

THE PROBLEM OF SOVEREIGNTY AND ORGANISATION OF EUROPEAN SECURITY *

by

Grigory I. TUNKIN

Professor, Moscow State University,
President, Soviet Association of International Law

The urgent need for the establishment of a system of European security is being realised by more and more people in Europe.

The two world wars which broke out in Europe have left on the globe, and especially in this continent, their indelible bloody traces. And it is now clear to everyone that another world war would be something more than a mere disaster, it will be a catastrophe for all the nations of the European continent.

The development of events in Europe and the world over in the past few years showed, even though this had been clear to many people before, that the confrontation between the states belonging to opposite socio-economic systems was not the only possible state of relations between them. It indicated that Europe, just as the entire world, should have a different development of relations between states, a development based on the peaceful coexistence of states with differing socio-economic systems, a development characterised by cooperation between states in various spheres, by a peaceful competition between them, by the settlement of their international disputes exclusively through peaceful means.

Historical development has brought Europe to an important frontier, as a realistic opportunity has appeared for having collective actions of states, to enhance the consolidation of security in Europe.

It is common knowledge that the Soviet Union consistently worked for the establishment of a European security system even before the Second World War, and many times came out with this idea after the war as well.

* N.d.I.R. Rapport présenté au colloque sur « Le problème de la souveraineté et l'organisation de la sécurité européenne », organisé à Vienne, les 22 et 23 juin 1973, par l'Institut international de la Paix.

The 24th Congress of the Communist Party of the Soviet Union posed, in its peace programme, the problem of European security as a practical task for the next few years. In his report to the Congress, L.I. Brezhnev, General Secretary of the C.P.S.U., « called for every effort to ensure collective security in Europe » (Documents of the 24th C.P.S.U. Congress, Russian edition, Moscow, 1971, p. 29).

The Soviet Union, acting in cooperation with the other socialist countries, did not lose time in implementing this programme. And as a result of the efforts of all the progressive forces we are about to witness an all-European conference on European security.

There is no need to prove to those present that the public can do a good deal for the success of that conference as regards the elaboration of concrete issues connected with the establishment of a European security system, as well as regarding the influence on the course of the work of the conference.

Therefore, one can certainly be grateful to the International Institute for Peace for the organisation of this symposium.

The problem of sovereignty, in connection with the organisation of European security, poses before us, first of all, the general preliminary issue — the issue of compatibility of sovereignty with collective security. In other words, is it possible to establish a European security system on the basis of sovereign states, or does this call for a basic rearrangement of the structure of international relations ?

It is generally known that there are different opinions on this score.

Before supplying the answer to the question, it is necessary, firstly, to define the meaning of state sovereignty and collective security.

State sovereignty can be defined as the supremacy of the state « within », and as independence in international relations. The sovereignty of the state is of a class nature, just as the state itself.

This factual situation is reflected in international law primarily in the principle of respect for the sovereignty of states. Under this principle every state must respect the sovereignty of the other states irrespective of the class content of their sovereignty.

Naturally, the sovereignty of a state has never been and can never be absolute. Sovereignty means the freedom of action of the state, but this freedom is not boundless. The state is in a community of states, and its freedom of action is limited by the same kind of freedom of action of the other states.

Sovereign states enjoying equal rights set up by agreement among themselves rules of international law, i.e. standards of behavior obligatory in their reciprocal relations. Thereby they legally restrict their freedom of action in order to ensure, among other things, a widest possible freedom of action conducive to normal relations between them.

Thus, when we speak of the sovereignty of states, we do not mean absolute sovereignty, which is impossible, but rather a sovereignty within the framework of international law.

Collective security is usually defined as a system of joint measures of states to ensure and strengthen peace and to develop cooperation on the basis of agreements concluded between them.

The idea of collective security reflects the process of internationalisation which have become particularly intensive in the past decade. They are manifest in the development and deepening of inter-state ties in various spheres and in various forms. And in this connection and under the conditions of immense progress in science and technology the maintenance of international peace has developed into a truly international, global problem. An armed conflict in one area is fraught with the danger of growing into a world war, a war that will engulf all the states, one way or another. Peace is indivisible : such is the brief formula expressing the core of the new state of affairs.

The globalisation of the peace problem was reflected in the establishment of the United Nations which is a universal international organisation for the maintenance of international peace and security.

The same process led to the introduction, in international law, of the principle of cooperation of states in the interests of ensuring the peace. The 1970 Declaration on the Principle of International Law says, in part : « States have the duty to co-operate with one another, irrespective of the difference in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation... ».

