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**EVALUATION OF THE SOVIET-GERMAN PACTS  
OF AUGUST 23 AND SEPTEMBER 28, 1939,  
FROM THE STANDPOINT OF INTERNATIONAL LAW**

The history of the world has a lot of convincing evidence that the development of interstate relations represents, in fact, a dialectical struggle between power and law, and an increase of the role of international law is undoubtedly a sure indication of progress. Peaceful coexistence is a predominant idea of modern era and a general principle upon which interstate relations guaranteeing normal development and security of all peoples and countries are based, and it is inconceivable outside international law and order. Coexistence can only be secured if the use of force or even threatening to use force is completely rejected in international policy, and if it is guaranteed by securing genuine sovereignty and equality of bigger and smaller nations alike and, finally, it should be based on the uncontested rights of all nations to self-determination. The adherence to the general principles of contemporary international law in today's interconnected and interdependent world where the preserving of life on earth and concerns for other human values have become of utmost importance is a matter of highest priority to observe and to follow.

In his speech in the United Nations Organisation on December, 7, 1988, M. Gorbachev said, "Our ideal is a peaceful community of law-abiding states which also submit their external policy to law".<sup>1</sup> Nowadays this new political thinking has been supported by the Federal Republic of Germany; in the Joint Declaration of the FRG and the USSR signed in Bonn on June 13, 1989, was stated, "All peoples and nations should be guaranteed a free choice to build their future and to have relations with each other based on sovereignty and international law. International law has to have primacy in internal and external politics".<sup>2</sup> It should be noted that the world community expects law-abiding behaviour and mutual selflimitation of sovereignty in favour of international bodies first and foremost from bigger states, who should play a decisive role in the world's history and in the development of international relations.

In order to have any progress in creating security and co-operation in Europe and the so-called Common European Home as well as building a really lawful Union of Republics in our Soviet State, it is urgently needed that the highest authorities in the name of Soviet Union should give correct political and legal evaluation of the Stalinist leadership's actions in Europe from the middle of the year of 1939 until Germany attacked the USSR.

Until 1985 — that is before *perestroika* — any kind of discussion of the recognition of genuine rights of self-determination of the peoples of Estonia, Latvia and Lithuania would have been just senseless: in the Stalin-Brezhnev state the decision-making was not subordinated to the law but these rights belonged to the bureaucratic apparatus and to the military. Today these matters of principle are very meaningful not only as a domestic problem but even more so as a problem of international law

<sup>1</sup> Известия, 1988, 8 дек.

<sup>2</sup> Известия, 1989, 15 июня.

and especially as we are to build a lawful state in the USSR and as Soviet leadership is introducing an idea of discarding ideology as a basis for international relations.

In connection with this it is highly satisfying to note that the first Congress of People's Deputies of the USSR did not attempt to avoid going into this problem but reacted favourably to the official appeal of the Baltic Soviet Republics and formed a corresponding Commission. But an emergence of different attitudes and some difficulties arising thereof in working out an objective evaluation was evident not only from the speeches of several Deputies but also from the obvious discrepancy between the name of the Commission and the description of its goals as they were presented by the Chairman of the Supreme Soviet. Suggesting to create a commission to evaluate the Soviet-German Non-Aggression Pact of 1939 from the political and legal point of view (even though there were more than just one Pact), M. Gorbachev also pointed out the necessity of answering the question of whether the incorporating of Estonia, Latvia and Lithuania into the USSR in 1940 had been a voluntary and lawful act.<sup>3</sup>

A well-known Soviet historian, now People's Deputy Roi Medvedev said to the same audience: "Until now in our official essays, in articles and publications printed in Moscow we have insisted that Estonia, Latvia and Lithuania had joined the USSR voluntarily, that there had been a people's revolution, that there had not been any kind of violence or threat and it had been a completely voluntary act on the part of Lithuanian, Estonian and Latvian peoples. This is not true. This was, of course, a premeditated action when the imperialistic war had been in full progress and when not only the Soviet Union but neither Germany or Japan, England or France had had any respect for the rights of smaller countries and nations, and when in taking their decisions they did not take into consideration the neutrality of Belgium, Holland, Finland or that of any other countries. That is why the commission has to be created so that at last we should be able to evaluate correctly these treaties."<sup>4</sup>

