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THE ISSUE OF FORCE USE IN INTERNATIONAL SECURITY SYSTEM

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Abstract
The concept of security has gained significant changes over the years, as well as states' attitude towards the multitude of ways of transposing its life in relation to the dramatic changes taking place internationally in recent years. Until the 80s the concept of security had only a minor role, mainly used in the military, but gradually came different approaches that have dominated international security issues. Richard Ullman, who developed the concept of security on its military aspect, gives a broad definition of security threat. It said that “a threat to security is an action or sequence of events that threatens to cause serious degradation of the quality of life of the citizens in a relatively short period of time” or “constitute a serious threat to the freedom of choice of the policy of a government or a private entity, or non-governmental organization within a state”³. After 90s were some schools of thought on the concept of security, the most important being the realism, liberalism and constructivism, each addressing different concept. Each security model created has as a reference point the threat as a criterion for definition, and an inflection point that identifies the security subject, respective the states, ethno cultural groups or human groups, as was the case recently in France from Charlie Hebdo. The international aspects of security have gained increasingly more importance. The end of the Cold War resulted in widespread acceptance of extended security model, and the state is not the only actor of security. We can say that, now ethics and integrity have become important allies in the practice and theory of political, administrative, legal and economic. Member of the international community and the EU Member States and many international organizations have become particularly active in this area in recent years⁴. Including NATO recognizes the importance of political, economic, social and environmental benefits that provide a basis for the Alliance to fulfil the tasks related

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⁴ To see also Main Challenges in the Field of Ethics and Integrity, in Main Challenges in the Field of Ethics and Integrity in the EU Member States, Danielle Bossaert and Christoph Demmke, EIPA, 2005. (translated by R. Viorescu, Prințipalele provocări în domeniul Etiici și Integrității în Statele Membre UE (traducere în limba română a publicației)
to security and effective cooperation with other European and Euro-Atlantic and the United Nations\textsuperscript{5}.

Keywords:
international community, security, military force, right to self-determination, aggression.

JEL Classification: K 33.

INTRODUCTION

Given the complexity of the serious problems, we say, currently facing the international community is required for states to rethink their approach and priorities in conducting international relations with other subjects of international law in the sense of the importance of increased and more detailed negotiations of various international agreements. We believe it is time that the rules of international law to be strictly observed by all subjects if we want to prevent a decline in international society, or even a new phenomenon. The experiences of two world wars or the Cold War and their so terrible repercussions, should not be forgotten, but on the contrary, they must be aware that the rules and principles of international law must be respected and to find new solutions, viable, for balancing the report of forces and cooperation in order to ensure and guarantee the fragile peace and security of the international community. Unfortunately, recent events in the international sphere is actually showing us how uncertain security system and how easily we can deviate from the common goals of states and the United Nations. We see in recent years that more and more we depart from the wishes expressed by the states after completing wars and that is why we consider it necessary to establish new rules to complement the existing rules of international law and severely penalizing those who are guilty of breach of international commitments and security of another state. We all want to live in a better and prosperous world, but for this now we must unite our efforts, to ensure the future of this world by finding and establishing rules, sanctioning at need, with universal character.

Major concerns of international law doctrinarians and states were peacekeeping and peacebuilding, removal-outlawed war, promote and respect the rules and principles of international law, cooperation between countries, world security. From the parent of international law science -Hugo Grotius - left us ideas about the rules and principles of international law, the importance of

\textsuperscript{5} To see also Conceptul Strategic al Alianței, partea a III-a, Abordarea Securității în secolul XXI, in Reuniunea la vâră de la Washington, April 1999, Ghidul cititorului, p. 53.
respecting their need for understanding and cooperation among states, rules on waging war, the need to develop rules to eliminate cruelties of war, the importance of concluding treaties between states are respected and applied in good faith. An important role in peacekeeping and peacebuilding lies with multilateral cooperation through conventions, agreements, treaties and multilateral agreements between states based on diplomatic negotiations with the aim of harmonizing international relations.

