

# The Nature of War. Unjust War. Justified Wars. Preventive Wars

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Defining the law of war means providing a prerequisite for a thorough study made on this phenomenon as such, followed by the analysis of the different meanings it acquires. Thus, it makes possible to avoid a frequently met confusion, especially in the literature of

popularisation that often dwells upon this subject. Notional explanations help us understand the place and role that war detains in human history as well as the modalities in which the idea of peace worked its way, asserted itself and developed in opposition to violence, confrontation and war.

## §1. What is war?

War is usually defined as a violent conflict. By war it is not action that is being assigned, but the state of those who confront in a violent manner. Filon showed that: "enemies are considered to be not only those who attack on land or by sea but also people who bring war machines in harbours and place them in front of city walls, even if they did not resort to fight"<sup>1</sup>.

The denomination of war<sup>2</sup> is attributed only to designate a conflict already started, here including preparations and the fight as such. Servius pointed out that "*bellum* includes preparation and concord (*consilium*)"<sup>3</sup>, while armed facts "imply only the action of opening warfare"<sup>4</sup>. War (*bellum*) represents the entire interval during which all means necessary to fight are prepared or fight itself is carried on. Battle (*proelium*) is the very action of hostilities.

From earliest ages, in times of conflict and hostilities it has been invoked and it is still being invoked the most different reasons *de iure* and *de facto* in favour or against violent and warlike actions. It is later on, long time after hostilities have taken place and peace has been concluded, that objectivity, usually, worked its way and the causes of violent actions as well as the purposes had in view by belligerents appeared in their true colours. The analysis of events and especially that of causes allows to outline some *criteria* of evaluation, thus facilitating to acquire the right understanding of this particularly complex phenomenon called war. Such an analysis is to be found in a treatise published at Frankfurt on Main between 1670-1734<sup>5</sup>, as well as in the works of

Gaston Bouthouf<sup>6</sup> and R. Carrère<sup>7</sup> and other researches who were deeply engaged in studying this issue. In a more complete vision – seen not only as an act of will or as a military phenomenon – Karl von Clausewitz defines war as being a social phenomenon, a real political instrument, the *continuation and maintenance of political relations through other means*. In his opinion, political intention is the purpose while war represents the means<sup>8</sup>.

Beyond the speculative analysis of this complex phenomenon, particularly met in Spencer's, Tarde's and Gumplowicz's studies, Quincy Wright examines war under the complexity of its military, political, juridical, sociological and psychological aspect<sup>9</sup>. Moreover, the famous Romanian sociologist, Dimitrie Gusti, defines war as being the means, often used by a community to achieve certain goals, while he considers peace reachable only as a consequence to the disappearance of the phenomenon of submitting one nation by another<sup>10</sup>.

Therefore, war is a socio-political phenomenon, determined by a complex causality, consisting in the violent confrontation of certain communities, peoples or states<sup>11</sup>. Only after having understood war in the multitude of its determinations and manifestations<sup>12</sup>, it becomes possible to understand the ways and means of achieving peace<sup>13</sup>. Juridical research represents, undoubtedly, such a means – as long as it takes into account the results obtained by other branches of science.

## §2. Defining senses

The law of war can acquire at least two meanings. One of them, the *right to a certain action* represents the substance and finality of war, the goals had in view by means of the given armed conflict. Moreover, it is the initial sense, met in the definition made to a violent action, especially in the primitive communal system as well as the slave and the feudal system.

### A. The nature of war

With its first meaning, that of *right to action*, it has been questioned within several studies made in the course of time, whether war were justified and what was exactly that explained and grounded the feature of war. In philosophical and politico-juridical thinking, "arguments" were given in order to accredit the "right" to conquest new territories and subdue other peoples as well as the "right" to *maintain* the occupation of other territories and people. The idea of conquering new territories was closely related to that of detaining their control. The powerful would impose his point of view to the subjected and any act of insubordination would be severely punished. The conquest of other territories and the submission of other peoples used to be extolled in hymns and poetry, while conquerors were praised in hymns of fame in which bravery and gallantry proved in battles was highly glorified. The defeated were deprived of their goods and subordinated to the conquerors who established their domination on the submitted peoples and territories.

The complex problems on the nature of war were thoroughly examined and conclusions that proved their viability in time were, consequently, formulated. The debate focused on gaining knowledge of those *defining* elements and criteria that allowed us to characterise violent and warlike action. The most significant contribution, brought, by far, to the act of defining the character of war and to the study, made from this perspective on the law of war, is due to the eminent Dutch thinker Hugo Grotius. From the very beginning of his work, *On the Law of War and Peace*<sup>14</sup>, he stated: "by entitling this research *On the Law of War*, I meant – as already mentioned – to make sure first whether a war was fair and, then, what is considered to be a right in war"<sup>15</sup>. Explaining his position and proving the

The other meaning would be that of *set of rules* on starting conflict and engaging in warfare, concerning rights and obligations of the parties involved, or the third party, permissible and impermissible means and methods of waging war, as well as conduct applied towards prisoners etc.

need of making such an analysis<sup>16</sup>, Grotius showed that a complete elucidation on the character of war belonged to the very essence of the study made on the Law of War, "because the word 'law' does not mean anything else but what is right and rather in a negative than in an affirmative meaning, so that right is seen as something that is not wrong"<sup>17</sup>. This analysis has in view the requirements of the idea of justice and has in view "the very question of knowing whether there is a *just war* at all, and what kind of war could be called so"<sup>18</sup>. It is clear that such an approach drew attention to the fact that wars were *justified* or *unjustified*. Therefore, suppression it was only on grounds of *precise criteria* that the character of each and every war could be established.