It is quite clear that the present Soviet leadership is in a rather awkward position, because of what has been inculcated into the minds of the Soviet peoples is very far from the truth and from what a critical political and juridical analysis and an objective evaluation of Stalinist leadership's unlawful actions in 1939—1940 should be. It is with this in mind that one should approach the articles published in the newspapers *Pravda* and *Sovetskaya Estonia* by R. Müllerson, Doctor of Jurisprudence and Chief of a department in the State and Law Institute of the USSR Academy of Sciences. He advises the Baltic peoples to proceed from today's realities and to put aside everything that alienates them from the All-Union Federation.<sup>5</sup> At that he would not touch upon the most crucial problem — that of the people's right to make their own choice and to use the possibility for self-determination in the conditions of the Soviet Federation. The better solution, in my opinion, is to give to the Baltic peoples the possibility to use the right of self-determination, which by no means should signify their separation from the USSR and which would undoubtedly raise trust towards the present Soviet leadership, increasing thereby the leadership's international authority; it would induce trust towards Soviet initiatives because it would prove success and irreversibility of *perestroika* and a victory for new political thinking.

Considerable contributions of the Soviet Union in elaborating the modern international system of law, in creating United Nations Organisation and in some other matters are undoubtful. But otherwise the activity

<sup>3</sup> Известия, 1989, 3 июня.

<sup>4</sup> Ibid.

<sup>5</sup> Правда, 1989, 22 мая; Советская Эстония, 1989, 1 июня.

of the USSR in external politics is not just a series of exclusively positive deeds, and historical, political and legal publications of the recent years amply confirm this. Alongside positive developments there were serious infringements on principles and norms of international law, trampling upon the rights of other nations due to libertarian interpretation of countries' rights and obligations, because of actual renunciation not only of the principles heralded in the first Soviet decrees but also of the constitutional principles for external activities of the Soviet State.

The most brutal offence of international law and the case of trampling upon the rights of other nations in the history of the USSR was the collusion between Stalinist leadership and that of fascist Germany in 1939. From the legal point of view it had not been a matter of choice — either to conclude a treaty with the Great Britain and France or to normalise political relations with Germany and to conclude a non-aggression pact. This was actually a political problem and we would not hesitate to disagree with the statement by V. Molotov on August 31, 1939, at the Extraordinary Fourth Session of the Supreme Soviet of the first convocation, when he, making his efforts to persuade the Supreme Soviet to ratify the Agreement, tried to justify the Agreement by asserting that internal and external politics of a state are allegedly not connected with each other and that therefore the fascist essence of Germany is an internal matter of that country and the USSR has no right to interfere there.<sup>6</sup>

An unexpected appointment of V. Molotov as People's Commissar for Foreign Affairs on May 3, 1939, attested to the fact of a change in Stalin's political thinking. V. Molotov was appointed instead of M. Litvinov, who was regarded as a specialist in international law. For example, right after the annexation of Austria by Germany in March 1938, in his protest against the Anschluss Litvinov proclaimed: "The breach of international obligations proceeding from the Covenant of the League of Nations and that of the Treaty of Paris (Kellogg-Briand) . . . presents to the Soviet Government a possibility not only to display its negative attitude toward these international crimes, but also to assert its readiness to active participation in all measures in organizing a collective rebuff to the aggressor notwithstanding an inevitable complication of relations with the aggressor."<sup>7</sup> From the diplomatic correspondence of Germany is evident that the appointment of "the closest friend and the nearest comrade-in-arms" of Stalin, that is V. Molotov, to the post of People's Commissar of Foreign Affairs had been accepted in Germany as a guarantee that the Soviet external policy would be conducted in full accordance with Stalin's wishes.<sup>8</sup>

In July 1939 the Soviet-German economic negotiations were renewed, and in August the political relations were positively settled. On August 23, 1939, in Moscow J. Ribbentrop and V. Molotov signed a Non-Aggression Treaty for their countries together with a Secret Supplementary Protocol.

Due to the fact that many materials in archives are still not readily accessible, the issue of the negotiations process and that of attaining the agreement should be regarded as not yet investigated well enough.

While the treaty as such, which could be viewed as a continuation of Neutrality Treaty of 1926 and as such does not induce any juridical objections, the Secret Protocol analysed from the point of its legality is undoubtedly unlawful. Being fully aware of German intentions to liquidate the State of Poland, the USSR agreed upon mutual annexation and the division of that country along the rivers of Narew, Wisla and San.

<sup>6</sup> Правда, 1939, 1 сент.

<sup>7</sup> Lander, R. Seizure of Territory. 1947, 158.

<sup>8</sup> Documents of German Foreign Policy 1918—1945. Series D (1937—1945). Vol. VI. London, 1956, 419—420.

