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Military Aggression, Peace Selection and International Law: Core Themes and Debates

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Abstract
One of the challenges that the international community is facing today is the use of military force which causes the worsening of the conflict between the two camps. The use of military aggression, although not allowed by international regulations, prevents the use of peaceful means to defuse the conflict, which can generate an escalation of violence that can lead to the involvement of other countries into the conflict. Furthermore, one of the main problems that the international community is facing today is that of military aggression, which often is considered by some countries as a mean of extinguishing a dispute. This concept originated in the practice of states over time, with roots that stretch back to antiquity. However, there are currently a number of international regulations that prohibit these practices, rules that are based on the principles of international law. The evolution of international law in the last decades has resulted in the formation and affirmation of its fundamental principles.

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The fundamental principles of international law contains the general rules of conduct, compliance with which is essential for the development of friendly relations between states, to maintain international peace and security (Geamănu, 1967: 7). As in any area of law, fundamental principles of public international law represent its resistance structure, a structure on which the other legal institutions that operate international law are grafted. Given their overriding, fundamental principles assure the stability of international relations development, regardless of how they were born. In Western doctrine there have appeared attempts to challenge or minimize the role of the fundamental principles of world peace. These opinions do a service to aggressive policies pursued by some pressure groups that for pecuniary interests conduct violations of fundamental principles of international law. With no immutable and eternal nature, fundamental principles transform and develop on the extent and in accordance to the evolution of social relations. Due to the progressive development of international law its fundamental principles are enshrined in multilateral treaties of an universal or regional type (U.N. Charter, Article 2). Over time, along with the emergence and development of relations between states the fundamental principles of public international law arose and evolved that should govern relations between all states and are called to be the substance of new international relations, an essential component of a new international political and economic order (Geamănu, 1981: 126).

At the end of the feudal monarchy, the notion of sovereignty appears as a legal and political expression of the rule of monarchical power within the country, meaning over all feudal and at the same time, independence, externally to the Church of Rome, the Holy Roman empires, the German nation and other feudal monarchs (Geamănu, 1975: 23). A widely recognition has been noticed within the principle of sovereignty in the period of absolutism. Therefor, through the Peace of Westphalia ended in 1648, the independence of Holland and Switzerland is recognized. The feudal and dynastic character gets imprinted also on the principle of sovereignty and equality of states.

The proclamation of the principle of sovereignty created the foundation for the recognition of equality of states, which removed conflicts on the hierarchy of feudal states and their representatives (Geamănu, 1975: 129). Also, during this period was proclaimed the principle of non-intervention, which due to the imperialist subjugation and inequality had very limited content, which led to the admission of exceptions, that allowed the practice of the great powers to invoke various pretexts for the interventions made. The principle of non-intervention raises much the same issues today. States frequently condemn the acts of other states as intervention in their internal affairs (Jamnejad, 2009: 346). Writing in 1989, Damrosch pointed to a rather serious gap between what a broad view of the nonintervention norm would require and what states actually do (Damrosch, 1989: 83). The new international standards proclaimed by the French Revolution occurred on class interests of the bourgeoisie, the ascending class in the first period of capitalism who played an important positive role in the development of principles governing relations between states (Diaconu, 1981: 25).

Through the influence of progressive forces, the old principles of international law, namely the respecting of the international treaties, equality and respect for sovereignty have evolved. We note that in the same period, citing several examples of interventions, including the deployment of Prussia, in 1787, of an army in the Netherlands in order to restore the throne to Prince of Oranje (Redslob, 1923: 238). New principles are beginning to assert, such as non-aggression principle, the principle of cooperation and the peaceful coexistence, the principle of the peoples right to decide their own fate, moment

that marks a qualitative leap in the evolution of international law. Since 1815, at the Congress of Vienna, there has been recognized the freedom of navigation and in principle slave trade has been banned. In contradiction with the principle of legitimacy and the principle of proportionality within territorial acquisitions, which had been proclaimed by the absolutist powers of the Congress of Vienna as a criterion for restructuring the political map of Europe, making their way are the principles of sovereignty of nations, the right of each nation to fall off into a separate state, the principle of nationalities, the right of nations to unite in one state and territory establishment through the plebiscite way (Geamănu, 1975: 142).