#### a. Unjust wars

Despite statements and controversies on this topic<sup>19</sup>, all wars that have in view the invasion of foreign territories, the subordination and submission of other peoples, as well as suppression of peoples' struggle for national and social liberation are *unjust wars*. Undoubtedly, *there is no right* to such a war, it is not and it could not be considered legitimate the act of subjugating, looting and invading other territories.

a.1. It has been considered, for many years – and some people still consider – the act of conquering other territories and subordinating other peoples to be a right of the powerful. Indeed, it may be the most conspicuous expression of the well known formula of right to force, the very conception according to which force generates the right. In order to understand these tendencies it would be sufficient to make reference to the appearance of war and the reasons that caused it.

From the dawn of times "virtues" of violence were connected to the covetousness and subjection of foreign territories. The desire of obtaining new territories, as a corollary to their role but mainly as a means of production, explains violent action, prepared minutely and carried on under various conditions, according to the given historical age<sup>20</sup>. At the inferior stage of mankind's development, actions of force would break out on account of certain compelling needs that primitive peoples had. Having realised that in the neighbouring communities there were stores accumulated for life and living, certain actions were directed to appropriate and use other community's wealth for their own benefit. Violent action was related to certain economic requirements and to territories where resources flourished to a greater extent. Most authors dwelling on primitive community issues outlined the *economic significance* acquired by the motivation of violent actions, the founding and the attempts of explaining recourse to force and actions implying violence, in general<sup>21</sup>.

If at a given evolution phase of the primitive community, picking and hunting could not assure the accumulation of a minimal stock to constitute the object of a violent action of spoliation and possession, it was in time that the development of human subsistence means as a corollary to the increasing work productivity, on terms of tools' improvement, determined the concentration of violent actions, thus becoming the main target for robbery and looting. Gradually, more and more people join the most powerful, by participating in systematic actions of conquering new territories and appropriating the harvest made by the defeated. The act of conquering stems from a multiple economic and social causality; the concern for further achievements and for material well-being materializes, during this historical period, in the act of conquering other territories and bringing other communities under domination. Researchers, such as R.B. Textor, W. Eckhardt, Q. Wright, R. Naroll, were preoccupied with these complex causes by stressing the frequency of violent actions and their reasons under the conditions of the primitive community<sup>22</sup>. Among the ultimate objectives of violent actions, several scientists pointed out the achievement of a. some goods of subsistence, as well as of b. some prestigious assets, exquisite values, precious metals. Within archaic society, there was a great competition for the attainment of these goods. It is

known that in case that violent action ended in the success of the initiators, it was they who benefited of the additional resources for subsistence, larger territories, and thrived – even for a limited period – by making less effort than during the preceding phases. Hence, violent action appears as the expression of a permanently renewed competition to obtain more means and assets for the sake of welfare, with no effort or paying lower effort than usual. This competition concerned both production sphere and the sphere of distributing goods for subsistence. It is easy to follow and explain conflict between communities, on a scientific level, provided ample researches are made on the constitution and evolution of each and every group and the relations between them. Analysing these phenomena, E.W. Russell draws the conclusion that all aggression forms specific to primitive social life are linked to war<sup>23</sup>. Competition and conflicts generate instability. Inequities gradually appear and deepen, in time, wearing most violent forms during the evolution of human society. Winners in the battle waged against a community or social group place more and more emphasis on *force consolidation*, turning the act of conquering and subordination of other territories into a quasi-permanent instrument. With time, preoccupation for violent action comes to have an *organised* character, as a consequence to a better understanding of the importance played by force in life and living structures within community. This concern is reflected in the preparations made before the eruption of war and even in the specification of certain elements of tactical and strategic nature. Gradually, a mechanism is constituted dealing with the preparations and initiations of warlike actions. Many authors inferred in their analyses made on primitive community the characteristic features of a military power, based on the military tendencies of certain groups and their will to live easier on account of the conquered and looted ones. The conquerors become the masters and subordinate the conquered turning them into slaves.

