

JUSTNESS, PEACE, WAR

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The primary question of vital importance of our time is the problem of the *war and peace*. Under the shadow of the threatening weapons of mass extermination the *further existence of the mankind is already at stake* therefore the question of war and peace is not any more "primus inter pares" but, as for its significance, it outdoes considerably the other anxieties of the mankind. Therefore, it may not be considered a mere chance that nearly all *responsible ideological and political tendencies* deal intensively with the problem of the peace and war. The position taken up in the case of peace necessarily involves the analysis of the values the fulfilment and realization of which improve the prospects of the maintenance of peace. Among them, first of all the justness, especially the social justness can be placed.

The valuation of the peace and the justness can *keep apart from each other* for social historical reasons and the judgement of the possible divergencies holds theoretically several problems and numerous possibilities of disputes in store. The justness is namely a category of several meanings, of several senses which may appear not only as social justness but also as connected to the peace and, to the contrast thereof, to the war, too. In this relation, however, not only the just peace as fundamental value shall be spoken of, set against the unjust war, but also the questions raised by *the just war and the unjust peace* shall be reckoned with.

Because, however, since the accomplishment and the development on a larger and larger scale of *nuclear weapons* the question of the war and peace has become the primary problem of vital importance of the mankind, the question is brought up by right whether the peace has not become a value of such character which cannot be confined to the second place in whatever collision of values. In other words *whether* the just war – traditionally expressed "*iustum bellum*" – *has not become senseless* because the grounds of the war exterminating the mankind cannot be substantiated by whatever justness.

In the literature of the recent years the number of works dealing with the possibility, and impossibility, respectively, of the just war has increased. The majority of these works challenges the possibility of the just war with reference to the dangers of the man-destroying war causing amoralism. This attitude is represented by M. Walzer in his work entitled *Gibt es denn gerechten Krieg?* (Suttgart, 1982). The same suggestion is to be found in the

work entitled *The Just War* of R. Tucker (Baltimore, 1960), with the difference, however, that Tucker sympathizing with the Marxism gives utterance first of all to his doubt in that respect whether the conceptions based on the strategy of determent, tending towards the preventive war of the American leading circles can be considered just. On the other hand, P. Ramsey in his work entitled *The Just War* (New York, 1968) argues with the work *Bellum contra bellum iustum* of R. Tucker (p. 391) and advocates the "just" war based on the determent.¹

Further on, I should like to find an answer to the question how many veracity is to be found in the statement according to which the war and the justness have become nowadays concepts incompatible with each other.

To give an answer on the merits to this complex question difficult to be responded, it seems to be necessary to give a *historical survey* in the course of which it should be investigated, on the one hand, how did develop and what kind of significant changes did the concept and ideology of the just and unjust wars undergo and, on the other hand, which *trend of development* evolved from the almost undifferentiated affirmation of the war up to the complete prohibition of war between the states. In the framework of this essay it is not possibly event to touch upon the significant components of this intricate complex of problems, thus e. g. I cannot deal in detail with the fundamental question either, what kinds of transformation have occurred in the sphere of the reasons of wars.

It may seem perhaps unusual that I deal circumstantially with the evolution of the *international law* in connection with the war. The reason thereof is implied in that although in general the law reflects only and lays down primarily the economic-social relations, it occurs exceptionally that it precedes permanently them. This is the case with the international law, several attitudes of which have comprised from the second half of the 19th century until our days norms containing humanistic "Sollens" embodying the wishes of wide social strata and drawn up in legal form and, thus, the law has constituted the organic part of the development of fundamental opinions on the just and unjust wars.

The evolution of the international law has to be taken into consideration just therefore, too, because the Marxist attitude on the peace and war has to show due regard also for the notion of the international law and as far as it is possible, it has to be in conformity with that. The ideology, the valuation of wars date back to nearly as old ages as the wars themselves. The men participating in the war by order or voluntarily, under obligation or for money risk their life, they kill and are killed, therefore they are not indifferent — and the peaceful inhabitants are neither — to the question why do all these happen. In spite of this fact, that wars appeared as normal phenomena resulting from the existence of the different countries just with the Greeks and Romans, the moral distinction of the characters of wars was still lacking in these ages. The war was a special "value", with the Greeks, Achille as a bellicose man was a kind of ideal and also the Romans highly appreciated the psychical and physical virtues related to the war.

According to László Gajzágó "The war has domination over the Greeks and not they over the war" (László Gajzágó: *Law of war and peace*, Budapest, 1942, pp. 10–11).