THE PRINCIPLE OF PROHIBITING THE USE OF FORCE IN CONTEMPORARY INTERNATIONAL LAW

Very long, war was considered one of the main instruments of foreign policy of states. Until the establishment of the League of Nations, the right to war (jus ad bellum) was treated as a normal expression of state sovereignty and means of resolving disputes between states. We note that until the nineteenth century, most of the classical treaties were mandating regulation warfare pathways rather than to define the rules governing peaceful relations among nations. The idea of limiting the “right” to use war as a means of conducting international relations first emerged in the Covenant of the League of Nations. The first attempts to eliminate war as a means of settling disputes between states and imposing peaceful means had held by the late nineteenth century. The Hague Conferences from 1899 and 1907, brought together under the auspices of “peace, disarming and arbitration”, although they failed in disarmament, they succeeded in diplomatic systematizing and improving procedures for settling disputes, consecration in the category of peaceful means of arbitration, including political and institutionalizing international jurisdiction. However, regarding conflict resolution between states, the concluded conventions leave, further, to states the choice between peaceful and non-peaceful ways. Covenant of the League of Nations proposed, the main its purposes, the one to watch over the peace and to provide an institutional framework of international social organizations to avoid war. By Covenant, are brought serious limitations to the right of states to resort to war, but it generally does not prohibit recourse to war.

Between 1925-1935, a series of international treaties contain provisions on refraining from war and use peaceful means in settling disputes. Of these, the most important is “The multilateral treaty for renunciation of war”, known as the Briand-Kellogg Pact, signed in Paris on 26 August 1928 and entered into force on 24 July 1929. Romania acceded to this treaty in 1929. Outside this conviction and the renunciation of war as an instrument of national policy, Briand-Kellogg Pact

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6 Society of Nations or the League of Nations was an international organization established in June 1919 after the Treaty of Versailles that ended World War. It was the first permanent international organization whose main mission is world peace.
record and commitment of States to resolve international conflicts only by peaceful means (art. 2). It is the UN Charter and other international instruments adopted under it, the merit of being filled these gaps and to proclaim refrain from the threat of force or use of force and peaceful settlement of disputes as principles of international law.

The content of the principle of non-use of force or threat of force in international relations set out in the UN Charter in par. (4) art. 2, dedicated to the principles which must govern relations between states in the following terms: “All members shall refrain in their international relations from resorting to the threat of force or use them against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations”\(^7\). One of the central ideas that define the content of the principle of non-use of force or threat of force, is the fact that the territory of a State shall not be subject to military occupation resulting from the use of force contrary to the Charter, nor the acquisition of territory by another State following the use of threat of force or its use. From the point of view of international law, such an acquisition is illegal. A second idea, equally important, the prohibition of the use of force or threat of force against the political independence of another State. This prohibition is generally considered to refer to “military force” and therefore has not considered other forms of coercion, “our military”. It was also considered that the prohibition of force, in this context, it should be understood any use of military force outside war itself\(^8\).

The UN Charter recognizes two exceptions to the principle prohibiting the use of force: art. 51 recognizes to Member States “the inherent right of individual or collective self-defence” and in Chapter VII is given to Security Council the power to authorize, under certain conditions, the use of force to maintain international peace and security.

**Self-defence.** Application of the above-analysed principle does not mean banning the use of force in all circumstances. Under art. 51 of the Charter, member states have the inherent right of individual or collective self-defence, which is no provision in the Charter cannot affect. “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”\(^9\). On the basis on the right to self-defence, states may use, among other means, and military force. As indicated by the text of art. 51, exercise the right of individual or collective self-

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\(^7\) Excerpt from the article. 2 para. 4 of the Charter of the United Nations  
defence can take place only if “an armed attack occurs against a Member of the United Nations”. In return for the overall commitment undertaken by UN member states to renounce the use of force between them, the UN Charter provides them with a “collective security system”, under which international peace and security are ensured by the powers attributed to this effect:

- Security Council;
- General Assembly and
- Regional arrangements or agencies.

These structures may resort, as regulated by the Charter, to coercive measures, including the use of force against one or some UN Member States, which, by their conduct, jeopardize peace and security of other Member States.

**Situations that armed force can be used legally**

As regards mandatory rules banning the use of threat of force and its use, Charter provides four situations that can be used legally the armed force: in self-defence; in applying sanctions of an aggressor with military force; against a state which during the Second World War has been an enemy of any of the signatories of the UN Charter and the right of peoples to use armed force to exercise their right to dispose of themselves.

*The right to use armed force in case of self-defence:* the right to self-defence is one of the most contemporary representative institutions, based, in legal terms, on the principle of not using force or threat of force and motivated, under political-military report on the need to prevent and discourage aggression and hence, protecting national members. Consequently, the record of this institution in the UN Charter were ipso facto illegalised some practices in international life, such as self-protection, armed reprisals, the right of intervention, preventive measures adopted by a state to reject aggression, and actions of the UN and regional organizations when made threats against peace, a breach of the peace or act of aggression. In the narrow sense, by legitimate defence means the right to self-defence, individual or collective, devoted in art. 51 of the UN Charter.

