

# Prohibition of War as a Means of Solving International Conflicts

*Dumitru Mazilu*

Be-coming more and more aware of the ominous consequences of war within international life, the peoples of the world have pronounced and are still pronouncing themselves for classifying war of aggression as being unlawful and for the punishment of those liable for having violated the norms and principles of

international law. In this respect, their effort has materialized in the elaboration and adoption of certain regulations that condemn and forbid manifestly war of aggression by specifying that threat and use of force as well as resort to military means and war, are not durable solution as regards conflicts and international litigations.

## § 1. A Moment of Choice in Outlawing War of Aggression

After World War II, while humanity endeavoured by joint constructive effort to do away with the painful consequences of the devastating conflagration, it appears more and more prominently the need to trace some most precise norms to outlaw war of aggression. An extremely significant moment in this direction is considered to be the elaboration and adoption of the Pact of the Society of Nations<sup>1</sup>. Within this important international document it is sanctioned the will of member States of not making recourse to war for finding solutions to the possible litigations existing between them. "All the Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council" and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council (art. 12). First of all it is noteworthy that the Member States of the Society of Nations committed themselves to avoid recourse to war for solving a conflict

between them but they chose resort to peaceful methods, such as arbitration or the Council of the Society of Nations. However, should the conflicting parties not accept the arbiters' decision or the Council's report, the Pact of the Society of Nations accepted war after a three months' deadline, in this respect, the elaboration and adoption of the Pact did not constitute but a moment - a truly significant one, indeed - in the continuous struggle of peoples and progressive forces for the prohibition of war of aggression and its removal from international relations. Regulations sanctioned by this important international document play a remarkable role in underlining the priority of peaceful means to find solutions for any dispute.

"likely to lead to a rupture" (art. 12); that is to say, a conflict or tensional state between two or more States, which represents a contribution to rethinking and re-establishing international relations on the solid foundations of peace.

## § 2. Condemning Recourse to War for the Settlement of International Disputes

The adoption of the *General Treaty on renouncing to war as a means of national policy*<sup>2</sup>, at Paris, on 27<sup>th</sup> of August 1928, represented, undoubtedly, a crossroads in the evolution of International Law with regard to the constitution of the Law of Peace. By this Treaty, the High Contracting Parties solemnly declared that "in the names of their respective peoples they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another" (art.1). Furthermore, the High Contracting Parties "agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means" (art.2)<sup>3</sup>. The literature of specialty has rightfully consigned that the negotiation and adoption of such treaty constituted a decisive step taken forward in the development of International Law, as in its rules war of aggression is placed outside the protection of the law by stipulating the need to resort to pacific means for finding solutions to litigations<sup>4</sup>.

How widely spread this point of view was, results from the fact that until 1939 – namely during 10 years - 63 States became forming parts of the Treaty said. These States – condemning solemnly war of aggression-engaged to renounce to it in their reciprocal relations of cooperation, fact that has had a particular significance in the settlement of certain cooperation relations within a peaceful climate and international security. As Nicolae Titulescu has asserted, under a legal aspect, the Treaty means the transposition of three things into the department of international law, "all of them, mainly, of practical nature:

a. the suppression, as far as the Members of the Society of Nations are concerned, of war in the four cases in which

the 1919 Pact did not succeed in stemming the legal right to war;

b. the extension regarding the renunciation to the legal right to conduct war for States that are not Members of the Society of Nations

c. the obligation of not opposing now on to sanctions that the Society of Nations would give in order to stop war - because, as long as there is a legal solidarity organized with regard to action foreseen in art. 16 of the Pact, there is at least a legal solidarity from the part of all signatory nations of the Kellogg Pact of not opposing the former one which represents actually the application of the latter"<sup>3</sup>, [t is also remarkable that the Treaty of Paris does not include any limitation in time or any regulations with view to its withdrawal or denunciation by the Party States. This spotlights the conception that governed the elaboration of this important international treaty, namely that the option of States to renounce to war as an instrument of national policy in their relations with one another gives expression not to a conjectural attitude but to durable conduct, unlimited in time and not submitted to change. "The present Treaty shall, when it has come into effect as prescribed in the preceding paragraph<sup>6</sup>, remain open as long as may be necessary for adherence by all the other Powers of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington and the Treaty shall immediately upon such deposit become effective as; between the Power this adhering and the other Powers, parties hereto", (al.2 art.3).