With the Romans, at most such a distinction was made that the war was just in case if it was preceded by the declaration of war (for want thereof it was unjust). They insisted on and ensured the protection of the legates and the maintenance of the cessation of hostilities. The obligation to bury the dead presented itself as a moral element. (As a matter of fact, the Greeks attached also great value to the burial of the dead.)

A fundamental change was brought about by the birth of the *Christianity*. The war was from the very beginning a difficult problem not fully solvable and solved for the Christians. The ideology of the early Christianity was essentially an unambiguously anti-war attitude, the war was incompatible with the principle of the love and the freedom from violence. According to Origenes "Do not take up arms against any nation, as men of peace, follow Jesus" (Cited by Tibor Somlyó Tóth in his article entitled "Celestial peace, earthly war", *Világosság*, 1984/2, p. 298).

The social, economic and political motives of the wars did not hold off even after the decline and fall of the Roman Empire. Following the turn of Constantine, with the becoming the state religion of the Christianity, it became necessary for the theologians to appraise more tingedly the wars initiated by the Christian sovereigns or those enforced upon them as well as the necessity of the participation therein. The Christianity had to include the war in the divine order of universe, making somehow or other consistent the omnipotence, sapience and charity of God with the wars, while it had to delimitate itself from the negative features of wars: from the homicide, the hate, the ravage, being unambiguously inconsistent with the fundamental principles of Christianity.

Consequently – may it say however inconsistent – the idea appeared in the antique Christianity that the war was not an evil, as well as the contrary of this idea did so: a fundamental difference had been made between the wars according to their justness and unjustness.

Augustine wrote about the first mentioned idea that "God could not order sinful things therefore the war could not be injurious either". If the war results in a progress it should be considered a divine donation, if, however, it brings about a ruin, thus, it is part of the divine destiny.

On the other hand – and this is an essential advance in the history of the estimation of war – the Christianity endeavoured to condemn unambiguously *somekinds* of wars. As it was stated by István Herczeg "In the Christianity the war was not any more a natural phenomenon but some kinds thereof have to be eliminated". (István Herczeg: *Prohibition of the offensive wars and the definition of aggression*, Budapest, 1964, p. 10). Already the bishop Ambrose preached that "the force without justice feeds only the evil" and Agostine stated unambiguously: "No state exists without justness. If the empires are not based on justness, they are at most "latrocina (gangs of crooks)" (Agostine, *De civitate Dei*, Jena, 1924).

The elaboration of the conception making difference between *just* and *unjust* wars holds on from Agostine through Gratian and A. Halensis up to Thomas Aquinas. The foundation in principle of the just war is based on the idea that in so far as an unjustness, grievance or a prejudice to interests befall a state than, for the sake of the protection of justness, the injured legal order shall be restored. Therefore, in this case, in the interest of the enforcement of justness regarded as the main virtue by the Christians, other values are subordinated which are infringed as a matter of course by the war. According to László Gajzágó "one of the flower shoots of the Christinity, the chivalrousness teaches that in such cases the princes are not only permitted but they are obliged to make war" (Since no human power is above them which would effect the legal remedy on their behalf and for them).

According to Thomas Aquinas the simultaneous existence of three conditions is necessary for the war being just.

a) "*iusta causa*" i. e. the repelling of unjust action of the enemy, and in this sense the war is some kind of the international purative administration of justice;

b) "*autoritas principis*" i. e. only a sovereign monarch that is a state can make or wage a just war and finally,

a) "*intentio recta*" i. e. good intent is necessary, no revengefulness must press the party making or waging a war (Cited by István Herczeg, op. cit.).

The Christianity could hardly tackle the contradiction between *the arbitrariness of war and the justness*. One of the fundamental justness principles of the Roman law, "*Nemo debet esse iudex in propria causa*" (Nobody must be judge in his own case) state unambiguously that the taking the justice into one's own hands is to a certain extent inevitably arbitrary due to the interest of the injured party, therefore it cannot be just. The war is, however, a characteristic form of the self-constituted court and the stipulation of Thomas Aquinas according to which no individual person or small group but only a sovereign monarch must make war, is only a modest help. Although this restriction means a delimitation from the anarchical fist-law, such problems whether the value judgement on the justness of war is reliable if the interested party establishes the justness and the applied means, are unanswered further on. The Aristotelian principle of *proportionality* aims at the reduction of arbitrariness, according to which the war is in so far just as it is proportionate to the caused grievance, the definition thereof depended, however, similarly on the injured party.