Researches concluded that within slave society, the organization of violent actions such as conquering and controlling new territories occupied a particularly important place<sup>24</sup>. Initiating *wars of conquest and subordination* was one of the major concerns during the age of slavery. Slavery gains ground. Certainly, this evolution on the military plane, preoccupation for weapon modernization, acts of organizing and

waging battles, looting and subduing other territories and communities root from a complex economic causality<sup>25</sup>. New relations of political character are strictly related to the subordination and occupation of other territories, goods and assets. It is, therefore, in the 3 and 2 millennium B. Ch. that Sumerians, Egyptians, Chinese, Indians, Assyrians, Babylonians, Phoenicians and Israelis developed significantly the means of productions by improving tools and creating civilizations that were constantly capturing the particular attention of generations of researches along history. Undoubtedly, the evolution of these communities is linked to important discoveries such as bronze, iron, writing, astronomy, architecture etc. What should be really stressed is that elements of progress as well as steps forward in the modernization and development of production means often depended on the community's ability of subordinating new territories, using other communities' means of production and subsistence and even their members in self interest<sup>26</sup>. This comes to explain that spoliation, looting and domination exercised upon other peoples, enslavement and the exploitation of others were considered acts of bravery, for they were praised in the literary works of those times and presented to younger generations as an ideal manner of conduct worth to promote in their relationships with the subjected communities or those that were to be conquered<sup>27</sup>. It is well known that actions taken by Ramses were welcomed, his conquests were extolled in numerous writings and folk songs. In the conception of the inhabitants living on the borders of the Nile during the third millennium and the first half of the second, the conquests made by the Egyptian army were considered to be the ideal of bravery. "Just like a devastating storm would Ramses pass through the unsubmitted possessions, destroying fortresses, woods and seizing inhabitants"<sup>28</sup>. Acts of robbery exercised upon foreign territories, bringing whole populations, living in primitive conditions, into slaves, turned Egypt into a society of opulence surrounded by impoverished areas. Previously robbed and deprived of all valuable possessions, these were consequently brought within the borders of the Empire.

Gradually they resorted to organize an armed force of their own, consisting both in members belonging to the given state community and those recruited from other territories. That is, for instance, the way that Egyptians recruited

"Barbarians" (Ethiopians, Libyans etc.). In this view, Tutumes I decides upon setting up the Egyptian global state. Therefore, he adds new conquests to former ones, important amounts of gold are accumulated within the country; temples of unrivalled splendour are erected. Under his ruling as well as the years to follow, during the reign of Tutumes III and Amenhotep II large architectonic and military constructions were made. It is needless to recall the significance of Tutankhamen's thesaurus that would demonstrate the level of wealth and luxury concentrated at great aristocratic courts. The huge riches robbed from neighbour populations were kept under the shield of their own army or that of recruited armed forces. It is between the Tigris and Euphrates that a great civilization center develops. The right to punish the unsubmitive was considered a natural right. Battles waged against neighbours were marked by unprecedented cruelties<sup>29</sup>. With Assyrians, prisoners and slaves were branded with hot iron. The Assyro-Babylonean art praises force, the sense of violence and puts emphasis on the special merit of the conquerors.

We witness the same complex causality, the same conception and vision with the explanations given regarding wars of conquest carried on by Ancient Greece, Rome and the Ottoman Empire.

Ancient Greece has developed due to the conquest and submission of certain "Barbarian" populations. In order to render as clearly as possible the dominant conception of Ancient Greece on the right to conquer, subject, loot other peoples and maintain them in slavery, we have only to mention Aristophan's assertion: "The place that confers welfare, is the land where one should find home"<sup>30</sup>. Prosperity becomes obvious in Attica, Beotia, Polyphones, in Greek colonies, but it does not belonging to "Barbarians", only to those who subdued them. In his famous work, entitled *Politics*, Aristotle shows that states neighbouring Greece are inferior both as intelligence and ability, and, therefore, "these peoples are unable to organize themselves, govern and conquer surrounding countries"<sup>31</sup>. As known, good skills in organizing conquests and war, as such, were considered to be essential virtues. Concomitantly painful consequences were suffered following the plunders and conquests of war. Thus, Tucidide considered that robberies made by Athens in detriment to Corinth "brought about tension, nothing but pain and troubles"<sup>32</sup>.

An attempt to "motivate" the right to conquest is to be found both in declarations of war and in military actions carried on by greatest conquerors. This is the case with Alexander the Great who claimed the "need" to edify a universal empire of Hellenic civilization. The god of war controlled the minds and energy of Macedonians; peoples were submitted; their goods were appropriated and they served exclusively the interests of the conquerors. Alexander Macedon's warriors entered Asia Minor, Middle East and Egypt until they reached Indian borders. As a consequence to previous conquests, certain governing groups ruled over entire populations by constantly subjecting and exploiting them.

Greek and Macedonian experience has been studied and taken into consideration, later on, by Romans. They sought to attain world domination that they eventually obtained, indeed, by most different means. In this purpose, Romans used alliances that were finally turned into actions of including allied countries. They resorted to the occupation and submission of other provinces and territories, the assassination of kings and other methods of the sort. Roman conquests aimed to achieve huge amounts of riches, on the grounds of which the famous Roman civilization began to develop. Romans would loot great quantities of gold from Thrace, silver from Spain, copper from Cyprus, iron from Gallia, lead from Britannia, marble from Greece. All these captures of great value were brought to Rome that had to become, as Romans said, the center of the universe. The main dominating idea in the conception and action undertaken by Roman warriors was that Rome had to subordinate all other peoples. Romans yearned for *eternal and universal* glory they believed to achieve by building an empire with no precedent in the world. *Urbi et orbi* meant the worldwide domination of Rome for the benefit of the imperial metropolis's patriciate. In the conception of the time there was the prevailing idea, as it appears in the writings of many philosophers, historians and poets, namely that war had to be waged against the "Barbarian" world. Such a civilization meant the subordination and submission of provinces, their transformation into territories made, ulteriorly, part of the Empire<sup>33</sup>. It is during Roman age that a series of regulations appear on the organization and the proceedings of war, concerning both