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10 Excerpt from art. 51 of UN Charter
11 The right to self-defence has, in the view of the UN Charter, two meanings: a broad sense, designating the armed resistance against the action of a State, using the illegal force, violates mandatory provisions of international law. In this regard, the term includes both self-defence measures adopted by a state to reject aggression, and actions of the UN and regional organizations when are made threats against peace, a breach of the peace or act of aggression. In the narrow sense, by legitimate defence means the right to self-defence, individual or collective, devoted in art. 51 of the UN Charter.
12 Self-perception was considered a natural right of states under which they can use force when it would be appreciated that created a risk to their interests.
13 Armed reprisals were considered an attribute of the so-called right to self-protection, to which the States would have the right to recourse in time of peace against another state, by violating international legal order, she would be harmed.
14 The alleged right of intervention on so-called humanitarian grounds is also supported today by a number of authors, citing his customary or character, whether it be authorized by Article 51 of
self-defence, conferring the discretionary right for states to use the force of arms. This was, however, the qualitative leap recorded in the unlimited right of States to resort to war of aggression, the general prohibition on use of force and threat with the lawful use of force in cases strictly defined. The right to self-defence enshrined in Article 51 of the UN Charter in the following wording: “Nothing in the present Charter shall impair the inherent right of self-defence brings individual and collective if an armed attack occurs against a Member of the United Nations until the Security Council will be taken the necessary measures for maintaining international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately brought to the attention of the Security Council and shall not affect in any way the power and duty of the Security Council under the present Charter to take at any time shares they will consider necessary to maintain or restore international peace and security. This is the only situation when states have the legal right to use armed force without prior authorization of the Security Council, but under its control. The right to self-defence is limited in time and conditioning exercise. It arises when there was a cease armed aggression acts and the Security Council has taken measures necessary to maintain international peace and security. He may be exercised only in three situations:

a. in case of an aggression act with the use of armed force;

b. if the act of aggression is prior measures of self-defence;

c. the act of aggression shows a called gravity.¹⁵

The existence of an act of aggression with the use of armed force. Establishing precisely the existence of an act of aggression is of great importance, both theoretical and especially practical, but also an obvious difficulty. Important, because it marks the moment when, legally, is born the right to self-defence, and the difficulty is that not all use of military force is an act of aggression, as no response to such a use of force is not an act of self-defence. The doctrine of international law and international meetings have expressed different opinions, some trying to broaden the scope of the right to self-defence, others restrict it. Reported to art. 51 of the UN Charter, both theories which attempt to broaden the scope of the right to self-defence, and those who seek to restrict it, are both wrong. Under this article, States are granted the right to use weapons only when they become victims of military aggression and this right is exercised only when a state or group of states has started against an armed attack until the Security Council intervenes, taking the necessary measures to put an end to bullying.

Anteriority of self-defence act against aggression. The emergence of the right of self-defence is subject to the pre-existence of an armed attack. By devoting "the inherent right to self-defence", Article 51 of the UN Charter makes from earlier armed attack a *sine qua non* of the birth of this right. The principle of precedence, which first resorted to the unlawful use of armed force, is inextricably linked to the *intention* - unique element of the subjective side of the offense - and the criterion determining the qualification of an act as aggression. Negligently commit an aggression is unthinkable. In all cases, the abuser realizes the unlawful nature of his actions and wants to accomplish it. Since involves the initiative element, the concept does not include retaliatory actions committed by the victim of aggression State the right of individual or collective self-defence, which may consist of carrying out offensive on the territory of the aggressor and any measures of coercion taken under art. 42 of the UN Charter. According to the definition of aggression, the phrase "first resorted to force" enshrines the principle of precedence, that the State armed forces a*ttacking first with another State* commit an act of aggression. This wording excludes from the scope of the right to preventive self-defence war and the possibility of invoking an “imminent attack” to initiate a war of aggression”.