Both parties agreed upon observing their "friendly mutual accord" when in future they would finally decide the fate of Poland. Besides that they agreed that Finland, Estonia and Latvia, as well as Bessarabia would be in the sphere of Soviet influence, while Lithuania would be in the sphere of German influence (Items 1 and 3).<sup>9</sup> Stalin and Hitler usurped the rights of many European nations to decide their own future and as their participation or their free will has not even been asked for so such treaties had been legally null and void, that is — they had been invalid from the very moment of their signing (*ex tunc*).

Comparative analysis of the subsequent events in Europe played out by the parties in accordance with the Secret Supplementary Protocol (including the subsequent Agreements) and a complete identity of the verbal formulations of the beginning in Items 1 and 2 of the said Protocol confirms that the Soviet leadership had definite intentions to incorporate Finland, Estonia and Latvia, and was ready, if necessary, to use its military force. This interpretation is supported by the testimonies of K. Selter, former Minister for Foreign Affairs of Estonia that were presented to the Select Committee of the United States Congress in 1954. K. Selter testified that immediately after he had signed in the name of Estonian Government a Mutual Assistance Pact with the USSR in the Kremlin on September 28, 1939, he noticed that V. Molotov, having received a signal from Stalin, went to the telephone and said into the receiver, "Klim! (that was Marshal Voroshilov's name) Stop it! Call back!" And Stalin himself said the following, "I can tell you that the Estonian Government did wisely and well in the interests of the Estonian people by concluding the agreement with the Soviet Union. Otherwise what had happened to Poland could have happened to you."<sup>10</sup>

Thus, the main powers confronting each other in Europe by the end of the 30s had their hands free to implement their aggressive intentions which were based on the use of force, and they also excluded the danger of premature clash between themselves. Therefore V. Molotov was right when he declared at the next Session of the Supreme Soviet: "The basic meaning of the Soviet-German Non-Aggression Treaty lies in the fact that two biggest European powers agreed to put an end to animosity between them, to eliminate the threat of war and to live in peace with each other. Due to this, the arena for probable military conflicts in Europe is narrowing. And even if military conflicts could not be avoided altogether the scale of military action will be limited."<sup>11</sup> In all probability that was not a mere coincidence that the day for starting the Second World War by Germany — September 1, 1939 — was the day right after the ratification of the first Treaty by the Supreme Soviet.

It seems to me that the choice made by Stalin in 1939 was not imposed on him by force of circumstances and he actually had two possibilities. So why did he choose in favour of Germany? For an answer let us consider reasonable arguments of a historian, Heino Arumäe, from Estonia who summed it up as follows — in the external policy Moscow was guided by the actual interests of the USSR under the specific conditions of the situation at that time and that was the reason why the treaty with Berlin seemed to Moscow more advantageous than that with London and Paris.

If an alliance with Great Britain and France were to be concluded then

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<sup>9</sup> Documents of German Foreign Policy 1918—1945. Series D. Vol. VII. London, 1956, 246—247.

<sup>10</sup> Communist Takeover and Occupation of Estonia. Special Report N 3 of the Select Committee on Communist Aggression. House of Representatives. 83d Congress, 2d Session — Union Calendar N 929. United States Government Printing Office. Washington, 1955, 7.

<sup>11</sup> Правда, 1939, 1 сент.

they had to sign a Treaty of Mutual Assistance, and that sooner or later would have drawn the Soviet Union into a war. Whereas a Non-Aggression Treaty with Germany did not impose any obligation on the Soviet Union, even more — it enabled the Soviet Union to stay away from any military involvement, or in any event to postpone the war. It is also obvious that in Moscow the leadership calculated on the weakening of the warring nations in an imperialistic war, which would strengthen the position of the USSR on the international scene and would create preconditions for promoting Socialism internationally.

Besides that, the aforementioned Secret Supplementary Protocol gave the Soviet Union an immediate advantage as to the Baltic States, Bessarabia and a certain part of Poland.

We may assume that the conclusion of the Mutual Assistance Pacts between the Soviet Union and Estonia, Latvia and Lithuania and bringing the Red Army troops into the territory of these states would have been highly unlikely without the preliminary Soviet-German agreement. The same can be said about the Soviet-Rumanian Treaty of June 28, 1940, as a result of which Bessarabia was incorporated into the Soviet Union.

For the Soviet party there was still another positive development resulting from the Soviet-German Treaty — it had caused some disarray among German allies. For example, there was a government crisis in Japan, and the new Japanese Government made an abrupt change in its policy towards the USSR. The hostilities launched against the Red Army in May 1939 were discontinued and peace negotiations were started.