preparations to violent interventions and its very practical modalities and means. The act of civilizing achieved in this manner was concretized for Romans in the subordination of other peoples and the elaboration of certain norms and regulations meant to impose the conquerors' will. We may very well mention here that during that period kings created edicts that set relations between Romans and provincials. For instance, by the edict of Caracalla all free inhabitant of the Empire could become a Roman citizen. Still, it should be added that under the Roman slave ruling there were really few free people compared to the mass of the subdued and the exploited.

As for the conquest and subordination of other peoples, it proved to be a rather difficult endeavour. Romans, for example, had to face strong resistance in Dacia. It was one of the most flourishing ancient countries – a kingdom of military democracy, with cities having consolidated trade and forts as well as good contacts with most advanced ancient civilizations – Greek, Roman, and Persian etc. According Vasile Pârvan asserted it, "popular instinct made Dacs avoid any form of cezarism, namely imperialism"<sup>34</sup> and "just the way that Burebista was the adversary of Cesar, Cotiso became the enemy of Augustus"<sup>35</sup>.

The "right" to conquest was also vindicated by the campaigns that Ottomans would organize as well as under the banner of battles waged against heathens. Historians describe mass slaughters and the destruction made upon East-European countries where Ottomans organized their conquests. Romanian, Bulgarian, Greek, Serb, Albanian, Hungarian, Macedonian and Croat peoples were seriously harmed by the proceedings of these wars<sup>36</sup>. It is clear that the "right" to conquest was justified by ideologists belonging to the ruling classes that acted for the promotion of violence, takeover, subordination and oppression of other peoples in order to achieve world domination. Seen from this perspective, the "right" to conquest was directly related to the right to establish an empire, under single domination and control. Moreover, the authors of those times insisted in their works on the "need" of building a universal empire, having a unique center where conquerors were responsible for the organization and the ruling of the whole empire. War represented the main means for the edification of such an empire and the maintenance of imperial

relations. Recourse to war was considered natural, the conquerors being allowed to prepare, organize and conduct it, for their own benefit, against the oppressed peoples.

a.2. Starting from primitive community and, later on, during slave and feudal society, then, during the capitalist system, the "right" to conquer was directly related to the "right" to subject, oppress and exploit other peoples and nations. In order to justify this "right" the so-called "civilizing" action of the conquerors undertaken in the subordinated provinces and territories was invoked. Such a conception is to be met with the Ottoman Empire as well as the actions undertaken by European countries in the process of establishing colonies in Africa, America and Asia. Historical analysis proves that it was neither the civilizing nor the Christian reasons that pushed Europeans to Africa, America or Asia but it was the activity of subordination and oppression undertaken against these peoples, certain States' race for enrichment on other peoples' account by spoiling and appropriating their riches<sup>37</sup>.

War represented the main instrument whereby the subordination, exploitation and subjection of other peoples were performed. That is the way King Henry, the sailor, organized an unprecedented gold rush doubled by slave trade.

In the XV<sup>th</sup> century, Western Africa became the land of first colonial conquests, while slave hunting hastened the rhythm of discoveries made on Western African coasts. Portuguese disembarked, usually at a river mouth, whole detachments that forayed seaside settlements, spoiled them, violated women and set their houses on fire. Their warlike actions would create a particularly tensional frame of mind, native inhabitants being terrified by the civilization that Europeans tried to bring to their territories. After Christopher Columbus had discovered America, Pope Alexander VI Borgia, by making use of the authority he had been conferred, on grounds of the 1493 Bulla decided the extension of two colonial empires, Spain and Portugal, on both parts of the 68 meridians. As already known, other Europeans have disputed the validity of this decision. Still, the documentary value of the Bulla remains.

In order to illustrate the ends that warlike actions were aiming to attain during colonial age it is sufficient to present some elements of the agreement made between the Kingdom of Castile

and Christopher Columbus<sup>38</sup>. Thus, in the first part of this convention, their majesties, *as masters of the seas and oceans*, pledged to award don Christopher Columbus the title of admiral of all islands and continents "that he, himself, due to his great abilities would discover or reach by these seas and oceans". On the other hand, Columbus committed himself by the same document to take control – for the benefit of the Castilian Crown – of southern seas, lands, harbours and islands, with everything belonging to them. "It is they who own – as the contract states it – the power and control of these Indies, the islands and the northern and southern continents with their seas, from the North Pole to the South Pole, on both sides of the Capricorn and beyond, now and ever, as long as there is life on Earth". It is stated in the same convention that "from all the valuables of any sorts, should it be pearls, gems, gold or silver, or other goods and merchandise, Columbus will have and will keep the tenth part of all, while the rest of nine he will put at their majesties' disposal". As it is well known, by the 1494 Treaty of Tordesillas, Portugal and Spain divided and shared the world. This Pact on dividing all territories of the entire world stirred the reaction of England, France and those of the Italian states.

