

The Concept and Status of Countermeasures and Limitations of Resorting to International Law

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Abstract

Acts of retaliation is an issue, which has been common in relations among states for a long time. When a state operated to the detriment of the other state due to its international criminal action, the state incurred a loss would retaliate at its discretion and according to its procedure. Sometimes, such as an action was not proportional to the committed offence at all. It was likely that the state incurred a loss would impinge on justice and inflict far great losses to that state. The plan of International Law Commission was first discussed responsibilities of states, stating that retaliatory measures should be taken according to some terms and conditions, infringements should be defined, and limitations of taking resort to that should be explained. Countermeasures are the measures that taking resort to them under normal conditions is against the international rules and regulations. Such measures are legal only under exceptional circumstances and they only aim to compel the responsible country to perform its obligations. The International Law Commission states that if countermeasures are not observed by the incurred state according to its requirements and principles, the state that took the measures shall take an international responsibility. Countermeasures were termed as retaliatory measures, retaliation, compensate one's loss at different times.

Keywords: reciprocity, international responsibility, a breach of the obligation, the government suffered.

Introduction

Reciprocity is a topic that has long been popular in the relations of states with each other . 's That time of the action with titles such as " self-help ", " retaliation , " " act of retaliation " , " interaction " , etc . . termed in the past as a way to settle disputes between states , especially compensation for damages caused by an act contrary to the government is no longer used . Background on " reciprocity " is controversial . General practitioners have defined the 19th century attempted to retaliate

and international obligations under various conditions is violated or remedy violations that have been made towards the objective of a valid copyright . Countermeasures are limited to two broad sense . Reciprocity in the broad sense refers to any photo reflection state that the act of another state that does attempted . It is clear that the concept of " reciprocity " , including concepts such as " retaliation actions " , " interaction " , " aggressive retaliation " and ... can be.'s . Of its armed only with regard to jus some exceptions, prohibits the use of force is prohibited Ghyrmslhan •but it includes measures that , if taken in another state in response to a previous violation , except as permitted otherwise contrary to international law is the law

The term " countermeasures " in the story " air service agreements " difference between America and France, was used by the United States Court of Arbitration and tending to the case of the term used. It is a kind of self-help countermeasures . Self-help includes unilateral actions of a government order to safeguard rights than any other state can be. Self-help measures include several measures , including self-defense and countermeasures can be . Of the terminology , traditionally called retaliation – seeking to cover illegal actions , including enforcement action in response to violations will be handled . We called retaliation action during the armed conflict between seeking International takes place is limited . The purpose of these measures, the adoption of a clear right of action against the offending country to stop its violent offenses and compensation

Pay. Its Countermeasures of reprisal tit covering the armed conflict that is not part of the force is not acceptable countermeasures .

That leads the world in similar terms used in connection with reciprocity, is a boycott. Between legal affairs, the boycott, the vast territory of one or more of the constraints or will include several other countries. The purpose of the "boycott" in international relations, prohibit the sale or purchase of certain goods and or prevent unloading or loading of ships carrying commodities, resulting in material losses to the merchants and manufacturers in other countries will enter

The UN Charter, the term " boycott " is not used , but in terms of " implementing measures " to learn whether a boycott is in fact the concept . Provide mandatory economic sanctions is entrusted to the Security Council . Economic sanctions as a measure to cope economically be nations are commonly used . Economic sanctions uninterrupted economic relations with a country that is . Despite being illegal in international law sanctions law , states can proceeding conducted Countermeasures in International Law against state law violation , the sanction may be appealed . A major objective of economic sanctions is deterrence , some know.

The international legal status of countermeasures

at different periods between international law, "the interaction" in relations between the countries, was highly regarded and government so that no. In times of doubt and ignorance have not been. Since countries committed any violations or refusal to render justice against their nationals or any type of threat to their sovereignty and considered to it is possible to compensate come back and seek answers to the territory and sovereignty your violation of any threat or danger to the commitment that their interests - throws, immune herein. towards this goal, one of those countries that invoke, they were acts of retaliation, one of the main points on the basic "to countermeasures such as" prior to the adoption of the UN Charter, the rights musicians of the 19th century, although the difference between war and other forms of compensation - to put it the countermeasures such as coercive and not distinguish.