However, during this period, principles as sovereignty, equality and non-intervention are violated through unequal treaties concluded between the great powers and semi-colonial countries, such as, for example, the treaties from Mankin (1840) and Tiantin (1860). Although peaceful means of international dispute resolution, such as mediation, arbitration and joint committees have met in the last decades of the nineteenth century an intense development, they contributed only a little to settlement of disputes, as they were applied only into small conflicts, in which the great powers were not involved. You can not talk about world peace as long as the international security can not be ensured (Titulescu, 2002: 8).

To ensure world peace Titulescu had a very simple solution: provide a unique front of peace. The Covenant of the League of Nations in 1919 in its preamble emphasized the need to develop cooperative relations among nations and the rejection of war. However, the rule of the cancellation of war was not mandatory but required a proceduralization of war. The Monroe doctrine supported the principle of non-intervention, citing in this regard the US policy not to interfere in European wars. Likewise, the United States, according to the Monroe doctrine will not allow the mixture of European powers in the Americas. A series of doctrines that opposed the intervention were formulated. We are talking about the Calvo and Drago doctrines, named after their originators. The Calvo doctrine opposes military intervention started for the recovery of damages caused to citizens as a result of civil war. Drago doctrine opposes armed intervention against a State which has not paid the debt. Political interference covers diverse situations where one state becomes involved in the internal political processes of another. This type of intervention encompasses acts of greatly differing intensity and coerciveness (Wright, 1960: 54).

In the interwar period new principles are developed, which are marked by the following points: Kellogg-Briand Pact, completed in 1928, which introduced as an instrument of national policy – renunciation of war; The Conventions from London of 1933, which gave a clear definition of the concept of bullying and aggression.

Numerous international conventions have contributed to the development of fundamental principles of international law. These include the UN Charter which defines the most important principles of international law.

The principle of sovereign equality and respect for the rights inherent to sovereignty

Traditionally, public international law was deployed as a means to regulate relations between states, and to protect sovereignty (Sandvik, 2010: 5). This principle is an essential element of public international law because it is based on many of the rules of this right. Representing an essential attribute of state, sovereignty consists internally in

the supremacy of state power and externally it consists in the independence of the state to any other power.

Sovereignty, as intrinsic attribute of the State, is a concept as old as it is the power and resolve without external influences and by his own will, problems that occur internally and externally, but without violating the rights of other State nor the principles and norms of international law. State independence and sovereignty means exclusive, inalienable and indivisible, with an originating and plenary character, the first one who defined this concept was Jean Bodin in the sixth volume of his work De Republic, published in 1576 (Floroiu, 2011: 24). Sovereignty is characterized by the following key features: exclusivity, indivisibility, inalienability, originating character and plenarity. The exclusive character of sovereignty is that a State can exercise only one sovereignty. This character is expressed in territoriality, in general laws and jurisdictional authority, the exclusive right of each state to establish the organization and functioning of its organs including administrative and exercise coercive power (Rosseau, 1974: 73). The indivisibility of sovereignty implies that it can not be shared with anyone. Acceptance of sovereignty would lead to fragmentation of old unlawful practices such as protectorate and colonialism. Inalienable character of sovereignty is that it cannot be dropped or transferred to other States or international organizations. Transferring it to another state would lead to emptying the sovereignty of any content.

The plenary and originating nature of sovereignty is due to the fact that each state's sovereignty is its own virtue of its subject of international law, it is not attributed to any entity outside and manifests itself in all areas of social, economic and political life (Ciuvăț, 2002: 73). This principle is part of jus cogens gentium, as by requiring a State to conclude a treaty would violate a norm of jus cogens, which would result, under public international law, the invalidity of the treaty. Sovereignty gives states the right to choose freely the political, economic and social system according to the will of the people living on its territory and, at the same time, to promote its own domestic and foreign policy. The report of the Special Committee for Coding Principles of 1964 stated that sovereignty is seen as "a general mandatory rule of contemporary international law".

The principle of territorial integrity and inviolability of borders

This principle could not be established as long as the war was considered a legitimate means of settling international disputes. The consecration of this principle was imposed, firstly, by the consequences of human and material losses caused by the First World War and, secondly, by the need to maintain the *status quo* established by the Peace of Versailles, signed ending June 28th, 1919. Article 10 of the Covenant of the League of Nations stated that members of the organization undertake "to respect and defend against any attack from outside territorial integrity and existing political independence of all members of the Society".