The global nature of problems of peace merge with their regional aspects. Problems of the maintenance of peace are simultaneously global and regional, in the sense that the maintenance of peace in certain region, being of interest to the entire international community, concerns primarily the states of that region.

Therefore the Charter of the United Nations as a universal system of collective security envisages the possibility of establishment of regional security systems.

Now back to the issue of compatibility of state sovereignty and collective security.

Quite current in the West is the concept according to which the establishment of an effective security system, whether universal or regional, is possible only under the condition of renunciation of state sovereignty or substantial restriction of sovereignty and establishment of centralised power which would be already not an international organisation but rather a state formation, and would have all the attributes of state power.

Thus, P. Jessup, the eminent American jurist and diplomat, considers that the only means for the provision of peace is the establishment of a « World government ». « There must be », he says « organs empowered to lay down rules (a legislature); there must be juridical organs to interpret and apply those rules (a judiciary), and there must be organs with power to compel compliance with the rules (a police force) »¹.

Another celebrated author, G. Schwarzenberger, professor at the London University, writes that the appearance of the atomic bomb imperatively calls for a rejection of state sovereignty. It was clear even before, he says, that it is impossible to ensure the peace with the presence of sovereign states. « Yet, it appears to have required the advent of the atom bomb to induce statesmen to make declarations such as that “ every succeeding discovery makes greater nonsense of old-time conceptions of sovereignty ”. » Schwarzenberger arrives at the conclusion that the only answer to the menace of general destruction is the establishment of a world federation².

We still remember the catchword used by Britain's Foreign Secretary after the Second World War : « War is the price for sovereignty. »

The unsoundness of this concept is seen from the fact that the state, as an institution of the human society, is regarded as something which can be basically changed, through the will of politicians and jurists, regardless of the economic system of society. The causes of wars, whose elimination is used as the key-note of all the projects for the world state, are sought in state sovereignty. Nevertheless, the very existence of sovereign states is a legitimate consequence of society's economic structure and the states will disappear only with the alteration of that structure.

The concept of a world state as the only means to ensure the peace, besides having other negative aspects, objectively misleads the nations. By presenting something unrealizable as the only way out, they deflect the attention of nations and states from the means and methods of collective security, implementable in the present situation.

Any collective security system can and must be built on the basis of sovereign states, inasmuch as the existence of sovereign states, is conditioned by the laws of development of society in our days. The state and the sovereignty, characteristic of it, cannot be simply abolished. This is not the only possible but also the best, in the present conditions, foundation for the establishment and operation of collective security organisations.

This is precisely the basis of the establishment and operation of the universal collective security system known as the United Nations.

¹ JESSUP, Ph., *A Modern Law of Nations*, Archon Books, 1968, pp. 2-3.

² SCHWARZENBERGER, G., *The Frontiers of International Law*, London, 1962, pp. 312-313.

The U.N. Charter stipulates that « The Organisation is based on the principle of the sovereign equality of all its Members » (article 2 (1) of the U.N. Charter).

The same must be the foundation for the organisation of a collective security system in Europe. This must be an organisation of cooperation of sovereign states in the interests of provision of peace and development but rather an inter-state organisation.

Apparently this general foundation for the organisation of European security must be translated into concrete principles that will underlie its activities.

The U.N. Charter allows for the establishment of « regional arrangements or agencies » provided their activities « are consistent with the Purposes and Principles of the United Nations » (U.N. Charter, article 52). The principles of the U.N. Charter, being also the basic principles of contemporary international law, must be among the basic principles of the European security system.

This, naturally, does not mean that the principles of European security must be a repetition of the principles of the U.N. Charter. Regional security systems are set up « for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations » [U.N. Charter, article 52 (1)].

A major principle of European security, representing a further development of the U.N. Charter principles, is the principle of inviolability of state frontiers now existing in Europe.

The U.N. Charter and general international law prohibit the threat or use of force, among other things, against the « territorial integrity » of any state (U.N. Charter, article 2, § 4). This is the principle of inviolability of state frontiers.

The Declaration on the Principles of International Law, adopted by the U.N. General Assembly in 1970, has this principle formulated as follows : « Every state has the duty to refrain from the threat or use of force to violate the existing international boundaries of another state or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of states ».

The principle of the inviolability of frontiers of European states goes beyond that : it includes not only the rejection of encroachments on the existing frontiers of states through the use or the threat of force, but also the rejection of territorial claims.