There is no doubt that discoveries made by Christopher Columbus, like those achieved, later on, by Bartolomeo Diaz, Vasco da Gama, Cabral, Almeida, Albuquerque and Magellan were of an indisputable scientific value. Opening the ways to Asian Indies, by reaching, during the first two decades of the XVI<sup>th</sup> century, the islands of Polynesia and Southeast China, represented a paramount scientific achievement. While, one side this aspect of the problem being the subject of numerous tomes published and republished in developed countries, on the other side, subordination, oppression, domination and the spoliation of colonial peoples was, mainly, kept under silence<sup>39</sup>. It has been proved these wars, besides their contribution to great geographical discoveries, had to pay their tribute with blood the conquered peoples. Spoliation was a basic objective of these civilizing actions in entire areas and continents, in provinces all over the world. Thus, for instance, with the discovery of the town of Malacca, Albuquerque obtained out of a single spoliation 3.500 kg of gold. Following the discovery of Indian lands, Vasco da Gama demanded solid convoys in order to transport the

riches found on those wealthy lands. Some discoverers obtained, in exchange of some important material values, a so-called right to conquest and colonization. For example, the Welser bankers, in Venezuela, for great loan accorded to Carol the Quint, obtained such a right in South America. For the activity undertaken by John Cabot in 1497, England considered to have priority over others as far as North American territories were concerned<sup>40</sup>. It is also to be said, that this was the way that immeasurable riches flooded certain European countries. Loot, robbery and spoliation go together with actions carried on by great colonial powers. He discloses the role that slave trade played within those operations. Conquered territories were given as presents or even sold. Thus, in 1540, Carol the Quint offered the Ducat of Milano to his son Philip, while in 1564, Henry VIII, king of England, was rewarded 800.000 of scuzi for having evacuated the French invaded territory. In this respect, the assertion of Henry IV, king of France, is really significant: "They did not give me this kingdom, they sold it to me"<sup>41</sup>. Therefore, it becomes clear that conquered territories could easily constitute the object of all sorts of transactions between kings, conquerors or between those who organized the colonization process of so many peoples and territories of the world. Gold seized from subordinated colonies was used to organize wars and buy mercenaries, who became an almost permanent component of each military action undertaken by the conquerors. Spies were paid and sent all over. The corruption of consciences by means achieved from conquered territories and areas became a quasi-permanent habit. It is easy to demonstrate that *there is no* such thing as the right to subordination, oppression, domination and exploitation of other peoples. The attempt to justify *the right to war* by the "need" for the "civilizing" actions of the conquerors does not resist to a scientific analysis. Depriving another person for one's own benefit is against nature, as Cicero put it, and if so, "society and human community would collapse inevitably"<sup>42</sup>. The act of conquering, subordinating and dominating other peoples proved to be contrary to truth and justice. Science has proved that such acts could not motivate "right" to war. Furthermore, in case a war implied the conquest and oppression of other peoples, that war became unjustified, it got an *unjust* character. Hugo Grotius – in the

research he made on the nature of war – showed that "unjust is everything that is against nature, society and beings endowed with reason"<sup>43</sup>, while Florentius proved that it was a crime for man to trap his fellow beings<sup>44</sup>. The injustice of acts like subordination and oppression is the outcome, according to the Aristotle's analysis, of inequality existing between master and servant<sup>45</sup>.

### b. Justified Wars

Thorough analysis and research made in the course of years led to the conclusion that the only justified wars were those of defence against invaders, outside aggressions, wars against national enslavement and those of national liberation aimed to break the chains of foreign slavery and gain independence.

b.1. The right to defence has been evoked and constantly motivated in studies of epoch-making value. Cicero demonstrated that right to defence *has the character of law* "that is not written, but we were born with, something that we did not learn, did not receive or read. We took it, drew it out, and squeezed it from the very essence of things. For its observance we are not learned but made, not prepared but born. It is the law according to which, should our life be jeopardized...by foemen's weapons, *any means making possible our salvation becomes good and fair*"<sup>46</sup>. Quintilian also claimed "all in all, *defence* merits prior attention, as it is natural that our rescue pass before the enemy's annihilation"<sup>47</sup>. As it has been well said, "it is in accord with law, that what someone does in one's defence... be considered as justified"<sup>48</sup> (Florentinus).