But in the early 20th century, efforts to - in order to limit the use of force in this kind of action arose, for example, power - the conventions a 2 Hague Convention dated 1907 (Dragv Porter) relate to the use of force to collect debts contracted reference said.refuses, the commitment required is Alrayh

Period before the adoption of the Charter, measures to tackle military as resorting to arms was made, for example, can include:

1)military occupation of a country at peace: for example, in France in 1923, the "Ruhr" as punishment for refusing to German German reparation (war reparations) occupied. Italy following the murder, "Gen. Tlyny" Boundary Delimitation Commission, Germany and Albania, Corfu Island, bombed and then occupied.

2)non violent naval blockade: a procedure in Germany, Britain and Italy against Venezuela in 1902 to protect the interests of its own citizens, stakeholders can be noted in this regard. Cuban naval siege of the United States of America in October and written in November 1962 issue of missiles, Another example would be.

3)bombing: a bomb Port Midi (southern Turkey) on 3 November 1902 by the Italian navy, looking for committed piracy operations throughout Eritrea, America's bombing campaign against North Vietnam in 1928 subsequent attacks on ships in the Gulf Tvkn bombing and destruction of civilian Hvanavhay by Israeli forces in Beirut airport in December 1968 bombing of Iraq's economic and military areas from Iran, the bombing and destruction of economic and military confrontation with Iran by Iraq in the years between the wars fi.

With the adoption of the Charter of the United Nations' efforts to fight a gun, "the rule" prohibits the use of force" in paragraph 4 of Article 2 of the Charter, and therefore was inconsistent with the Charter. are considered. groups of rights lawyers believe that to countermeasures such as unarmed" is contrary to the Charter and not inconsistent with the purposes of the Charter. That is why countries from 1945 onwards, "to countermeasures such as unarmed" began. The America including countries that frequently these measures against countries that use. In this context we noted the following:
said.

- 1) the seizure of Iranian assets by America from November 4, 1979 - to - 20 January 1980 as the "tit - like" towards the arrest and detention of United States diplomatic and consular members in Iran on charges of espionage.

Terms resort to countermeasures

Previous breach of an international obligation to declare moratorium internationally wrongful act, observe the principle of proportionality

1) previous breaches of international obligations:

Before resorting to countermeasures do an act contrary to the provisions rather than a breach of an obligation of national and international inter is.

Between - International Law Commission in its description of the proposed changes are intro Article 12 says:

"When a breach of international obligations realized that the current government is not consistent with what the commitment will require. Regardless of the source or nature of what is promised".

is the government's commitment to the realization of origin does not matter come from other states can conduct their unilateral commitments to accept

The phrase "regardless of its origin and nature" refers to all sources of international law. Means all the processes of creating legal obligations that have been recognized in international law .between America and Iran can not be violated by force. ICJ answered.

It is illegal to the extent that the violations through an administrative decision"

Court's Ratings their Despite the emphasis on the fact that military action by the United States in attacking oil platforms on 19 October 1987 and 18 April 1988 not - be based on necessary measures for the protection of fundamental interests in conformity with Article xx, paragraph (d) Treaty of 1955 friendship, relationships friendly and Consular rights between Iran and America in the light of international law recourse to the law, be justified, acceptance of Iran's claims that these actions violate America's obligations under the Convention has refused to.

Some of the inter legal experts believe that only our international condemnation of America and unjustifiable action by the Court to know them a moral and informal approach to Iran of the and the preservation of which

requires .

(2) Stop saying internationally wrongful act:

In this context, the international responsibility of Article 48 of the draft states:

1_ Any State other than the injured State is entitled in accordance with clause 2 below may invoke the responsibility of another State if:

A) violations committed by the government against a group of such that the government 's obligation to protect the public interest group status is relevant.

B) violations committed against the entire international community is.

2_ Any State entitled to invoke responsibility under paragraph 1 may be responsible for the administration of this request:

A) stop the wrongful act and to international inter reliability and estimation of non- repetition in accordance with article 30.

B) implementation of the obligation to make reparation in favor of or seen much beneficiaries of the obligation breached.