By giving voice to their trust as for the ratification of the Treaty mad by all the States in the world, the Signatories consigned in its preamble: "hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavour and by adhering to the present Treaty as soon as it comes into force bring

their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy".

### **§ 3. War of Aggression - a Crime Against International Peace**

Considering that several States - forming part in the Treaty of Paris - committed themselves to renounce to war as an instrument of national policy in their relations with one another, and as a consequence to the appearance of a powerful trend against acts of aggression, there can be easily inferred the conclusion that it is for the benefit of general security and peace that aggression be defined<sup>7</sup>.

An important place in the process of defining aggression is held by the Conventions of London (3-4\* of July 1933), which specifies what aggression means and who is to be considered an aggressor. Thus, the elaborated texts stipulate that a State is considered to be an aggressor if it becomes liable for perpetrations, such as "invasions by the means of armed forces, even without any previous declaration of war, made against other States' territories, vessels and aircrafts; the naval blockade of other States' coasts and harbours; support given to armed bands, formed on the territory of one State and invading another State's territory; a State's refusal - despite all requests made by the invaded State - to overtake to its own territory, all the measures in its power, to deprive the armed bands formed on this territory of any assistance or protection<sup>8</sup>. Furthermore, it is sanctioned that "no consideration of political, military, economic or of any other nature, shall serve as an excuse or justification for an act of aggression", as defined in the texts of the Convention.

Later on, after World War II, there arose the problem of establishing some more precise criteria in order to determine accurately the concrete situations presenting acts of aggression as well as aggressor State,

The condemnation of the war of aggression and placing it outside the protection of the law raises the problem of defining aggression and understanding its consequences within international relations.

taking into account the fact that, quite often, in trying to justify its aggression, the aggressor State invokes different reasons by which it declares the other State as being its aggressor. By giving course to these requirements, the U.N. General Assembly<sup>10</sup> adopted the definition of aggression<sup>11</sup> specifying all actions belonging to this grave form of illegal recourse to force. The Special U.N. Committee aiming to define aggression, took over valuable previous contributions - inclusively the defining elements presented in the 1933 London Conventions -, concluding that aggression consisted in a State's recourse to armed force against other State's sovereignty, territorial integrity or political independence, or any other way, incompatible with the Charter of the United Nations. In the light of this document, an act of aggression implies: a. invasion or attack made by one States\* armed forces on the territory of another State, or any other military or temporary occupation, resulting from such an invasion or attack, or any annexation, by force, of a territory or part of territory belonging to another State; b. bombardment made by the armed force of one State on the territory of another, or the use of any weapons of a State against another State's territory; c. naval blockade of the coasts or ports of another State; d. attack by the armed forces of one State against the land, naval or air forces or the naval and civil air forces of another State; e. the use of the armed forces of a State which are stationed on the territory of another State with the approval of the host State, contrary to the conditions stipulated in the agreement, or any extension regarding their presence on the given territory after the expiry of their agreement; f. the action of a

State to agree that its territory, available to another State, be used by the latter to commit certain acts of aggression; g. the act of sending by a State or on its behalf, armed bands or groups, of irregular forces or mercenaries to commit acts of armed forces against another State, of a gravity that is tantamount to the results of the above-mentioned acts, or the very fact of engaging itself substantially in such an action (art. 3). It is specified as plainly as possible – in the text adopted by the United Nations General Assembly, as well<sup>12</sup> – that no reason, regardless its nature (political, economic, military or any other), *cannot justify an act of aggression* (art.5).