So, having considered all the circumstances mentioned above, we may assume that in the autumn of 1939 the Non-Aggression Treaty together with the Secret Supplementary Protocol was advantageous for both parties — Germany as well as the USSR. In the context of the subsequent events however other opinions are of course feasible. But as far as Moscow's aspirations are concerned, not all hopes and expectations came true.<sup>12</sup>

Division of Poland was clearly to the Soviet advantage because the Treaty made it possible to move the Soviet State border to the west for some 300 kilometers. From V. Molotov's speech "On external policy of the Soviet Union" delivered on October 31, 1939, to the Supreme Soviet Session, it comes out that under the pretext of protecting the life and property of the brotherly population of the Western Ukraine and Western Byelorussia, the Red Army crossed the Polish frontier and, suffering insignificant casualties (737 killed in action and 1862 wounded) overcame the resistance of the Polish army, and occupied the territory of approximately 196 000 km<sup>2</sup> with the population of almost 13 million, among them 7 million Ukrainians, 3 million Byelorussians, more than 1 million Poles, and the same number of Jews.<sup>13</sup>

Soviet annexation of Poland started on September 17, 1939, and Germany was fully informed. At 2 o'clock a.m. Stalin and Molotov received in the Kremlin the German Ambassador, and declared that at 6 o'clock a.m. the Red Army would cross the Soviet border along the whole length from the city of Polotsk to Kamenets Podolsk. In order to avoid incidents, Stalin requested that German airplanes should not fly to the east from the line Belostok-Brest-Litovsk-Lemberg (Lvov).<sup>14</sup> The advancement of the Red Army proceeded fast up to the demarcation line, and the military actions for the annexation of Poland were completed by

<sup>12</sup> Rahva Hääl, 1988, 11. aug.

<sup>13</sup> Molotov, V. M. Nõukogude Liidu välispoliitikast. (Rahvakomissaride Nõukogu esimehe ja Välisasjade Rahvakomissari sm. V. M. Molotovi kõne NSV Liidu Ülemnõukogu istungil 31. oktoobril 1939. a.). M., 1939.

<sup>14</sup> СССР — Германия 1939. Документы и материалы о советско-германских отношениях в апреле—сентябре 1939 г. Сост. Ю. Фельштинский. 1983, 95.

a joint parade of the Soviet and the German troops. Before that the German Army gave up some areas to the Soviet Army where it trespassed the line of division which was negotiated and agreed upon in Moscow. For example, the Germans ceded Lvov.<sup>15</sup>

On an innocent pretext to “restore peace and order on that territory and to secure peaceful coexistence for the peoples residing there” the government of the USSR and Germany, after “disintegration” of the former Polish State, concluded in Moscow on September 28, 1939, a “German-Soviet Boundary and Friendship Treaty”. The division of Poland based on that Treaty as well as a map supplemented to the Treaty, the Confidential Protocol and two Secret Supplementary Protocols are undoubtedly contrary to the international law of that time and they also contradict today’s imperative norms *ius cogens* and therefore are legally null and void.

In the Secret Supplementary Protocol was declared: “The Secret Supplementary Protocol signed on August 23, 1939, has to be corrected in Item 1 due to the fact that the territory of the State of Lithuania was transferred to the sphere of the Soviet influence, while, on the other hand, Lublin region and a part of the Warsaw region were transferred to the German sphere of influence (see the map supplemented to the “German-Soviet Boundary and Friendship Treaty” signed today). As soon as the **government of the USSR takes special measures on the territory of Lithuania to protect its interests**, the existing boundary of Germany-Lithuania, for the sake of making a substantive and simple frontier description, will be corrected in such a way that the Lithuanian territory situated to the south-west from the line shown on the map will be transferred to Germany”.<sup>16</sup> It should be noted here that by the next Treaty of January 10, 1941, the USSR obtained from Germany the last “piece” of Lithuania for the price of 7.5 million dollars.