Territorial integrity and inviolability imposes a number of obligations for the states, one of which was to refrain from any interference with the territory of another state through military action, or otherwise, from any attempt aimed at the partial or complete rupture of national unity and integrity territorial of another State, from any act of using force or threat of force against another state territory leading to military occupation, annexation, dismemberment of another State; from any act of seizure or usurpation of the whole or part of the territory of another State (UNO General Assembly resolution – 26.25 XX). On the basis of territorial integrity are inalienable and indivisible state territory, allowing exercise of sovereign rights of a State on the entire national territory. Any

violation of the principle of territorial integrity at the same time lead to a violation of sovereignty.

The principle of equality of states

According to this principle all states enjoy equal status without discrimination, from which arising the ability of these countries to acquire rights and bounds equally. In other words the principle precludes a State or group of States to benefit from more rights than other countries in international relations. Equality means, therefore, that states are holding to the same rights and obligations under international law. This is an important factor, since it represents an evolution in international law and international relations at a time when the law was made by the great powers, at their discretion and without any regard for the opinions of smaller states, to a time when this behavior tends to take the path of history, being replaced by manifestation of the principle of legal equality of States in international relations (Floroiu, 2011: 25).

Professor Grigore Geamănu noted that "equality of rights means that no Member State is unable to arrogate in mutual relations greater rights than others so having an equal opportunity to acquire rights and assume obligations" (Geamănu, 1967: 100). Joining the principle of sovereignty to the principle of equality was made through the UN Charter summarizing the two principles in the principle of sovereign equality. Equality of rights plays a functional or absolute conception of equality. States have an equal legal capacity to acquire rights and assume obligations, rights and obligations that must be the same, regardless of the fact inequalities between states (Ecobescu, 1979: 107).

The principle of the right of peoples to decide their own fate

UNO Declaration 1970 provides that "all peoples have the right to decide their political status freely and without outside interference and to seek their economic, social and cultural life and all have an obligation to respect this right under the Charter". The claim to self-determination often encapsulates the hopes of ethnic peoples and other groups for freedom and independence. It provides a powerful focus for nationalist fervour, and it offers a convenient tool for ethnic entrepreneurs seeking to mobilize populations and fighters in pursuit of a secessionist cause. Indeed, self-determination conflicts are among the most persistent and destructive forms of warfare (Weller, 2009: 111). The Final Act of C.S.C.E. 1975 provides that under the principle of equality of peoples and their right to dispose of themselves, all peoples always have the right, freely, to determine their political status as they wish, internally and externally "without any outside interference and to perform according to their will the political, economic, social and cultural development" (Geamănu, 1967: 109).

By affirming and enshrining this principle, the national liberation struggle of oppressed peoples acquired a legal character. It is increasingly common for third states (often through international organizations such as the OSCE) to take a close interest in, and be free with their comments on, the conduct of the elections. This is often at the invitation of the state concerned. Indeed, that state's co-operation is important, as was evident from the problems with observing the Russian presidential elections in March 2008, which led the OSCE to cancel its mission. But state practice confirms that even without such consent, comment on the fairness (or otherwise) of elections is not contrary to international law (Asante, 1994: 235).

Legal consecration of this principle occurs in the moment of decolonization, particularly in the case of Namibia (1971), the Western Sahara (1975) and East Timor

(1995). International Court of Justice states the principle as fundamental and opposable *erga omnes*, deemed to apply to all people, not just those subject to colonial domination (Floroiu, 2011: 32). The principle allows oppressed peoples to resort to armed force if the force opposing oppressive state resists the self-determination struggle. By virtue of this principle both peoples shall freely establish their political status and economic, social and cultural development. An important issue discussed in this principle was whether this right is recognized national minorities or not.