Moreover, of special significance is the sanction made by the World Forum's General Assembly with regard to the fact that no territorial acquisition or special advantage resulting from an act of aggression is legal and they should not be recognized as being so (art.5). Meanwhile, it is asserted that none of the elaborated texts could affect, no matter what, peoples' right

to self-determination, freedom and independence (art.7)<sup>13</sup>, as it results from the UN Charter. As it has been emphasized in the literature of specialty, this definition was liable to improvements and completions so that it might comprise all forms of aggression and facilitate the adoption of the necessary measures for the prevention and elimination of all acts of aggression<sup>14</sup>.

Prohibiting war of aggression requires placing outside the protection of law all acts qualified as aggressive. There is no doubt that their precise settlement facilitates the determination of aggressive acts and taking measures for their suppression as well as punishment applied to those liable for having committed them. Thus, it has also been attempted the deterrence of some possible aggressors.

The General Assembly defined war of aggression as being a "crime against international peace" (art. 5), sanctioning the principle according to which "aggression generates international liability" (art.5).

#### § 4. Condemning War Propaganda

On the grounds of a multilateral analysis made on both world conflagrations and the outbreak of armed conflicts in different areas of the world, the UN General Assembly firmly condemned war propaganda<sup>15</sup>, qualifying it as a serious peril addressed to peace and international security<sup>16</sup>. Soon after World War II, in November 1947, on the occasion of the third ordinary session, the UN General Assembly adopted a resolution by which it condemned war propaganda "regardless its form or the country it occurs in, should it aim at, represent or enhance a threat to peace, its violation or an act of aggression"<sup>17</sup>. War propaganda has been defined as an act of ideological preparation to war, of a particular gravity, inciting to aggressive actions and generating a warrior psychosis, favourable to violent confrontation, use of armed force and other means of mass-destruction.<sup>18</sup>

On account of the serious consequences to war propaganda, it has appeared the preoccupation for its incrimination, condemnation and elimination from international life. Thus, within the conferences concerning the unification of criminal legislation held in Warsaw (1927), and in Brussels (1930) it has been approached, in all details, the problem of "liability in the case of" undertaking warlike propaganda activities. In 1933, during the debates of the Legal Committee of the League of Nations, it has been stressed the need to sanction war propaganda, all actions undertaken to spread information which could lead to the deterioration of interstate relations or harm the international climate. The legal Committee found it mandatory that States adopt reprehensive measures against all acts of disseminating information

of calumnious nature that might bring about the deterioration of international relations.

Over the years following World War II, within several European debates, it has been pointed out the request to condemn and punish war propaganda, consigning - in the Final Act of the Conference on Security and Co-operation in Europe - the obligation of all participating States "to promote, by all the means they would consider appropriate, a climate of trust and respect among peoples. Accordingly they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force"<sup>19</sup>.

Furthermore, war propaganda has been incriminated within the internal legislation of several countries. Thus, English criminal legislation foresees sanctions against any person trying to humiliate or insult the head of a foreign State, an ambassador or other dignitary in order to undermine the pacific and friendly relations that the United Kingdom has with the State the offended persons belong to. Similar relations are to be

found in the Legislation of the United States of America, France and other countries.

In Romania, criminal legislation incriminates and punishes war propaganda by including it among crimes committed against peace and the entire humanity<sup>20</sup>.

A careful analysis on the phenomena of our contemporary world leads to the conclusion that war propaganda should be considered only the direct incitements to war of aggression and all manifestations that prepare such a climate. It was the case of the dissemination of fascist ideology\* of the irredentist conceptions etc.