The principle of the inviolability of frontiers fully conforms to purposes and principles of the U.N. Charter, being a development of these principles. This is stressed in the Treaty between the U.S.S.R. and the F.R.G. of August 12, 1970, in which the principle of inviolability of frontiers is formulated as follows : « In accordance with the foregoing purposes and principles, the Federal Republic of Germany and the Union of Soviet Socialist Republics share

the realization that peace can only be maintained in Europe if nobody disturbs the present frontiers.

— They undertake to respect without restriction the territorial integrity of all States in Europe within their present frontiers;

— they declare that they have no territorial claims against anybody nor will they assert such claims in the future;

— they regard today and shall in future regard the frontiers of all States in Europe as inviolable such as they are on the date of signature of the present Treaty... »

The principle of the inviolability of frontiers is likewise included in the treaty between Poland and the F.R.G. on December 7, 1970, and the treaty between the G.D.R. and the F.R.G. signed on December 21, 1972. Its importance for European security is emphasised in such important international documents as the Principles of Cooperation between the U.S.S.R. and France of October 30, 1971, and the Joint Soviet-American Communiqué of May 31, 1972, as well as the Soviet-Austrian Communiqué of December 5, 1971, and the Soviet-Italian Communiqué of October 30, 1972, etc.

Thus, the principle of the inviolability of frontiers, as a principle of European security, will be largely a consummation of something which recently earned extensive acclaim in Europe.

The principle of the inviolability of frontiers is a major one, a principle without which it is actually impossible to think of a lasting system of European security. Historical experience shows that territorial claims always led to the aggravation of relations between states, and very often to armed conflicts. The recognition of the inviolability of frontiers is the main legal foundation for the development of friendly relations between European states. That is why the Soviet Union and its allies insist that this principle be made the foundation of European security. As L.I. Brezhnev, General Secretary of the C.P.S.U. Central Committee, said at the 24th C.P.S.U. Congress, « the foundation of lasting peace in Europe means above all the inviolability of the frontiers of European states ».

The principle of the inviolability of state frontiers in Europe will be an effective guarantee of sovereignty for European states. The encroachments on the frontiers of states and, consequently, on their territory, are among the gravest violations of state sovereignty. And the rejection of such encroachments will be an important means to strengthen sovereignty and to develop good-neighbourly relations between European states.

One of the basic principles of a European security system must be the non-application of the threat or use of force. Recorded in the U.N. Charter, this principle is generally acknowledged in contemporary international law. Paragraph 4 of Article 2 of the U.N. Charter lays down « All Members shall

refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations ».

The content of the principle of non-application of the threat or use of force is elaborated in the 1970 Declaration on the Principles of International Law. An important action of the U.N. to implement this principle was the resolution (adopted at the 27th U.N. General Assembly session in 1972) on the non-application of force in international relations and on the eternal banning of the use of nuclear weapons.

The incorporation of this principle in the agreement on a system of European security would mean not only its reaffirmation, but also its application to a concrete situation in Europe, and this is quite important. Here is a case in point.

Dealing with the content of the principle of non-application of the threat or use of force, the 1970 declaration says, in part : « A war of aggression constitutes a crime against the peace, for which there is responsibility under international law. » This principle is generally acknowledged in contemporary international law, and is obligatory for all states. Nevertheless, this principle would be of substantial significance in a European security system. The point is that the basic post-war measures of the Allied Powers with respect to Germany as the aggressor state are based on this principle of international law under which the state responsible for starting and conducting an aggressive war is punishable under international law for these actions and is subject to the application of sanctions. Such was actually the case with respect to the aggressor states in the Second World War.

In a European security system the aforementioned principle of international law will be an important guarantee of the territorial status quo.

The principle of the prohibition of the threat or use of force, especially its detailed applicability to the situation in Europe, will help to provide additional legal guarantees against violations of the sovereignty of European states, connected with the use or the threat of force.

Naturally, one of the principles of a European security system must be that of the peaceful settlement of disputes between states, something which is closely connected with the principle of non-application of the threat or use of force. These principles are, in a sense, two aspects of the same matter. If the states are forbidden to resort to force or the threat of force in their relations with each other and, consequently, for the settlement of disputes between states, then this means that there are only the peaceful ways open for the settlement of such disputes.

The content of this principle in general international law means that states are in duty bound to settle all the disputable issues arising between them

exclusively through peaceful means without the application of force or the threat of force. Yet the states concerned are free in the choice of these peaceful means in each concrete case, depending on this or that situation. At the same time the treaties between states often contain provisions defining in advance which peaceful means will be applied in case of appearance of disputes arising out of the interpretation or application of an international treaty.