In the second Secret Supplementary Protocol it was agreed in principle to conduct single-handed efforts or united actions of both parties against any Polish manifestation with the aim of getting self-determination. It was declared that “both Parties will not allow on their territories any kind of Polish agitation affecting the territory of the other Party. They will suppress all the sources of such agitation and inform each other about their actions to this effect”.<sup>17</sup>

In the Confidential Protocol there is an agreement that both Parties will not obstruct migration into their respective territories of the other Party’s citizens, while the property rights of the migrating persons are to be preserved.<sup>18</sup>

Many Soviet researchers consider the concluding of the Soviet-German Friendship and Boundary Treaty to be an unforgivable mistake. While negotiating boundaries, J. Ribbentrop was a very generous person in making compromises. His counterparts in Moscow were very happy instead of becoming watchful. According to General Volkogonov, it should finally had occurred to Stalin that the Germans had not really meant business in the boundary negotiations after all, because for them it had been a temporary boundary.<sup>19</sup> “Here the Satan outwitted the Devil,” as R. Müllerson put very aptly.<sup>20</sup>

Before proceeding to consider the status of international law by 1939

<sup>15</sup> Гальдер Ф. Военный дневник, Т. 1. М., 1968, 125—127.

<sup>16</sup> Akten zur Deutschen Auswärtigen Politik 1918—1945. Serie D (1937—1945). Bd. VIII. Baden-Baden; Frankfurt/Main, 1961, 129.

<sup>17</sup> Ibid., 129.

<sup>18</sup> Ibid., 128.

<sup>19</sup> Авиkson, Т. 1939—1940: Ме võidame tõega // Edasi, 1988, 30. aug.

<sup>20</sup> Правда, 1989, 22 мая.

in issues of using force or threatening to use force, I will allow myself two remarks. Firstly, there is no need to prove here that the Secret Supplementary Protocols did exist as a part of the so-called Molotov-Ribbentrop Pacts and they have not been falsified by the "certain quarters" in the West. On June 12, 1989, in Bonn at an official dinner-party in honour of the head of the Soviet State, Mr. Kohl said, "... fifty years ago the Second World War started by attacking Poland which before that had been divided for the fourth time on the basis of a shameful Pact".<sup>21</sup> In principle even if only an oral Treaty had been concluded it would have had the same validity as if it were a written one (see also Paragraph 3 "a" of Vienna Convention of 1969 on the law of international treaties.)

And secondly, there are many cases of opinions expressed not just by ordinary people but by members of the Academy who speak out against legality of denouncing, or should I say condemnation, of the Pacts in question because Germany attacked the Soviet Union on June 22, 1941, and those Pacts had lost their validity. But let me tell you that this kind of reasoning could be uttered only by those who, on the one hand, do not understand the differences in legal consequences in the case of a cessation of a treaty or in the case of a null and void treaty and, on the other hand, these people fail to notice that the Molotov-Ribbentrop Pacts are by no means a problem of Soviet-German bilateral relations. These Pacts, until June 22, 1941, served as the basis for deciding the destiny of the Polish, Estonian, Latvian and Lithuanian peoples and also for an attempt to decide the destiny of the Finnish people. As to the issue of Poland, then in principle the solution had been found already on July 30, 1941, in London when the Soviet and Polish Governments concluded an agreement for a renewal of diplomatic relations. But Soviet actions in relation to Estonia, Latvia and Lithuania, which were incorporated into the Soviet Union by force or annexed as it has been defined in many recent publications, for example, on May 17, 1989, in "Molodezh Estonii" ("Youth of Estonia"), have not yet received a proper internationally legal evaluation on the part of the USSR.

By the time of the conclusion of the Molotov-Ribbentrop Pacts some principles for prohibiting aggressive wars had already been shaping up on the international law arena, such as the principle of nonrecognition of forcible seizures of territories (Stimson doctrine), the principle of solving international disputes only by peaceful means, etc. The world community came thus far after a long protracted struggle of force and law in international relations and by the contest of two principles, one of which is expressed in the well-known Machiavellian formula *la forza fa giustizia* (might makes right), which later on was reconstructed as "the right to conquer", and the other is a very old Roman maxim *ex iniuria ius non oritur* (breach of a law does not make a law).<sup>22</sup>

After World War I there was a dispute in international relations on the issues of war and peace, security and disarmament, and also on the role of international organizations in solving these issues. The League of Nations was created, and Paragraph 10 of its Covenant proclaimed: "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such an aggression, the Council should advise upon the means by which this obligation should be fulfilled."<sup>23</sup>

<sup>21</sup> Известия, 1989, 14 июня.

<sup>22</sup> Hough, W. J. H. III The annexation of the Baltic States and its effect on the development of prohibiting forcible seizure of territory // New York Law School, Journal of International and Comparative Law. Vol. 6, N 2 (Winter 1985), 303—351.

<sup>23</sup> Ibid., 326.