Gravity of an act of aggression. Since the exercise of the right to self-defence is a remedy and not a pretext of force, aggression definition covers acts committed with intent (subjective side) and having a certain severity (the objective side). Unlike the definition in the Conventions from 1933, which mentioned five categories of acts which, if they were committed, constituted acts of aggression. Definition from 1974 lists seven such acts:

- invading or attacking the territory of a State by armed forces of another State, or any military occupation, even temporary, resulting from such invasion or of such an attack, or any annexation by force of the territory or part of the territory of another State;
- shelling by the armed forces of a State of the territory of another State;
- blocking ports or coasts of a State by the armed forces of another State;
- attack carried out by the armed forces of a State against the armed forces by land, water, and air, maritime and civil air fleets of another State;
- use of armed forces of a State are stationed in another state with the consent of the receiving State, contrary to the conditions laid down in the agreement, or any extension of their presence in the territory in question after the extinction of the agreement;

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16 A state or group of states can commit aggression; it can be directed against both states and peoples who have not constituted in the state.
• fact that a state to admit that its territory which he put at the disposal of another State, to be used by the latter to commit an act of aggression against a third State;
• sending by a State on behalf of a State of gangs or armed groups, irregular forces or mercenaries who commit acts of force, equivalent to documents summarized above, or that substantially engaging in such action\(^{17}\).

This document describes aggression as a crime against peace, its commit attracting international responsibility. The occupation of foreign territories on track of aggression is void \textit{ab initio}. Defining typical cases of aggression from their severity, document, report the facts and the right to self-defence acts with a certain degree of threat to international peace and security, independence and territorial integrity of a state, ie acts which infringe a State fundamental right\(^{18}\). Certain minor offenses, such as challenges\(^{19}\), frontier incidents and others, that, although involving the unlawful use of force or the threat of it, is punishable by international law does not justify the use of armed forces under the right of self-defence by aggrieved stated.

\textbf{THE USE OF ARMED FORCE BY THE SECURITY COUNCIL AS A MEASURE OF RESTRAINT}

With the creation of the United Nations have been established a new system of coercion, provided in the Charter and developed in other posterior legal and diplomatic instruments, which is much more complex and nuanced, and postulating to restore peace and reinstatement of injured State and so on. The right to self-defence has been considerably widened by introducing, with innovative nature, the collective self-defence element. In addition, the United Nations was equipped with numerous mechanisms and remedies provided in chapters VI, VII and VIII, which allow, as preventive measures, to take both coercive measures. In order to prevent aggravation of a dispute or conflict, UN mechanisms allow provisional measures, which is without prejudice to the rights, claims or positions of the parties. Charter provides also disciplinary action against the state that violates international legality, consisting of suspension from exercise of rights and privileges deriving from membership of the UN and even exclusion from the organization. In addition to the penalties laid down in the Charter,

\begin{itemize}
\item \textit{\textsuperscript{17}} Constantin-Gheorghe Balaban, \textit{op. cit.}, p. 163-164.
\item \textit{\textsuperscript{18}} The self-defence institution protects: the right to sovereignty, independence and territorial integrity; the right to decide freely on their destiny; right on natural resources; right to peace and security etc.
\item \textit{\textsuperscript{19}} Often are cited challenges committed or danger that could harm the interests of a State nationals or their property, to justify acts of aggression. For example, such an argument invoked Belgium in 1960 to invade Zaire (formerly Belgian Congo colony).
\end{itemize}

states that violate international law may apply coercive measures by arbitral tribunals or courts. After the Second World War, through international agreements and conventions, have been provided and criminal penalties for individuals who commit international crimes.

**COERCIVE MEASURES DECIDED BY THE UNITED NATIONS SECURITY COUNCIL**

*The first generation of constraining forces of the UN Charter.* The Security Council, the principal action organ of the United Nations, is the most extensive powers court, he is empowered to act where it finds “a threat to peace, a breach of peace or an act of aggression”\(^{20}\), to make recommendations or decide coercive measures to be taken in each of those situations. In exercising the powers conferred by the Charter, the Security Council may act “ex officio” whenever deemed competent. If a finding of aggression, he springs into action and, under Article 51 of the Charter, exercise the collective self-defence function. The Council has also the right to be informed of the existence of such acts, the General Assembly is not acknowledging them such a right. The right to notify the Security Council has it, first, the state victim of aggression, provided that they have taken measures in advance of individual self-defence in accordance with Article 51 of the UN Charter and the allied victim participating in collective self-defence, if an agreement to that effect or if exercised before making notification collective self-defence right. If those states do not undertake any approach other members of the UN can, under Article 35 paragraph 1 of the Charter\(^{21}\), refer the matter to the Council, and, under Article 99, the General Secretary may bring to the attention of the Council any matter which in his opinion, could endanger the maintenance of international peace and security. From the moment, the Council is informed by the existence of an act likely to endanger the maintenance of international peace and security, he springs into action, trying to assist the victim. Charter does not establish a hierarchy of measures that the Council can take, based on the a mandate to restore international peace and security, limiting to specifying only that he can “take actions whenever they will deem necessary...”\(^{22}\). Such actions may, where appropriate, either to end acts of aggression or enforcement of the measures. When he finds committing an act of aggression, the Council

\(^{20}\) See Chapter VII of the UN Charter.