Grotius pointed out that this right was unchallengeable, that justice of those defending themselves could be questioned not in the least. "This principle – he explained – is based on a *justice so obvious*, that even with animals which do not grasp the significance and nature of law only somewhat its appearances, we should distinguish between violence that causes injustice and violence<sup>49</sup> that rejects it". War of defence as well as the act of rejecting invasion is fully justified. A person in defence "cannot commit an act of injustice"<sup>50</sup>. It is proved, in recent research, that right to defence is founded on the very need to "prevent or diminish a threat exercised on a State's security"<sup>51</sup> in order to turn away a foreign attack that imperils the national being of the given people. The right to exist as a nation and to defend against invaders has been exercised by all

peoples along history. This right has been assumed, for instance, by the Romanian people against wars of spoliation and invasion it had to face. Romanians – showed Jules Michelet – “have often stopped Barbarians, often defeated them, by doing away with the fury of God’s enemies and by enduring so much”<sup>52</sup>. Karl Marx also evoked the courage Romanians made proof of in the war of defence against Turks and showed that despite their significantly smaller army, they succeeded in crushing Turkish invasion completely: it is only few Turks that escaped death; four subdivisions of a pashalik and one hundred flags had been captured<sup>53</sup>.

b.2. Furthermore *the justified* character of wars of national liberation carried on to escape foreign yoke and gain national independence was also proved.

In the researches of those times the need to do away with injustice by means of war was motivated: against those who installed themselves, by using force, on territories that did not belong to them. Thus, Cicero underlines that force has to be opposed by force itself<sup>54</sup>, while Cassius says that it is allowed to “reject weapons by weapons”<sup>55</sup>. According to Cicero’s reasoning, it is not allowed “to increase our wealth, riches and welfare by spoliating others”<sup>56</sup>. In socio-political and philosophical thinking they demonstrate the *unjust character of actions* – such as occupying foreign territories and looting other peoples or by pointing out the modalities that led to situations based on such deeds<sup>57</sup>. This came to motivate the need of *eliminating injustice*<sup>58</sup> obtained this way, and to show that a war aiming to attain a certain objective was *entirely justified*. Therefore, the fight of slaves led by Spartacus, in the 1<sup>st</sup> century B.Ch., against the oppression exercised by slave owners becomes justified. It is also the case with the German 1525 Peasant War, the 1877 Independence War, the war of the antihitlerist coalition states against German fascism etc.

### c. Preventive War

Some authors of International Law claim that International Law would admit the so-called

preventive war<sup>59</sup>. Provided a state considering itself threatened by an imminent armed danger coming from another state, it would be justified to resort – preventively – to armed force. It is stated that engagement in such a war would represent a licit act of self-defence as imminent threat represents an act of aggression<sup>60</sup>. There are attempts to accredit the thesis according to which a threatened State would have the right to undertake “urgent actions to counteract perils”<sup>61</sup>, fact that would explain war preparation and conducting. Actually, it is an attempt that aims to prove the necessity of punishing the aggressor before it has got the aggression started. Such a thesis might be considered unjustified from a theoretical point of view and dangerous under its practical aspect. It represents a source of tension and instability in international relations. A war organized on such grounds – far from being a defence war – proves to be a war of aggression with serious consequences in international relations.

This conception runs counter to norms and principles generally acknowledged in contemporary International Law. It is known that in conformity with art. 51 of the UN Charter, the right to individual or collective self-defence may be exercised provided an armed attack has occurred. Under the pretext of the imminent nature of such an attack, military action may be easily initiated, considering the fact that – mainly in certain regions of the world – a certain state of strain, tension and conflict is maintained. When establishing the imminent nature of attacks, certain elements of subjectivity intervene but they are not likely to resist to an ample analysis based on the objective set of data on the given situation. Assuming a correct interpretation of the provisions stipulated in the UN Charter on the right to self-defence, most jurists proved that war was justified only when carried on against an effective armed aggression and not a supposed one<sup>62</sup>. According to Professor Grigore Geamanu’s reasoning, the theory of preventive war “has to be vehemently rejected”<sup>63</sup> as mere threat to peace is not a sufficient reason for the initiation of such war.

### NOTES

<sup>1</sup> Filon, *De special. leg.*, II (111, 15).

<sup>2</sup> The word *bellum* (war) originates from the old world *duellum*. According to Hellenes, *bellum* is connected to the presence of a crowd that fights in a battle.

<sup>3</sup> *Aeneis*, Chorus I (I, v. 545).



<sup>4</sup> *Ibidem*, Chorus VIII (I, v. 547).

<sup>5</sup> See Mattheus Merian, *Irenico – Polemographia sive Theatri Europaei oder Historischer Chronicken Beschreibung Alter Vernembsten und Denck würdingsten Geschichten so sich hin und wieder in Europa, sonderlich im Reich Deutscher Nation von A. 1633 bis in A. 1715 begeben und zugetragen*, Frankfurt am Main, 1670-1734.

<sup>6</sup> Gaston Bouthoul, *L'infanticide différencié*, Paris, Hachette, 1970; *idem*, *Traité de Sociologie. Les guerres. Eléments de polémologie*, Paris, Payot, 1951.

<sup>7</sup> R. Carrère, *La guerre, cette inconnue: découverte et avenir de la polémologie*, in "Guerres et paix", nr. 1, 1969.

<sup>8</sup> Karl von Clausewitz, *On War*, Ed. Militară, Bucharest, 1965, pp. 17-19; 88; 593-596.

<sup>9</sup> See Quincy Wright, *A Study of War*, Chicago and London, The University of Chicago Press, 1965.

<sup>10</sup> Dimitrie Gusti, *The Sociology of War*. Edit. C. Sfetea, Bucharest, 1915, pp. 66 and next.