The reduction of unjustnesses within the justness is served by the argumentation that the war, similarly to the duel widely popular in that time, is actually the judgement of the (just) God.² In this case, however, it was difficult to justify why the princes making a just war often succumbed.

All these, however, did not make a change in that even the "just" war contained several further unjustness for the defeated party. Thus e. g.

all properties of the defeated devolved upon the conqueror, the booty was considered rightful, during the war not only the men but also the women and children (!) were permitted to be killed, only the violation of women was considered a wrongfulness.

A further restriction was that the distinction between the just and unjust wars was valid only in respect of battles fought by the Christian princes against each other, against the unbelievers, however, the war was just. The principle of "Fides non est habenda cum infidelibus" (Faith — here: faithfulness — does not pertain to faithless people" was applied e.g. in the holy ways. This was in close connection with the fact that the enemies advocated the same principles. Thus e.g. according to the Coran, only an armistice but no peace-treaty might be concluded with the nonbelievers (giaours).

The Christianity deserves credit for its trying to teko measures for the mitigation of the cruelty of war and in this respect it became the forerunner of the "later so-called humanitarian law". First of all the so-called "treuga dei" belonged among these measures according to which on certain days (primarily on feast-days) it was prohibited to wage a war and the churches were considered in principle sanctuaries. Moreover, the pope in power had the right to excommunicate the princes initiating unjust war.

Several ways similarly full of unforeseeable difficulties presettled themselves for the elimination of the collisions of values resulting from the valuation of a part of wars as just, justifiable ones, as a consequence of which priority was given to the values of these wars over other fundamental Christian values.

One solution was the elimination of the collision of values at the expense of qualifying no kind of wars in the future as — relatively — valuable but declaring the general prohibition of war in order to ensure the "free road" for the principle of love. In the course of the history such attempts and conceptions appeared repeatedly. The decree of Emperor Maximilian I of 1495 was one of those requiring "Ewiger Landsfried" i.e. everlasting peace from the princes of the German empire. The law thereon provided, however, by no means a real of general validity since it was qualified only for the limitation of wars, dissensions within the German empire — let us add — without any success. The famous ideas of Kant on the "everlasting peace" may be classed here. Kant regarded the peace built up on the selfish inclinations of people, utilizing the mutual economic advantages of the trade as the solution of the future. Kant was not, however, an Utopist, he was aware of the war being at present still inevitable, in relation to the negative features of the human race.

In this respect Kant represents a transition to the other, more realistic idea which takes rightfully into consideration that the wars cannot be — at least for the moment — eliminated, therefore it tries to reduce the collisions by the means of law, more precisely, of the *international law*.³

The international law itself is the product of the early bourgeois evolution in the course of which national states came successively into existence. The conception of "one state — one empire" was relegated to

the background, and the regulation in the spirit of the international law of the relations of states coming into existence and getting stronger became more and more necessary. The evolving international law regarded from the very first the regulation of the law of peace as one of its fundamental problems wherein the endeavour came across that the judgement of procedures, conducts permissible during the warfare must not be left to the — essentially arbitrary — value judgement of the belligerent parties, and of the princes, respectively, but the — in principle — more exact norms of the law should be applied.⁴

It cannot be regarded as a mere chance that Hugo Grotius counted — according to a great many people — to be the founder of the international law, wrote a work of three volumes on the "Law of war and peace" in which he tried to define with an exceptional preciseness *when could a war be considered just*, and what is, respectively, permissible and forbidden in the war. He stated that the war had extremely manifold reasons. "So many sources the judicial action has, so many sources the war has," Grotius, just like the other famous international jurist, De Vittoria, tries to define more exactly what types of grievances may occasion to wage a just war. According to Grotius "No war must be made on account of whatever crime". De Vittoria still writes in his work entitled "De jure belli" that "Not all sorts and all degrees of grievances are sufficient for making war" (cited by Géza Herczeg in his work entitled "Evolution and present problems of the humanitarian international law" Közgazdasági és Jogi Kiadó, Budapest, 1981, p. 212).