However, the Covenant did not contain a direct unconditional prohibition of an aggressive war. According to R. Ilyuhina, military actions were supposed to be permissible in four cases: if arbitrary or court decision was not carried out during a "reasonable period of time" or if the Council of the League of Nations did not take a report during a six-month period (Paragraph 12); if one of the conflicting parties refused to obey the arbitrary or court decision (Paragraph 13); if a State refused to be guided by a unanimous decision of the Council (Paragraph 15); if the report was not taken by the Council unanimously (Paragraph 15).<sup>24</sup>

If the issue is not solved by peaceful means then, in accordance with Item 7 of Paragraph 15 of the Covenant, the Members of the League of Nations possess the right "to act as they choose to preserve law and justice." What comes out of it is that, before resorting to military actions to preserve law and justice in a way they interpret them, the States are obliged to implement peaceful means of settling the controversies.

The states which were involved in the Molotov-Ribbentrop Pacts became members of the League of Nations in the following way. Initially the constituent members of the League were the States which had been in the state of war against Germany and were the Signatories of the Treaty of Versailles. Those were Poland and Rumania. Later on, in 1920, the membership was granted to Finland, in 1921 to Estonia, Latvia and Lithuania, in 1926 to many others, and in 1934 to the USSR. In the meantime Germany refused to obey any kind of international law and order, and left the League of Nations in 1933; the Soviet Union was stripped of its membership in the League on December 14, 1939, because it had attacked Finland.

The first versatile international treaty that prohibited an aggressive war as "an instrument of national policy" for solving international issues was the Treaty of Paris or the Kellogg-Briand Pact.<sup>25</sup> In Article 2 of the Treaty the High Contracting Parties agreed that the settlement or solution of all disputes or conflicts of whatever nature or whatever origin which might arise among them, should never be solved by any other except peaceful means.

Upon joining this Treaty, the Soviet Government, for a further progress of the Decree of Peace, declared that the conception of eliminating military conflicts and wars in international policy represented a basic idea of Soviet international policy. It also emphasized that any kind of international war had to be prohibited as an instrument of the so-called "national policy" as well as that for other purposes (for example, in order to suppress national liberation movements, etc.). The opinion of the Soviet Government was that prohibition should cover not only any war in a formal and legal interpretation of that word (that is with the assumption of "declaration of war" and so on) but also any kind of military actions, such as armed intervention, blockade, military occupation of someone else's territory, someone else's ports or harbours, and so on<sup>26</sup>. In an attempt to speed up the coming into effect of the Kellogg-Briand Pact, the Soviet Union concluded a special Agreement with some neighbouring states — Rumania, Poland, Lithuania, Latvia, and Estonia so that the Pact should come into effect ahead of schedule, immediately after the signing of the Agreement. With other states the Pact came into effect on July 24, 1929.

From the Kellogg-Briand Pact it comes out that no kind of territorial supremacy in violation of this Pact can be recognized as lawful. The final shaping up of the interpretation of the Pact was outlined in the note of the

<sup>24</sup> See: *Илюхина Р. М. Лига Наций (1919—1934)*. М., 1982, 82.

<sup>25</sup> See: Treaty of Paris, Aug. 17, 1928, U.S.T. 5130.

<sup>26</sup> *Документы внешней политики СССР*. Т. XI. М., 1966, 495, 496.



United States Government of January 7, 1932, to the Governments of China and Japan in connection with the occupation of the Chinese province of Manchuria by Japan. The Stimson Doctrine contained in the note had declared as unlawful and internationally unrecognizable any situation, treaty or agreement which might be brought about by means contrary to the Pact of Paris of 1928.

International community immediately hailed this Doctrine as a major event in the development of international law. On March 11, 1932, the Assembly of the League of Nations adopted a resolution which committed its members to refuse to recognize any treaty that contradicted the League of Nations' Covenant and the Kellogg-Briand Pact.<sup>27</sup> Before World War II nonrecognition of forcible territorial annexation was expressed in many other international Agreements and Declarations (for example, in the so-called "Chaco Declaration" of August 2, 1932, issued by nineteen South American States in connection with Paraguay aggression against Bolivia; and also in a Treaty signed at Rio de Janeiro by Argentina, Brazil, Mexico, Paraguay, Uruguay, and Chile).

Recognition of the Stimson Doctrine as a standard for interstate relations prior to August, 1939, was expressed by many states unilaterally. The Department for Foreign Affairs in the Soviet Government headed by Maxim Litvinov declared the nonrecognition of the forcible seizures of territories and denounced the annexation of Ethiopia by Italy and that of Austria and Czechoslovakia by Germany.