<sup>11</sup> See researches made on this phenomenon by Professor Valter Roman: *On the Theory of War*, Edit. de stat, Bucharest, 1948; *On Contemporary War*, Edit. de Stat, 1948; *Contemporary Military Problems*, Edit. de stat, Bucharest, 1949 etc. An ample analysis is also made on this subject by Vasile Secares in his work entitled: *Polemology and Peace Issues*, pp. 11 and next.

<sup>12</sup> See Hans J. Morgenthau, *Politics among Nations. The Struggle for Power and Peace*, New York, Alfred A. Knopf Publisher, 1967, pp. 31 and next.

<sup>13</sup> See Vasile Secares, *cit. work*, pp. 232-239.

<sup>14</sup> Hugo Grotius, *De iure belli ac pacis*. Libri tres, Privilegio Regis, Parisus 1625.

<sup>15</sup> Hugo Grotius, *On the Law of War and Peace*. Edit. Științifică, Bucharest, 1968, p. 104.

<sup>16</sup> *Ibidem*, pp. 104-105.

<sup>17</sup> *Ibidem*, p. 104.

<sup>18</sup> *Ibidem*; Hugo Grotius, *De iure belli ac pacis libri tres in quibus ius naturae et gentium item iuris publici praecipue explicatur*, 1993. Rev. by P. Hagenmacher, Tijds Regeschied 62, '94, pp. 403 and next.

<sup>19</sup> See Robert Ardrey. *The Territorial Imperative*. New York, Atheneum Publishers, 1966; *idem*, *The Social Contract. A Personal Inquiry into the Evolutionary Sources of Order and Disorder*, Atheneum Publishers, New York, 1970; Konrad Lorenz, *On Aggression*, Bantam Books, New York, 1967 etc.

<sup>20</sup> In the literature of speciality they have shown that economic relations and those of production laid, mediately, at the origin of war; it is only through political action, under its political expression – an extremely complex one, in most cases – that economy brings about armed conflicts (see P. Ciuhureariu, "War as a Specific Conflict Situation", in *Socio-political Studies on the Contemporary Military Phenomenon*, vol. 2, Edit. Militară, Bucharest, 1972, pp. 161-163).

<sup>21</sup> See William G. Sumner, "War", in *War and Other Essays*, New-Haven, Yale University Press, 1911, pp. 3 and next; M.R. Davie, *Les Guerres dans les sociétés primitives*, Paris, Payot, 1931 etc.

<sup>22</sup> Quincy Wright, *cit. work*, p. 39; R. Naroll, *Does Military Defence Deter?*, in "Transaction", vol. 3, nr. 2/1996, pp. 14-20.

<sup>23</sup> E.W. Russell, *Factors of Human Aggression*, in "Behavior Science Notes", vol. VII, 1972, pp. 275 and next.

<sup>24</sup> "Force has got the mission of maintaining and enhancing living and domination conditions as far as the privileged class is concerned" (Vasile Secares, *cit. work*; p. 145).

<sup>25</sup> Researches prove the existence of a direct relation between the interests of slave owners and the causes of wars of conquest and loot (see H. C. Greiman, K. Finsterbuch, *Modernization of Warfare*, in "Social Science and Modern Society", nr. 4, 1973, pp. 54-57).

<sup>26</sup> Researches lead to the conclusion that there is a complexity of causes at the origin of violent actions. Quincy Wright proves that "War has politico-technical, juridico-ideological, socio-religious and psychoeconomic reasons". (Quincy Wright, *A Study of War*. University of Chicago, Chicago, 1942, II, p. 739). Following the synthesizing of a whole research, the author concludes "in reality, war finds its origin in a general situation, which finally involves almost all 9 reasons invoked by humanity until the very moment that the given war erupts" (*ibidem*, I, p. 17).

<sup>27</sup> F.H. Denton and W. Philips draw attention to the significant correlation between social antagonisms within a community and resort to force in external relations (*Some Patterns in the History of Violence*, in J.C.R., 1968, nr. 2, pp. 182 and next). Other author, like R.J. Rummel and R. Tanter tried to demonstrate that this correlation would not have been significant (see R.J. Rummel, *Dimensions of Conflict Behaviours within and between Nations*, in J.C.R., 1966, nr. 1; R. Tanter, *Dimensions of Conflict Behaviours within and between Nations*, in J.C.R., 1966, nr. 1, fact invalidated by the researches made by M. Hass and J. Wilkenfeld (see M. Hass, *Societal Approaches to the Study of War*, in J.P.S., 1965, nr. 2; J. Wilkenfeld, *Domestic and Foreign Conflict Behavior of Nations*, in J.P.S., 1968, nr. 1).

<sup>28</sup> E.M. Jukov and collective, *World History*, vol. I, Ed. Științifică, Bucharest, 1959, p. 352.

<sup>29</sup> Certain historians considered this phenomena to be the outcome of "an active instinct of hate and aggression" (Sigmund Freud, *A General Introduction to Psychoanalysis*, Boni & Liveright, New York, 1920; William Mc Dougall, *An Introduction to Social Psychology*, Luce, Boston, 1926, p. 30 and next).