The overwhelming majority of academic commentators have given a negative answer to this problem considering that it is absurd to assign this right to national minorities as they are part of a nation already. To give a positive answer to this problem would create internationally, artificially, the conflict related to a series of territorial claims, which would be made by national minorities. The ending of this action would be the fragmentation of the existing countries in a multitude of small states since, in principle, no nation is "pure", she comprising several national minorities. Titulescu stated that: Obligations of States towards minorities must be universal in the form of law or in the form morals ... minorities shall be treated with kindness, and the states that they are part of shall be treated the same (Titulescu, 1996: 121). Exercising the right to decide their own fate by a people under foreign rule aims to achieve independence and establishing a national state of its own. Economic measures can be directed against states or their leaders to force a change in policy (Bowett, 1975: 261).

The principle of non-interference in internal affairs

This principle is also called the principle of nonintervention. The concept of International Law Public intervention in problem solving involves an interference inside or outside the State, which leads to its illicit nature. The principle of non-intervention tends to be dealt with briefly in general works on international law (UNO Charter, Article 2 pt. 7). UNO Charter provides that "Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of a state, nor shall require the Members to submit such matters to settlement under the present Charter".

Thus it prohibits not only armed intervention but also any other form of direct or indirect interference in the affairs of other states, thus affecting national sovereignty, the right of peoples to decide their own fate (U.N.O. Doc. A/5746: 126).

In Western doctrine is argued that this principle undergoes a series of exceptions. It is mainly the case of "consensual" interventions and "humanitarian reasons" interventions. In the first case the legality of an intervention would be because it would take place at the request of the government. An example of this is the US aggression on Vietnam, supported by the fact that she made the request of the puppet government of that country. The second case refers to intervention for humanitarian reasons executed when the state is guilty of repeatedly cruelty and persecution of its citizens. An example of this is the US military intervention in the former Yugoslavia.

One reason given was that uncertainties over the scope of the law of intervention made it unsuitable for criminalization – the dangers of violating the principle of *nullum crimen sine lege* were too great. It was at no point proposed that a violation of the non-intervention principle (as opposed to aggression) should be included as a crime in the Rome Statute of the International Criminal Court, and there is no basis for suggesting that, as a matter of current international law, such a violation of itself involves international criminal responsibility (Linarelli, 1995: 25).

Compliance and the principle of noninterference in the affairs that fall within national competence of the Member is particularly important for the new international relations, to respect other fundamental principles of international law, particularly the principles of sovereignty, equality of rights and the right of peoples to themselves decide their own fate, and to ensure peace (Takacs, 1976: 45). Regardless of the pretexts that would be invoked to justify an intervention, it is prohibited by contemporary international law. This general prohibition is absolute and general, it representing the guarantee of sovereignty defense and equality of states and the right of people to decide their own fate (Geamănu, 1967: 191).

The principle of non-resort to force or threat of force

With the development of military technology and increasing economic disparities between States, the risks of unequal wars and considerable human losses were increasingly important. Thus, to mitigate these risks, in the late nineteenth century war was banned as a means of conquering territories, so that a little later, to also limit the use of force in the case of contractual debt recovery (Drago Porter Convention). In 1919, the war of aggression was interdicted, although the provisions of the SDN Covenant were relatively vague in this case (Floroiu, 2011: 26-27). It is enshrined in a number of international documents including the UN Charter. This principle could exercise with the outlawing of war. Because of this, war was allowed to be used only exceptionally, in two cases, namely: in the case of exercising a right to self-defense, in cases based on decisions of the UN Security Council. In the new millenium, the scope and limits of the use of force in international relations are still the subject of strong debate. Some legal scholars and state representatives favour an expanded interpretation of the right of self-defence which includes so-called pre-emptive and anticipatory self-defence (Ochoa-Ruiz, 2005: 499).

International sanction laws are necessary to provide guidance for coercitive action of non-military nature directed at guvernments or groups whose conduct is considered a threat to international security (Sponeck, 2002: 81). In the category of acts prohibited by this principle also include: organizing and supporting acts of civil war in another State; supporting terrorist acts in another State; tolerance to pursue activities in the State involving the use of force or threat of force. From the interpretation of the Charter of the United Nations Organization results that is prohibited not only the use of armed force but also the use of force manifested in other forms. Unallied countries Conference of 1964 in Cairo emphasized the idea that force can manifest in various forms both militarily and politically or economically, and all these manifestations of force are prohibited. Acts of aggression are classified into two broad categories: acts of armed aggression; acts of aggression by using other manifestations of force in international relations (economic pressures, political etc.).