The international law has, however, particularities due to which its legal nature has been repeatedly queried up to the present day. While namely the "internal" law regulating the relations of the subjects of a state can be enforced by the state, no such external compulsive power exists — aside from a few exceptions — in case of the international law. Therefore, the question is often raised whether a norm system having unenforceable postulates may be regarded actually as a law. Consequently, the international law has been considered — at least in the early period of its development — essentially the collection of natural-law principles since the enforcement of its principles has depended — directly — just on the attitude of the interested states. If we add moreover that the establishment and development of the international law are closely connected with the consolidation of another historical phenomenon, namely of the evolution of the *state sovereignty* being in several respects a factor reacting against the international law, it becomes obvious that the restriction of the unjustness of wars by means of the international law comes up against extremely serious obstacles seeming insurmountable.⁵

Hence, it follows that famous "classic" international jurists, such as Pufendorf and Vattel are compelled to state that the war is the situation where the national can enforce its rights. This means that in the conflict of the sovereignty and peace, the peace is necessarily and repeatedly overmatched. Therefore — unfortunately — the international jurist is right who states that up to the middle of the 20th century "the unrestricted right

to war was the inseparable constituent of the state sovereignty" Herzeg, op. cit., p. 13; author's italics). This means that for certain sovereign states, the enforcement of their real or presumptive rights by unjust wars as well is much more important than the observation of natural-law principles relating to the peace and to the just war of the international law.

As a consequence of all these, the parties fought their wars — on both sides — in the spirit of the justness presumed by them. The aggressor was convinced that he repelled a grievance, whereas the attacked party professed the justness of the defence. The sometimes doubtful coupling of the justness with the war results in that the justness loses one of its original human functions, its role of intensifying the confidence of human relations, of people in each other and becomes *dehumanized*. The slogan "*Fiat justitia, pereat mundus*" (be — i.e. triumph — the justness, even if the world would get lost) originates the enforcement of which may result in endless, nearly interminable wars implying immense suffering and grief.⁶

In the history of the views relating to the just war the *French revolution* represented a further step, among the declared principles of which not only general human rights appeared but also democratic, humanistic norms concerning the relations to each other of nations and states were present. The declaration of the *equality of states* falls under them which, due to its essence, was favourable for the smaller states as against the considerably stronger great powers and served for the legal elimination of their inequality. A still more significant principle of justness is the declaration of the obligation to "*non-intervention*" (as a complementary principle of the state sovereignty). Accordingly, it is prohibited and unjust to interfere in the home affairs of another state, and this principle may be actually regarded — impliedly — as a pre-idea of the prohibition of war.

The evolution of the 19th century, the colonization, the establishment of the imperialism did not encourage, of course, the endeavours which tried to avert at least the outbreak of unjust wars by international legal means. The unrestricted right to launch war has been ranked further on — implicitly — as an institution generally accepted by the international law.

Although the estimation of the question did not alter basically from the point of view of the international law, the problem practically worsened and, parallel to the development of the technology, to the development of the weapons of mass destruction, the burdens of wars, the grieves caused by them were multiplied. The evolution occurred not in the field of the "*ius ad bellum*" (right to launch war) but in the sphere of "*ius in bello*" (law applied in the war).⁷

The so-called "*humanitarian international law*" has asserted itself more powerfully at the first time from the second half of the 19th century. The principal endeavour of its representatives was to elaborate internationally accepted rules as a consequence of which the anti-humanistic and unjust features of the wars already broken out could be mitigated. The humanitarian international law, while accepting the fact that the aim of the war was the defeat of the enemy, has wanted to formulate norms

with the observation of which certain inhumanities and unjustnesses not necessarily incidental to this aim could be obviated.

The humanitarian international law has been realized in the so-called *Geneva conventions* with the further development of which the United Nations Organization has dealt on several occasions. Plans have been elaborated for the regulation of the treatment of the prisoners of war, of the wounded and diseased, starting from the principle that it would be unjust to treat them just like the soldiers able to fight. Moreover, it was declared in the spirit of the same that the principle "nobody must survive in the battle, no prisoner of war must be taken" was unacceptable. The further development and application of the weapons of mass destruction have begun to make gradually indistinct the dividing lines between the soldiers and the civilian population. The followers of the humanitarian international law have therefore strived after the elaboration of rules providing for the protection as intensive as possible of the civilian population in case of war conflicts.

A highly important endeavour is in this field the effort to restrict the weapons of mass destruction causing greater damages than the average. The prohibition of the chemical weapons belongs e.g. here.