For several years, the UN Commission on International Law focused on the elaboration of the bill of crimes committed against peace and humanity by incriminating and qualifying war propaganda as a crime against peace and humanity. As an expression of the consistence proved by Member States in condemning war propaganda, it is in the Declaration on Principles of International Law Regarding Relations of Friendship and Co-operation between States that war propaganda is incriminated and it is also sanctioned the compliance of States to "restrain from all propaganda favouring war of aggression"<sup>21</sup>.

## § 5. Preparations for War - a Grave Peril Addressed to Peace

In terms of advanced technology, the diversification and development of arms of all sorts, the production and modernization of thermonuclear, chemical and bacteriological weapons or the production of the bomb with neutrons, preparations for war represent a serious threat addressed to peace.

For this very reason, it has been recently developed a powerful trend of opinion against war preparations or any actions that might bring about the deterioration of interstate relations, the accentuation of strain in international relations. In important international documents it is sanctioned the commitment of States not undertaking actions of war preparation and the avoidance

of such actions. Thus, in the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water<sup>22</sup>, it is stipulated the obligation of each State Party "to refrain, furthermore, from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion at any place under its jurisdiction or control" (al.2 art. 1).

In the reports made by the UN Secretary General regarding the economic and social consequences of arms race and its profoundly harming effects on peace and world security<sup>23</sup> as well as in the resolutions adopted by the UN General Assembly it has been emphasized the need to adopt some

urgent and effective measures against war preparations, for the cessation of arms race and the achievement of concrete progress towards disarmament, mainly nuclear disarmament<sup>24</sup>. Putting an end to arms race and the adoption of some real measures in order to accomplish disarmament would represent a concrete contribution to the maintenance and promotion of peace and international security. It becomes obvious that all action taken to enhance the development, production and qualitative improvement of different types of weapons, especially nuclear arms, represent a huge peril to world peace. Preparations for war imply actions that run counter to the norms and principles of international law, to co-operation and understanding among peoples;

consequently, they become vehemently condemned by worldwide public opinion. Therefore, the *Statute of the International Military Tribunal* of August 8<sup>th</sup>, 1945, qualifies the planning, preparation, initiation and waging of "a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing" (art.6) as being crimes against peace within the jurisdiction of the Tribunal for which there shall be individual liability<sup>23</sup>. All these represent the expression of the undeterred determination of all peoples and progressive forces in the world to put an end to all warlike actions or deeds likely to endanger peace and international security.

#### Note:

<sup>1</sup> *The Pact of The Society of Nations, Versailles, 15/28 June, 1919.*

<sup>2</sup> Romania became part of the Treaty on the 21<sup>st</sup> of March 1929 by ratification (see M of Nr. 30/1929). Known under the denomination of Briand-Kellogg Pact, this Treaty gives voice to the major reasons that determined its elaboration and adoption: "persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated" (al.3. Preamble).

<sup>3</sup> The reasons leading signatory States adopt this position are to be found in the Preamble of the Treaty said: "Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its national interest by resort to war should be denied the benefits furnished by this Treaty" (al. 4, Preamble).

<sup>4</sup> See Nicolae Titulescu, *Diplomatic Documents*, Edit Politică, Bucharest, 1967, p. 293.841 and next; Donnedieu de Vabres, *Le Proces de Nuremberg*, Paris, p. 59 and next.

<sup>5</sup> Nicolae Titulescu, *cit. work*, p. 293.

<sup>6</sup> It is about article 3 that states that the Treaty "shall be ratified by the High Contracting Parties named in the Preamble (Germany, U.S.A., Belgium, France, Great Britain, India, Italy, Japan, Poland, Czechoslovakia, e.n. Mote) in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington".

<sup>7</sup> The Signatory Powers of the 4<sup>th</sup> of July 1933 Convention (Romania, Czechoslovakia, Turkey, U.S.S.R. and Yugoslavia) have specified their reasons for signing such a convention: "mindful of the that the Briand-Kellogg Pact of which they are Signatories, prohibits all aggression", deeming it necessary in the interests of die general security, to define aggression as specifically as possible in order to obviate any pretext whereby it might be justified" (al. 3-4, *Convention for the Definition of Aggression*, London, 4<sup>th</sup> of July 1933).