The U.N. Charter, as I have already pointed out, makes it incumbent upon states to incorporate, in the regional agreements on security, provisions concerning the « peaceful settlement of local disputes » (U.N. Charter, article 52, § 2). Moreover, it is difficult to picture a regional security system that would not envisage various means for the peaceful settlement of disputes between its member-states. In this case, with the situation in Europe in view, one will apparently have to deal also, just as in general international law, with the selection by the parties in the dispute, under an agreement in each separate case, of corresponding peaceful means and especially with respect to multilateral and bilateral consultations.

The principle of peaceful coexistence is of particular importance for a European security system. Two opposite socio-economic systems have developed (and now exist) in Europe, as a result of historical development. It is precisely in Europe that the tensions between states of the two systems reached sometimes a near breaking point.

The principle of peaceful coexistence, being extremely general and diversified, must imbue the entire system of European security. This means, first of all, that European States must proceed from the fact of the existence in Europe of states with opposite socio-economic systems, and from the assumption that « the difference between the systems must not be an insurmountable obstacle for an all-round development of relations between them », that they must build their relations « on the basis of accord and cooperation in the interests of peace »³.

It follows from this principle that demands to change the socio-economic or state systems of individual states cannot be used as stipulations for the establishment of a system of security in Europe. And it is common knowledge that such stipulations are often being made by the reactionary quarters endeavouring to interfere with the development of the cooperation of European states. These quarters stubbornly advocate the idea to the effect that the development of cooperation between European states and specifically the establishment of the European security system must allegedly be based on the prerequisite of the « evolution of the Communist system », its « softening », « liberalisation » and so forth, that allegedly without such changes it is impossible to establish a European security system.

³ The Prague Declaration of the Warsaw Treaty Member-States of January 26, 1972, as featured in *Pravda* of January 27, 1972.

The principle of peaceful coexistence calls for the rejection of attempts to use the European security system to influence the socio-economic or state system of individual European states. The same follows from the principle of respect for the state sovereignty and equality of states.

It follows from the principle of peaceful coexistence, just as from other basic principles of European security, that the system of security must be built not on the opposition of European states to each other, just as it must not be spearheaded against any states, but must rather be a system of equal security for all its participants.

It is common knowledge that the principle of peaceful coexistence also underlies the world security system — the United Nations. The U.N. Charter says that all states and, consequently the states with differing socio-economic systems, must « practice tolerance and live together in peace with one another as good neighbours » (Preamble to the U.N. Charter).

Last but not least, the basic principles in European security must include the principles of equality and reciprocal non-interference in domestic affairs. These are traditional principles of international law, closely connected with the principle of respect for state sovereignty.

The principle of equality directly flows from the principle of respect for the sovereignty of states. States enjoy equal rights as sovereign entities. Inasmuch as under contemporary international law the sovereignty of states must be based on the implementation, by the nation or the nations within the state in question, of the right to self-determination, the principle of equality of states is a manifestation of the equality of nations, the equal right of every nation to independent development; respect for national traditions, culture, etc. This is an indication of the important place occupied by the principle of equality of states in general international law, and of the place it should have likewise in the system of European security.

One can hardly overestimate the importance of the principle of non-interference as a principle of collective security in Europe. It is generally known that this principle means that by virtue of its sovereignty every state is free to settle at its discretion the issues within its domestic competence; the issues with respect to which it is not bound by international commitments. Interference in the domestic affairs of states always entailed serious complications between them. The implementation of a European security system will facilitate the implementation of this principle, and this is a substantial condition for the consolidation of peace and the development of cooperation of European states.

There is finally the following question arising : will the organisation of collective security in Europe, based on the existence of sovereign states, states belonging to different socio-economic systems, be an effective one ? In other words, will such an organisation be an effective instrument for the maintenance of peace in Europe and the development of cooperation of European states ?

I would like to make only a few remarks on this diversified and complicated issue.

Firstly, there is no choice here. The establishment of collective security in Europe is possible only on the foundation I mentioned.

Secondly, hardly can there be any doubt that the establishment of such a collective security organisation will be conducive to the consolidation of the peace in Europe and the development of cooperation between European states. The preparatory work for the establishment of European security has already had a favourable influence on the situation in Europe.

Thirdly, there is every condition to make the organisation of collective security in Europe an effective one. The establishment of the system of security in Europe reflects the objective laws of social development. And all the European nations and all the people of the world are interested in its establishment and successful operation.

It is the task of the progressive forces to use these favourable conditions so as to turn, with their constant activities, the future organisation of collective security in Europe into an effective instrument for transforming this continent into a continent of peace and good-neighbourly relations.