A significant moment was in the development of the humanitarian international law the establishment and application of the concept of war-criminal in the international law after the Second World War.⁸

The provisions of the international law to be applied were not only of humanitarian character but the majority of them contained simultaneously considerable justness moments. Thus, the conception is obviously just that the civilian population deserves a different treatment in the war than the opposed armed military forces. (The killing of these latter in battle falls under a different moral judgement than that of the defenceless civilian population.⁹

A similarly fundamental principle of the justness comes across in that the committers of criminal acts are called to account not only in case of having committed "civil" crimes but also in such cases if crimes of war character rests upon them. According to the salty remarks of H. Bernstein: "It is not any more an excuse for the criminal if killed not one but two persons, these two, however, in millions" (H. Bernstein, *Final Judgement*, London, 1947, p. 22). After the war criminals having been called to account, the committers of such acts have to reckon in the future with the fact that the war character of their activity does not mean an excuse for them.

The legal regulation of the above outlined subject matters — comprising only some main fields of the humanitarian international law — resulted in considerable disputes. At the same time, the enforcement of the norms in the practice was highly restricted. Thus e.g. in the trials of the Nazi war-criminals the Nuremberg Tribunal stated that the leaders of different level of the Nazi Germany had violated in the Second World War in great masses the provisions of the Geneva Conventions signed also by Germany. (By the way, this fact served as legal basis for the calling to account since the laws

of the fascist Germany did not qualify several acts laid to the charge of the accused as criminal act.)

The evolution of the international law was not confined, however, to the further development of the rules of "ius in bello" in respect of the war, but endeavours have been made and continually strengthened which have *opposed* the principle of *the unrestricted war authority of states*. In this respect two phases of development may be distinguished. The first one beginning with the Hague Conventions of 1899 and 1907 was characterized in that it wanted to *restrict* the unlimited war authority and tried to make preliminary conditions of the right to unleash a war. Hence, in this period the starting a war was not yet considered unjust from the very first, certain forms thereof met, however, with the reprobation of the international law. Thus e.g. the Hague Conventions obliged the signatory states to settle their conflicts through "goodwill" and court of arbitration — and only in case of the failure of these steps they were entitled to start a war.

The League of Nations pursued this direction. Numerous anti-war conventions were originated from among which the most important one was the so-called *Brian-Kellog Pact* of 1928 which was the first in the history which interdicted the war as the instrument of the pursuance of policy. The 60 states including almost the entire community of the sovereign international states of that time renounced the right to start a war. The consequent attitude of the Soviet Union beginning with the peace pact of 1917 perceptibly influenced this development. Unfortunately, the *Brian-Kellog Pact* (together with other arrangements) produced no effect and the Second World War proved unambiguously that the means of the international law were not efficacious enough with respect to the aggressive imperialist ambitions.

After the Second World War, the framing of the United Nations Charter induced the further development, though provisionally in a legal way and legal respect only. The Atlantic Charter adopted by the Allies in August 1941 laid already down that "All nations of the world have to come to abandon the recourse to violence".

The United Nations Charter relies on two essential principles in the question of war, according to the first point of the first Article of first Chapter: "The conflicts must be settled under the principles of *justness* and of the *international law*" (author's italics).

The most significant change was brought about, however, by that the UNO unambiguously declared the *prohibition of war*, moreover, prohibited all kinds of violence as well as the threats of violence among the states. "The United Nations Charted definitely closes the period of which the war was a normal legal institution" — writes István *Herczeg* (op. cit. p. 62).

An essential fact is that UNO was not contented with the declaration of the disapproval of war but has established an international organ (the Security Council) which has been obliged to *restore the peace* by applying international forces. The striving after the accurate *definition of the aggression* is an organic consequence of the anti-war fundamental norms of UNO.

After long-lasting discussion, the general assembly of 1974 adopted a resolution on the definition of the aggression. Both the question of the aggression and the definition of the war were much debated (it was not a mere chance either that due to the ambiguity of the concept of the war the expression "armed conflict" has been applied since 1949).

As a consequence of all these, a fundamental legal change has been brought about in the position of states participating in the war. "In the past, the legal position of states fighting with each other was identical, the attitude of the aggressor was only morally or politically differently judged than that of the attacked party since the states had the right to resort to armed violence in order to settle the cases at issue . . . After the abolishment of the right of states to start a war *the act of the aggressor became an international delict and the state attacked by force of arms got in the state of justifiable defence*".

Although, according to UNO, the prohibition of war of the states is *absolute*, the enforcement of this regulation renders inevitably justified the *military* measures required for the restoration of *peace*. Therefore, *the self-defence against the aggression* further on (but only until the arrangements of the Security Council) and *the armed intervention of the community of states* by reason of the resolution of Security Council against the aggression are equally justifiable.