From what has been said comes out that German-Soviet annexation of Poland as well as forceful imposing of the treaties of mutual assistance on the three Baltic States under the threat of invasion by considerable numbers of Soviet troops into their territories and also the Soviet attack on Finland on November 29, 1939, — all these based on the Molotov-Ribbentrop Pacts, were unlawful acts from the standpoint of international law of that time. The secret Soviet-German Agreements to include the Baltic States into the sphere of Soviet influence as viewed in the context of the later behaviour of the Soviet Union disclosed in this paper, presents every reason for re-evaluating of what had happened in 1939—1940 in those three independent States and to make a conclusion that it was an incorporation into the USSR by force, as if it had been enacted in accordance with one and the same scenario for all the three States and directed by a single producer. That is why in the resolution of Euro-parliament adopted in Strasbourg on January 13, 1983, it was stated that "the annexation of the three Baltic States has not been recognized by the majority of European countries and the conception of the Baltic States is, as before, supported by the United States, Canada, Great Britain, Australia, and Vatican."<sup>28</sup>

From the standpoint of present common international law juridical insignificance of this kind of treaties and actions proceeds from their contradiction to the imperative standards *ius cogens* (see Article 53 of the Vienna Convention on the Law of International Treaties. "The specific content of this kind of norms" — as noted by an English scientist, J. Brownly, — "makes useless any objections, recognitions or silent consent; prescription cannot justify this kind of unlawfulness").<sup>29</sup>

Summarizing the issue of juridical insignificance or, in other words, being null and void, of the Secret Supplementary Protocol as part of the Soviet-German Non-Aggression Treaty of August 23, 1939, and, also of the Soviet-German Friendship and Boundary Treaty of September 28, 1939, with Secret Supplements and a map, it should be plain that these Treaties

<sup>27</sup> See: *Taska, A. Rahvusvaheline õigus*. Lund, 1977, 81.

<sup>28</sup> Looming, 1988, N 3, 428.

<sup>29</sup> Броунли Я. Международное право. Книга вторая. М., 1977, 191.

cannot possess any positive legal significance just because of their inner characteristics. The explanation is that here the object of the Treaty was not an interrelation between contracting parties but the fate and future of the nations without their participation.

The content of this paper presents a possibility to make the following conclusions:

1. The Molotov-Ribbentrop Pacts represent serious evidence that the USSR, in 1940, annexed Estonia, Latvia and Lithuania. However, the final answer as to the presence or absence of annexation can be obtained from the analysis of the said Pacts in the context of the further conduct of the Soviet Union in its relation towards the Baltic States and also of the developments in Estonia, Latvia and Lithuania in 1939—1940 which have juridical significance.

2. This analysis and solving the problems of the Baltic States is not only an internal problem of the Soviet Union but mainly an international problem and as such it is within an international forum of competence and is a subject to be considered from the standpoint of international law.

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#### **NÕUKOGUDE—SAKSA 1939. AASTA 23. AUGUSTI JA 28. SEPTEMBRI LEPETE HINNANG RAHVUSVAHELISE ÕIGUSE PÕHJAL**

Viiekümne aasta eest Ida-Euroopas toimunud sündmuse on tunda ka tänases Nõukogude Liidus. 1985. aastani, s. t. perestroika alguseni vaikiti maha eesti, läti ja leedu rahva võõrandamatu enesemääramisõigus, sest stalinlik-brežnevlikus riigis ei olnud otsustav mitte õigus, vaid administratiiv-bürokraatlik ja sõjaline jõud. Põhimõtteline suhtumine ammustusse sündmusesse ei ole üksnes Nõukogude Liidu siseasi, vaid see on tähtis ka rahvusvahelise õiguse aspektist, eriti nüüdisajal, mil Nõukogude Liidus on asunud õigusriigi loomisele ja Nõukogude juhtkond on esiplaanile seadnud rahvusvaheliste suhete deideoloogiseerimise.

Praegu on aktuaalseks saanud julgeoleku ja koostöö tagamine Euroopas (nn. Euroopa ühiskodu), samuti tõelisel föderatiivsel alusel õigusriigi loomine, seetõttu on äärmiselt vajalik, et Nõukogude riik annaks oma kõrgeimate võimuorganite kaudu poliitilise ja õigusliku hinnangu stalinliku juhtkonna tegutsemisele 1939. aasta keskepaigast kuni Saksamaa kallaletungini Nõukogude Liidule. See on eelkõige usalduse ja õigluse küsimus ning sellel hinnangul hakkab põhinema nii suurte kui ka väikeste rahvaste edasine vaba koostöö.