Also, military aggression in turn is divided into two levels: direct military aggression; indirect military aggression. Declaration of war addressed to a State, while appearing in the work of the London Convention of 1933, in the definition of aggression, however this was not retained in UN documents since it does not amount to an armed attack. That argument, however, is contradicted by international practice, which proved that all these statements were followed by military action.

The Second World War demonstrated that excesses of dictators could threaten other countries, their people and democracy itself. Thus, international awareness about the need for international criminal tribunals that would ensure the punishment of the greatest crimes against humanity, started to reset, in order to avoid impunity and transmit to

dictators the message that nobody is above the law and that the law values the dignity of the human person (Floroiu, 2014: 46).

Indirect armed aggression materializes in the following forms: infiltration or incursions of irregular armed forces aggressor in another state; initiation of subversion, overthrow pursuing political order, social, legal of another state, fact on which is based the use of force. The moral reality of war is divided into two parts. War is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt. The first kind of judgment is adjectival in character: we say that a particular war is just or unjust. The second is adverbial: we say that the war is being fought justly or unjustly (Allhoff, 2013: 1).

Threats of force consist of acts or actions of states, which is equivalent to express promises to use force against other states. These actions are materialized in: declaring war ultimatum; concentration of troops in border areas; military demonstrations, water and air; complete or partial interruption of economic relations or means of communication; propagating war against some states through mass media. These actions constitute violations of the principle of non-aggression. A final point to make is that peacebuilding requires bravery, particularly in societies emerging from violent conflict in which enmity still remains. It may require individuals and groups to put their heads above the parapet and to act in ways that are socially unacceptable to their own group. It is understandable that many people find it easier to follow group conventions. Yet there have been startling instances of individuals and groups who have gone against the grain, often at personal risk (Mac Ginty, 2013: 390).

It is generally recognized that the non-use of force or threat of force, is a peremptory norm of international law from which states may not derogate in relations between them. Although it was developed in conjunction with the UN collective security system, the principle of non-resort to force or threat of force has already acquired a customary rule statute, which applies independently of the action of UN institutions (Diaconu, 1981: 292).

The principle of resolving international disputes by peaceful means

It is a corollary of the principle of non use of force or threat of force. The United Nation Charter, Member States committed themselves to renounce the use of force and resolve possible conflicts only by peaceful means.

Regarding the war, Titulescu was convinced that “the war is never, but really never, the solution to a conflict. War in the best case, the victorious war, can only change the terms of the issue, tomorrow's dissatisfied will take place of today's dissatisfied. To a war held in the name of fairness will follow a war held in the name of justice. And so indefinitely. And at what price? With a huge price shall be paid by the international community for the objective reasons of one or more of its members” (Diaconu, 1981: 331).

This principle has been inserted into a number of international documents such as: The General Act on peaceful settlement of international disputes since 1928; UNO Charter 1945; Declaration on Principles of trade relations and cooperation among States in 1970 adopted by the UN General Assembly; UNO General Assembly Declaration the peaceful settlement of international disputes in 1982; The Final Act of C.S.C.E. 1975 Helsinki etc. The main rules that form the content of this principle are: the obligation to regulate international disputes by peaceful means only; the obligation to seek a quick and equitable resolution of disputes; free choice of means of settlement, the parties deem most

appropriate in the circumstances and nature of the dispute; the obligation of the parties as if that they do not reach a solution through peaceful means one continue to seek resolution of the dispute by other peaceful means; the obligation of states in dispute, as well as other countries to refrain from any action likely to aggravate the situation and endanger peace and security or make it more difficult to resolve the dispute; the obligation to settle disputes on the basis of sovereign equality of States and in accordance with the purposes and principles of the UN Charter (Diaconu, 1981: 294). The application of this principle shall be made over all disputes without exception. In the conception of Titulescu "the most valuable asset of a country is prolonged peace that alone allows a nation to find its way, that alone lets one to bring to the general civilization the creative benefits of the national genius" (Titulescu, 1996: 457).

In conclusion, the following of the fundamental principles of public international law has as consequence a climate of peace and security both regionally and universally, which causes the removal of all forms of military aggression. It requires energetic actions to halt the military actions of aggression, which can go up to the application of economic sanctions to the aggressor state from the international community.

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