The prohibition of UNO relates, however, only to the military conflicts *between the states*. Point 7 of the second clause of the United Nations Charter prohibits the intervention of UNO in such cases which "belong essentially to the internal jurisdiction of a state". The resolution of 1974 defining the aggression lays down that the definition encroaches by no means the rights to the self-determination, liberty and independence of the states. This is closely connected with the conception that *the wars of liberation must not be considered aggression* which means at the same time that their *favouring from outside* cannot be qualified as of such character either.

Unfortunately, the effective international situation *falls* considerably *behind* the positive and foreshadowing character of the development of the international law. In spite of the resolutions of UNO several wars broke out between states and UNO did not succeed its efficient measures in forcing the parties participating in the war to stop immediately the war. A characteristic example thereof is the war between Iraq and Iran going for some years and causing considerable casualties. The *responsibility of the Great Powers* — permanent members of the Security Council — is highly significant for making immediate decisions in case of each war broken out between the states for stopping this war and for enforcing these measures with the assistance of the Great Powers.

Let us investigate now (in the light of all those said above) how *the attitude of the Marxism* has worked out *in the question of the justness of war*. As for the justness, the classics of Marxism dealt little with the question of justness for historical reasons and they criticized especially the opinions which wanted to build up the necessity of the socialism — raising moral standards — on the "eternal" justness.¹⁰

Some change occurred with *Lenin* who dealt more thoroughly with the problem of the justness of war. His work comprehended the periods of the preparation, the outbreak and issue of the First World War when the fundamental question was propounded whether the war could be prevented, and after its outbreak, how could it be finished, respectively, in accordance with the interests of the labour movement.

In the judgement of the war, Lenin joined primarily to the *humanist trend* of the history of ideas which reprehended the war as an anti-human institution. "The socialists have always disapproved of the war between people as of a barbarous, brutal thing." (Lenin: *On the war, the army and the military science*, Budapest, 1978, p. 556).

In conformity therewith, Lenin strived after the prevention of war by the labour movement and reprehended those social democrats who voted the military budget of their own country.

At the same time, Lenin held that *the wars were the special products of the class-societies* which were closely connected with the home policy of the individual countries, with the activity of the classes. He agreed with Clausewitz according to whom "the war is the pursuance of the policy by other means". In this sense Lenin extended the notion of the war and regarded not only the armed conflicts between the states but also the national wars of liberation and the civil wars as wars. On this basis he distinguished between the wars by taking into consideration "which were the reasons of the war, what the aims of the participants and which classes waged the war". (Lenin, op. cit. p. 775).

There are just wars the purpose of which is the liberation of the oppressed people, and nations, respectively, and the social progress. "The history knows several wars which, in spite of the inevitably associated horrors, brutal atrocities, calamities and misery, were of progressive character and promoted the development of the mankind . . ." (Lenin, op. cit. p. 556). On the other hand — according to the sense — the wars of conquest, acquiring new territories, the imperialist wars are unjust.

Finally, one of his main ideas in connection with the war is that only the socialist revolution can relieve the *mankind* for ever of the war, the wars can come definitely to the end only by the world-wide victory of the socialism.

Since the laying down of Lenin's ideas nearly seventy years passed and fundamental historical changes occurred in the world and in the judgement of the question of war and peace. These changes are indicated not only by the establishment of the Soviet Union and other socialist countries and, together therewith, the further development of the Marxism, the transformation of the capitalism, the Second World War, but simultaneously by the danger of a world war threatening the existence of the mankind, and at the same time by such political and international legal efforts which have proclaimed the war outlawry. The question is rightly raised how does the Marxism react at present theoretically upon the problem of the relation of war and peace as well as of the justness?

These questions are extremely difficultly answered, among others because this range of problems is influenced not only by theoretical but by fundamental political considerations. Therefore, I should like to outline further on — schematically — a possible Marxist answer. In my book published last year I attempted to elaborate a *possible* Marxist conception of justness, in the forthcoming I shall try to give an answer in the spirit of this conception to the raised questions.¹¹

The brief, concise and therefore somewhat simplified essence of the above outlined conception consists in that the society must be considered just which ensures equally for all people what is due them by right of their being a man: *putting forth of their human essence, of their abilities to the largest possible extent*. Since, however, so far no social-economic formation has reached this stage of development, this principle of justness can be rendered operative only if the everyday use of the expression "justness" is overstepped which applies these expression generally as poles as under ("something is *either just or unjust*"). A many-graded scale is applied with which not only the justness placed on one pole, but also all the grades constitute a value each which are *more just* than other grades being more unjust as compared therewith. This hypothesis has the consequence, too, that even the social (similarly as the individual related thereto) justness appears *scarcely distinctly*; the overwhelming majority of the phenomena is complex: it contains — though in different proportions — equally just and unjust elements. In this conception the justness and the social progress are though in close connection but do not coincide at all automatically with each other: due to the contradictory nature, the social progress has phases which mean a progress as compared to the previous age, though they involve major unjustnesses. (Thus e.g. the development of various ancient forms of the slavery is generally a part of the social progress, at the same time, it brought about much more unjust social relations than the previous era.)