Lähtudes tolle aja rahvusvahelise õiguse sätetest, on antud õiguslik hinnang Nõukogude—Saksa 1939. aasta 23. augusti mittekallaletungilepingule ja selle salaprotokollile, samuti Nõukogude Liidu ning Saksamaa 1939. aasta 28. septembri sõprus- ja piiri-lepingule ja selle salajasele lisale. On põhjendatud nende lepete õigusvastasust ja juriidilist tühisust (v. a. mittekallaletungileping) ning näidatud, et neil ei saa olla mitte mingisugust positiivset õiguslikku tähendust juba ainuüksi seetõttu, et lepete objektiks ei olnud mitte asjaosaliste poolte vahelised suhted, vaid kolmandate riikide ja rahvaste saatus. Nimetatud lepete sõlmimisel ei rikkunud stalinlik juhtkond mitte ainult rahvusvahelist õigust, vaid ka Nõukogude Liidul mitmete kokkulepetega lasuvaid kohustusi, samuti sisepoliitika põhiprintsiipe, mis olid fikseeritud Nõukogude Liidu konstitutsioonis ja deklareeritud Nõukogude riigi esimestes aktides.

On esitatud kaks järeldust.

1. Molotovi-Ribbentropi paktid on kaalukas tõend sellest, et 1940. aastal annekteeris Nõukogude Liit Eesti, Läti ja Leedu. Lõpliku kinnituse sellele väitele annab nimetatud paktide juriidiline analüüs, lähtudes Eestis, Lätis ja Leedus 1939.—1940. aastal toimunud sündmustest.

2. Et Baltikumi probleemid väljuvad Nõukogude riigi sisepoliitika raamidest, tuleb neid käsitleda rahvusvahelisel foorumil, tuginedes tänapäeva rahvusvahelisele õigusele.

## МЕЖДУНАРОДНО-ПРАВОВАЯ ОЦЕНКА СОВЕТСКО-ГЕРМАНСКИХ ДОГОВОРОВ ОТ 23 АВГУСТА И 28 СЕНТЯБРЯ 1939 ГОДА

События 50-летней давности в Восточной-Европе дают о себе знать в СССР и сегодня. До 1985 г., т.е. до начала перестройки, разговоры о признании за народами Эстонии, Латвии и Литвы подлинного права на самоопределение действительно не имели значения: в сталинско-брежневском государстве решало не право, а административно-бюрократическая и военная сила. Принципиальная оценка этих событий — это не столько внутрисоюзная, сколько международно-правовая проблема, которая приобретает особое значение сегодня, когда речь идет о строительстве в СССР правового государства и советским руководством выдвигается идея деидеологизации международных отношений.

С точки зрения продвижения как в вопросах обеспечения безопасности и сотрудничества в Европе (создания т.н. общеевропейского дома), так и в вопросах строительства действительно правового федеративного образования, крайне необходимо, чтобы Советское государство в лице своих высших органов власти дало правильную политическую и правовую оценку действиям сталинского руководства в Европе с середины 1939 г. до нападения Германии на СССР. Это прежде всего вопрос доверия и справедливости, на чем может и должно базироваться дальнейшее свободное сотрудничество как больших, так и малых народов.

В соответствии с положениями международного права того времени дается правовая оценка советско-германского договора о ненападении от 23 августа 1939 г. и его секретного дополнительного протокола, а также Договора о дружбе и границе между СССР и Германией от 28 сентября 1939 г. и его секретных приложений. Автор обосновывает их противоправность, юридическую ничтожность (кроме самого Договора о ненападении) и отмечает, что они не могут иметь позитивного правового значения уже потому, что объектом договоров являлись не взаимоотношения договаривающихся сторон, а судьбы третьих государств и их народов. Указывается также на погрешение при этом сталинским руководством не только норм международного права и взятых на себя Советским Союзом международных обязательств, но и основных принципов внешней политики, зафиксированных в Конституции СССР и декларированных в первых актах Советского государства.

Сделано два вывода:

1. Пакты Молотова—Риббентропа являются серьезным доказательством того, что СССР в 1940 г. аннексировал Эстонию, Латвию и Литву. Окончательный ответ на вопрос о том, была аннексия или нет, даст юридический анализ указанных пактов в контексте с последующими событиями, происходившими в Эстонии, Латвии и Литве в 1939—1940 гг.

2. Проблемы Прибалтийских государств выходят за рамки внутрисоюзных, а потому они подлежат рассмотрению на международном форуме и на основе современного международного права.