<sup>30</sup> *Ubi bene, ibi patria*, in its complete form *Patria est ubicumque est bene*, as Marcus Pacuvius put it.

<sup>31</sup> Aristotle claimed that wars against Barbarians were justified (see Aristotle, *Politics*, Cultura Națională, Bucarest, 1924, pp. 21, 30 and next). In his analysis, Aristotle showed, further on, that "Barbarians, though born to serve, do not accept to be ruled over" (*ibidem*, p. 34).

<sup>32</sup> Tucicide, *The History of the Peeloponiac War*, Ed. Științifică, Bucharest, 1966, Book I, chap. 23, p. 160.

- <sup>33</sup> *Pax Romana* (Roman Peace), idealized in those times' writings contained obvious contradictions. Population was made up of governors, preceptors and soldiers. It was by military means that domestic order was preserved and external battles were waged against Barbarians.
- <sup>34</sup> Vasile Pârvan, *Dacia*, Ed. Științifică, Bucharest, 1967, p. 100.
- <sup>35</sup> *Ibidem*.
- <sup>36</sup> See P.P. Negulescu, *The Destiny of Humanity*, Biblioteca de filosofie românească, Bucharest, 1939, p. 15 and next.
- <sup>37</sup> For a more thorough analysis, see Titu Georgescu, *The Arguments of History for a New International Order*, Edit. Științifică și Enciclopedică, Bucharest, 1977, pp. 51-57.
- <sup>38</sup> Philippe Delaunes, *Les libérations de l'Amérique latine*. Ed. Rencontre-Lausanne, 1969, pp. 10 and next.
- <sup>39</sup> See Titu Georgescu, *cit. work.*, pp. 53/57.
- <sup>40</sup> Philippe Delaunes, *cit. work.*, pp. 11 and next.
- <sup>41</sup> See Jacques Madaule, *The History of England*, Ed. Politică, Bucharest, 1973, pp. 254 and next.
- <sup>42</sup> Cicero, *On Duties*, Ed. Științifică, Bucharest, 1957, p. 1965.
- <sup>43</sup> Hugo Grotius, *cit. work*, pp. 104.
- <sup>44</sup> Florentius, *Digeste*, I, 1, p. 3.
- <sup>45</sup> Aristotle, *Ethic. Nicom.*, VIII, 8.
- <sup>46</sup> Cicero, *Speech in the Defence of Titus Amnius Milo*, in Romanian by V. Greciuc.
- <sup>47</sup> Quintilian, *Inst. Orat.*, VII, 2, p. (underl. en.).
- <sup>48</sup> Florentinus, *cit. work*, XI, 2, p. 4 (underl. en.).
- <sup>49</sup> Hugo Grotius, *cit. work*, p. 124 (underl. en.).
- <sup>50</sup> *Ibidem*.
- <sup>51</sup> Elton B. McNeil, *The Nature of Human Conflict*, Englewood Cliffs, N.J. Prentice-Hall, 1965, p. 81.
- <sup>52</sup> Jules Michelet, *French Confessions on the 1848 Romanian States*, Ed. Științifică, 1968, p. 47. "How should I call Romania, the Vlachs and Moldavians? – wandered the eminent historian. And it was still him who answered: "The sacrificed nation... Eight millions of the same language and race, one of the world great nations" (*ibidem*, p. 47).
- <sup>53</sup> The analysis made by Marx refers to the battle of Vashui.
- <sup>54</sup> Cicero, *De Offic.*, I, 11, p. 34.
- <sup>55</sup> *Digeste*, XL, III, 16, 1, p. 27.
- <sup>56</sup> Cicero, *De Offic.*, III, 5, 22.
- <sup>57</sup> See Charles Seignobos, *Histoire compare des peuples de l'Europe*, Editions Rieder, Paris, 1938; Emile Wanty, *L'art de la guerre*. Marabout Unibersity, Verviers (Belgique), 1967 etc.
- <sup>58</sup> See Quincy Wright, "On political Utility of War", in *A study of war*, II, pp. 853 and next.
- <sup>59</sup> G. Gold, *An Introduction to International Law*, New York, 1957, pp. 585 and next; A. Rölling, *The Question of Defining Aggression*, in *Symbolae Verzjil*, Haga, 1958, p. 315 and next.
- <sup>60</sup> A. Rölling, *cit. work.*, pp. 314 and next.
- <sup>61</sup> D.A. Bowett, "Self-Defence", in *International Law*, London, 1958, p. 270, see Quincy Wright, *The Prevention of Aggression*, in A.J.I.L., nr. 3/1956.
- <sup>62</sup> See A. Verdoss, *Idées directrices de l'Organisation de Nations Unies*, in R.C., vol. 83, pp. 59 and next; H. Wehberg, *L'interdiction du recours à la force*, in R.C., vol. 78, pp. 81 and next.
- <sup>63</sup> Grigore Geamănu, *Contemporary International Law*, vol. II, Edit. Științifică și Enciclopedică, Bucharest, 1975, second revised and completed edition, p. 360.