An important element of the conception is further on that however much the justness may be an important value in the life of a society, it may not be considered the *top* value standing on the peak of the hierarchy of values (as was presumed by numerous people from *Aristotle* up to *Rawls*), therefore in case of the collision of justness with other values, it has to be *concretely* pondered to which of them and to what extent preference should be given. If this conception is intended to be applied to the present problems of war and peace, *the universal peace and the world war* shall be regarded as the co-ordinates determining everything else. Since, however, a possible world war would cause — according to the almost generally accepted notion — the perdition of the mankind, accompanied evidently by the destruction of all values, we have to accept as an *axiom that such a war cannot be just from the very first*, be as it may the purpose of its starters. Consequently, in this collision of values *the peace* becomes inevitably dominant, namely to such an extent that thereby the justness moments of a possible thermonuclear war are completely eliminated.

This axiom leaves at the same time its mark on all possible so-called *local* wars of our time. In my opinion, *one of the fundamental characteristics of our age* is that under the shadow of the danger of the third world war the nature of *no (local) war* of smaller or larger volume can be satisfactorily judged *by itself* without investigating: what effect will the given war have on the universal peace. Consequently, the nature of the war cannot be any more determined on the strength of the intentions, aims of the belligerents as it was previously done, but also the *result* caused by the war plays a part as equivalent criterion.¹² (In the first place, their effect on the universal peace shall be taken into consideration but as another important element, also the social consequences not only of the after-war state but also of the war shall be reckoned with, as for the personal and material losses, the moral moments also included.)

In the present world situation, some of the so-called "local wars" carries in itself *potentially* the risk of the world war since it is mostly unforeseeable how the "escalation" of the given war will take place due to the fundamental conflicting interests. In addition, it occurs frequently today in the local wars that both parties get assistance, therefore the wars of liberation are extremely drawn out and demand innumerable victims (see e.g. the war in Viet-Nam). The destructive effect is intensified by that the traditional military engineering has developed by leaps in the recent one and a half decades and due to the external assistance, the results of this military engineering can be used almost uncontrolled by the belligerents. Therefore, even in case when the pre-war state shows the picture of a highly unjust, moreover, historically outdated society — e.g. in case of an intense colonial enslavement — the question, whether the unleashing of a war is just or not, cannot be answered as unambiguously as previously on the principle that the war is just because it aims at the establishment of juster social conditions as compared to the former ones. It cannot be considered a mere chance that the socialist countries advocate the possible peaceful settlement even of conflicts of such character.

With the valuation of such wars the fact shall be taken into consideration that *fundamental contradictions* exist between *the justness and the war* according to the above outlined conception. While namely the justness means the liberty of people, the putting forth of their abilities and their ideas, the comprehensive enforcement — within certain bounds — of their volition, the war, on the contrary, represents the violence, the destruction, the working of the will of some people upon the others. Therefore, the peace is the precondition, the concomitant of the justness.

Consequently, even a local war aiming at the establishment of juster social conditions, involving, however, also unjust moments, cannot be unambiguously just. Not in the sense as written by Lenin that "no clear phenomena" exist in the nature and in the society and, thus, neither this war is like that. *Such war is a profoundly contradictory phenomenon* with a view to the justness. The war of such type is full of value-destroying moments when it declares such unmoral conducts as values as the destruction of human and material properties whereby a shifting of values occurs which

renders for a long time difficult the enforcement of moral values, among them of the justness, still after the conclusion of peace. The just wars produce also inevitably the mass perdition of innocent people: both of armed and unarmed ones. (Although these marks are to a certain extent characteristic of all wars, they gathered, however, strength in the recent years, e.g. because the outlines between the belligerents and the civilian population get blurred by the modern war.)