<sup>8</sup> See art. 2, *The Convention of London* (3th of July 1933). The *Annex*, to this article gives voice to the Signatories desiring, subject to the express reservation that "the absolute validity of the rule laid down in Article Convention shall be in no way restricted", by furnishing certain indications for determining the aggressor: "declare that no act of aggression within the meaning of Article Q of that Convention can be justified by the following grounds, among others:

A. The internal condition of a State:

E.g., its political, economic or social structure; alleged defects in its administration; disturbances caused by strikes, revolutions, counter-revolutions, or civil war.

B. The international conduct of a State:

E.g., the violation or the threatened violation of the material or moral rights or interests of a foreign State or its nationals; the rupture of diplomatic or economic relations, economic or financial boycotts; disputes regarding economic, financial or other obligations towards foreign States; frontier incidents not forming any of the aggression specified in Article 2".

<sup>9</sup> *Ibidem*, art.3. The article makes reference to the Annex concerning art. II in which some of these considerations are enunciated.

<sup>10</sup> Doc. A/XXIX/3314 - 14<sup>th</sup> of December 1974.

<sup>11</sup> The definitive project of the definition of aggression has been elaborated by a special Committee of the United Nations, made up of 35 States, including Romania as well.

Following its long debates – during which the significant historical experiences and future possible situations have been evaluated – there have been elaborated both the defining elements of aggression and the criteria required for the definition made to the aggressor. The definitive project met the unanimity of the special Committee's Members.

<sup>12</sup> This text takes over almost integrally art.3 of London Convention (3<sup>rd</sup> of July 1933).

<sup>13</sup> The document stipulates these people's right to fight against foreign domination and to request and obtain assistance in accordance with the principles of the Charter and the Declaration on the principles of International Law, especially regarding peoples under colonial or racist regimes, or other forms of foreign domination.

<sup>14</sup> see *Aurel Preda – Mătăsaru, Non-aggression and negotiation: an equation of peace*, Edit. Politică, Bucharest, 1981, p. 27 and next.

<sup>15</sup> Even from its early days, the United Nations Organization strived for peace maintenance and international security, considering that war propaganda was an action undertaken against these major objectives of mankind (see doc. A/III/110 – 3<sup>rd</sup> of November 1947).

<sup>16</sup> See doc. A/III/110 – 3<sup>rd</sup> of November 1947.

<sup>17</sup> 110 / III Resolution (3<sup>rd</sup> of November 1947).

<sup>18</sup> It is known, for instance, the part played by war propaganda in the preparation and outbreak of World War II. Launching the absurde idea of racial superiority and stirring warrior instincts represented the priority objectives of military propaganda in Nazi Germany.

<sup>19</sup> *Declaration on Principles Guiding Relations between Participating States*, Conference on Security and Co-operation in Europe, Final Act, Helsinki, 1975.

<sup>20</sup> Art.356, Title XI, Part.II, The Penal Code of Romania.

<sup>21</sup> Doc. A/XXV/1970. The text of this declaration has been elaborated by a Special Committee constituted in 1974, comprising 31 Participating States, among which Romania, as well.

<sup>22</sup> The Treaty has been ratified in our country by Decree nr.686 (1963) in B. Of Nr.20 – 31<sup>st</sup> of October 1963.

<sup>23</sup> These reports have been issued by experts coming from different countries, exclusively ours. This problem has been approached within the U.N.O. at an initiative made by Romania.

<sup>24</sup> See Resolution nr. 2667/XXV, 7<sup>th</sup> of December 1970.

<sup>25</sup> See also Resolution nr. 3 (I) - 13<sup>th</sup> of February 1946 and nr.95 (I) -11<sup>th</sup> of December 1946.