Cf. Suárez, 1858, p. 744. "In retaliating for injury, two things may be attempted: first, compensation for damages to the offended person. There is no difficulty in legitimately declaring war for this cause, because if it is permitted by reason of an injury, it will be more reasonably so that each State preserves the integrity of its rights. Many examples are found in Sacred Scripture. The second, so that the offender is punished with complete complicity, which offers his difficulty "(Suárez, 1956, p.79).
- 28 Writes A.A. Cassi thusly: "It is in the [...] sectio V that Suárez distances himself from the sententia quam Hostiensis Panormitanus, et alii Canonistae defendunt, which affirms the titulus infidelitatis, quia scilicet nolunt veram religionem admittere. Suárez wisely notes that on this road, rather than avoiding, the offenses against God are multiplied more than they could be avoided. "(Cassi, 2014, p. XXII)
- 29 "I conclude that a Christian prince cannot declare war if it is not because of an injury or for the defense of the innocent" (Suárez, 1956: 89).
- 31 "Sicut initium, ita continuatio belli debet esse necessitatis" (Suárez, 1858, p. 753).
- 32 "Denique jus belli est odiosum, et poena ejus gravissima; ergo restringenda est, quoad fieri potest" (Suárez, 1858, p. 753).
- 33 "Nam hoc interdum licet sive ob nimiam criminis gravitatem, sive ad emendationem aliorum; quia vero tunc vix possunt distingui innocentes a nocentibus, nisi per sexum vel aetatem, ideo quoad reliquos generaliter datur illa facultas quandiu durat actualis pugna secus vero erit illa finita et parta victoria. [...] Nam qui habet jus ad finem belli, per se loquendo, habet jus ad haec media: mors autem innocentum non est tunc per se intenta, sed per accidens sequitur [...] Et confirmatur, nam alia ratione impossibile esset perficere bellum. Item mulier habens in utero filium potest uti medicina necessaria ad vitam suam, etiamsi sciat inde consequendam mortem filii. Ex quibus rationibus colligitur extra articulum necessitatis hoc non licere" (Suárez, 1858, p. 756).

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Date of receipt of the document: April 10, 2017

Document revision date: April 25, 2017

Date of acceptance of document: June 15, 2017

Date of publication of the document: 15 July 2017