Summing up: the historically evolved close connection between *the justness* and *the peace* as values becomes in the 20th century, and especially in the second half thereof, more and more evident according to the tendency of the historical development. One of its most suggestive mark is that the former valuation sharply distinguishing between the just war and the unjust one, must be replaced by a more differentiated analysis *judging* the whole question *primarily in the perspective of the universal peace and of the world war.*

REFERENCES

¹ These questions are dealt with further on by the books of V. Meiser: *Concepts of Just War* (Leiden, 1975) and of S. Albert, *Bellum iustum* (Kallmunz, 1980).

² Gajzágó alleges that etymologically the word "bellum" (war) originates from the word "duellum" (duel).

³ The Roman Catholic Church agreed also with this conception in the main aspects. A. Hertz points out that the Church regarded for centuries the conception of the international law further developed by Vittoria and Suarez as the basis of the judgement of war conflicts. (A. Hertz: *Von der Theorie des "Gerechten Krieges" zu einer Theologie des Friedens*, Wilhelmshaven, 1968, p. 9).

⁴ Somlyóí - Tóth indicates that a characteristic feature even of the pre-scholastic and scholastic literature dealing with the justness of war is that it was cultivated by the canonists. This gives an inling of the idea that the recognition that in the safeguarding of the justness of war the law might have - in principle - a significant part, started just in this period.

⁵ Thus e. g. Moser states that the "bellum iustum" is a merely moral postulate having no international legal basis at all. According to Lasson: "No legalstatus can exist between the states as sovereign individuals". (Cited by István Herezeg, op. cit. pp. 12 - 13).

⁶ The very irony of fate is that the principle of "Fiat iustitia, pereat mundus" is declared not only by certain states but also by such individual persons deserving a better lot, as Michael Kolhaas who were carried along to such self-destroying principles by the feudal injustice.

⁷ The "ius in bello" is divided, strictly taken, into two parts, namely to the so-called military law regulating the rights and obligations of the parties participating in the war and to the humanitarian law dealing primarily with the norms relating to the persons unfit for fighting and to the civilian population.

⁸ The Allies agreed in August 1945 in London upon how to call to account the war-criminals of the axis powers. The established International Military Tribunal defined three kinds of crimes: the crime *against the peace* committed by an aggression or by a war started due to a breach of contract, the *war crime* which manifested itself in the breach of laws of the warfare and the *crime against humanity* which meant the killing and employing for slave-labour of the civilian population.

⁹ One of the most difficultly sovable problem of the humanitarian law: the establishment of the rights of partisans, was connected therewith. The increased protectiin in due namely to the civilian population because it is not a fighting party. The fighters in plain clothes, however, were for a long time judged more severely than the soldiers because they constituted much greater danger than the others, they were not considered prisoners of war after being captured, etc.

¹⁰ In greater detail see in the work of Tamás Földesi: "*Dilemmae of justness*" (Budapest, Kossuth Könyvkiadó, 1983, pp. 147-160).

¹¹ Tamás Földesi, op. cit.

¹² The valuations cannot be therefore agreed with which oppose the object as exclusive determinant to the result in the judgement of the justness of war. The authors of the book entitled "*War, army, military science*" e. g. write on the question as follows: "The political objects of the war must not be confused with the results of the war, the character of the war must not be judged by its - sometimes rather remote - consequences. (*War, army, military science*, Budapest, Zrinyi Kiadó, 1965, pp., 104-105). Apart from the fact that this is the ethics of intention, the starters and participants of the war shall not take into consideration only their own objects but - to an even increasing extent - they should reckon also with the consequences inseparable from the war.

JUSTICE, PEACE, WAR

TAMÁS FÖLDESI

In his study the author tries to apply the conception elaborated in his book on justice to the problems of war and peace. In the course of a historical analysis he examines the evolution of the conception of a just war in philosophy and international law. He comes to the conclusion that the marxist conception of a just war must be revised for in the shadow of a 3rd world war threatening the survival of mankind the criteria of a just war must be changed and it is doubtful whether this conception can be used in the future.

JUSTICE, PAIX, GUERRE

Dans son étude, l'auteur essaie d'appliquer la conception élaborée dans son livre sur la justice aux problèmes de la guerre et de la paix. Au cours d'une analyse historique il examine l'évolution de la conception d'une guerre juste dans la philosophie et le droit international. Il en vient à la conclusion que la conception marxiste d'une guerre juste doit être révisée car à l'ombre d'une troisième guerre mondiale menaçant l'existence de l'humanité les critères d'une guerre juste doivent être changés et il est contestable que cette conception puisse même être utilisée à l'avenir.