\(^{21}\) There have been cases where Member States have notified the UN Security Council without invoking this article. For example, Australia, before the Council on 30 July 1947 that the hostilities between the Netherlands and Indonesia is, in its assessment, breach of the peace, in accordance with Article 39 of the Charter.

\(^{22}\) Art. 51 of the UN Charter.
may adopt coercive measures against the aggressor. Such measures are of two categories:

- **economic and diplomatic** and
- **military** character.

Coercive measures from the first category are set out in Article 41 of the Charter, formulated as follows: “The Security Council may decide what measures not involving the use of armed force must be taken to give effect to its decisions and ask the United Nations members to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations”. If these measures do not prove effective, he can pass the use of armed force against the aggressor state, undertaking “with air, sea, or land forces, any action it deems necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations, executed by the air force, sea or land forces of Members of the United Nations”\(^23\).

Actions of this nature have been undertaken only once, before 1990 (when North Korea invaded South Korea on June 25, 1950\(^24\)) and again, in 1991, against Iraq, which, on 2 August 1990, invaded Kuwait, which subsequently annexed repressing the civilian population (summary executions, arbitrary arrests on midnight, terrorizing, collective punishment, torture, looting, etc.). First, on 18 August 1990, the Security Council adopted a resolution referring to the massacre of the civilian population, demanded Iraq to allow access to consular representatives and nationals from Kuwait, to victims. On 13 September, noting that Iraq has not complied with the previous resolution, makes it responsible to the international community\(^25\). There have been adopted other resolutions, that Iraq was ordered to stop atrocities and release Kuwait. The Security Council imposed a total blockade on Iraq and invited some states to put available troops to release Kuwait. Thus, in January 1991, was triggered operation “Desert Storm”, after which Kuwait was liberated and to Iraq have been imposed a number of conditions, including restitution raised in Kuwait, pay for repairs for damages, destruction of weapons of mass destruction, etc. Pending the completion of all the conditions imposed, the Security Council decided to maintain the embargo on Iraq\(^26\). The right to use armed force (*jus ad bellum*) is in this case a *collective* right, which belongs and is exercised on behalf of all UN member states and not of

\(^{23}\) Art. 42 of the UN Charter.

\(^{24}\) In 1956, the Soviet Union relied on Article 42 of the Suez crisis, proposing the Security Council to authorize UN members, especially the USSR and the US, to send air and naval forces, ground units, volunteers, military instructors and give Egypt and other forms of assistance.

\(^{25}\) Since Islamic law forbids soldiers to attack civilian targets, especially women, children and elders, Islamic countries have condemned Iraq for these barbaric acts.

\(^{26}\) Details about the constitution of the armed forces of the Security Council and other military missions, see I. Cloșcă, *Conflictele armate și căile soluționării lor*, Ed. Militară, Bucharest, 1992, p. 276-284.
states that provided to Security Council the armed forces. It is not a state of belligerency between Iraq on the one hand, and the countries that participated in “Desert Storm”, but imposed a state coercion, in the opinion of the Security Council, committed an aggression. Armed Forces participating in such measures under Article 42 of the UN Charter, are the forces from the first generation and could be defined as constraining forces.

CONCLUSIONS

International law plays a key role and is designed to become an effective instrument for consolidating a peaceful international society that predominate cooperation in all areas and ensure beneficial relations between all countries. It regulates international relations and must satisfy the common wishes of the members of the international community, defending important values such as peace, security, raising living standards, developing a harmonious world. However, when these values are violated, intervenes international responsibility that must help safeguard the international legal order in international relations and the cooperation between states. Because regulates and coordinates relations between states, international law becomes a regulator role that addresses the need to reduce the anarchy in international relations. Compliance and enforcement of international legal norms is an obligation for all countries, regardless of their size or level of development. Binding of these rules stems from the agreement of the states in their capacity as carriers of sovereignty. Today, peace and security are two individual concepts, whereas security world, or just a region or individual countries is a matter of national and international life, an ongoing process and argued that combines past, present and future. States must work constantly to strengthen world peace and security, seeking new methods of prevention of destabilizing events like those of September 2001 in New York and March 2004 in Madrid, or London in July 2005 and, unfortunately, the list is quite long.

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