International Court of Justice on the issue , " the Barcelona Traction ," Among certain obligations and commitments of the governments of the international community " fundamental distinction " attribute . In connection with the latter type of liability , the Court stated that in connection with the breach of general obligations all states have a legal interest . If the obligation is to discuss the entire international community , governments , non- state losses see their responsibility to cite . It is also necessary in this discussion , the concept losses appear to be determined. State Zyandydh state that the right given him by committing an act wrongful inter national repudiation or so – another verb influenced by . Accordance with paragraph 2 of this Article , each State referred to in Article 48 is entitled to stop the act wrongful inter national and if circumstances should require the presentation may call Tzmyndy not to repeat the act . So it may not suffer any violation of its own government , while some are in a position to state compensation , especially the former had laid claim restitution . Accordance with paragraph 2 of Part B claim to have seen the government or individuals Zynf obligation breached is considered harmful . In these cases, the project applicant and the interests of the state stakeholders commitment, a clear distinction has been made. In this regard – be made by the European Court of Human Rights in the case of Denmark and Turkey , dated April 5, 2000 , noted that states: a state that under Article 48 Responsibility cite and is nothing more than a declaration of cessation of operation wrongful requests must prove in order to benefit the injured work When the loss is seen as a country , its government is able to validate such an interest – represent.

Other materials that need to be addressed in this context that Article 43 be.

Article 43 pre charge of drafting the relevant procedural 2001 losses seen by the government to invoke the responsibility of another State will follow. This article is poetry:

1_ The government is seen as the responsibility of another State cites losses will be fighting it to the notice of the government.

Although state responsibility through the exercise of sovereign rights of committing international wrongful act between will be realized in practice, requires the state government or losses seen pictures tendency to stop or remedy react .may have legal consequences , even causing loss of right to invoke the responsibility of turning a blind eye or is satisfied . remains the Vienna Convention on the Law of Treaties 1969 – in Article 67 , stipulates that – notices must be in writing.

losses seen in the state . a first step the government should take charge of the situation and realized that it may invite the appropriate steps to take wrongful act or to stop the violation . losses seen during the announcement of the government's claim that he usually will determine whether the behavior is necessary to compensate for how to stop doing . Defectiveness the government to the detriment be seen will be to select compensation . Therefore, the government may prefer compensation to restore the situation . As in the case of Germany " Kvrzvf Factory " or Finland, and finally the issue , " the pass-through channel big ticket"

said . But may be useful for the government to know , what's the harm There will be satisfied , because it would be solutions - to facilitate dispute

3) observe the principle of proportionality:

Principle of Proportionality as a legal principle in all fields of International Relations world used to be . One of the things crucial role played by the principle of proportionality - that the defense is. Between aggression and self-defense measures should be in the takes place in self-defense , fitness exist. If a country - as illegitimate another country exceeds the country has the right to immediately exceed the armed invasion of the country by any means possible and resort to force in self-defense , to crush the enemy aggressor .also accepted. , this principle is an important principle governing countermeasures - is. Article 51 poems that:

Countermeasures must be commensurate with the losses incurred due to the severity of the internationally wrongful act and the rights in question are carried out .

Respect the principle of proportionality should be the limiting factor in leading and managing conflicts and

Countermeasures of that support involves more than Ghyrzmdgan and ordinary people . The appropriateness of their place in the early 20th century the - customary international law arena opened. But by adopting the 1977 Protocol I Additional to the Geneva Conventions of 1949 the principle of proportionality as a rule explicitly deal was made. The provisions of the Protocol against the Warriors Ghyrzmdgan has supported the invasion . These conditions countermeasures by the government embarked on the first major limitation losses caused is seen . Secondly , the decision making about how to countermeasures that can be applied and how severe it is effective . Thus, the proportion is considered to be the benchmark for action . They reciprocity wrong - can lead to public office who has attempted to do so .

The concept of proportionality in international law , international posed of two aspects - is :

First, as a general principle of law that any relationship be apply , accordingly , any act or speech to be associated with your purpose .

The conceptual framework fit the particular structural relationship between two elements emerge and determines - does . It is clear that the principle of proportionality of ancient history , but the law is the law century , following the banning of the use of force in international relations, more content is accurate . Countermeasures on the widely accepted doctrine and approach between - International .

The connection between the wrongful act and the appropriateness of countermeasures is concerned - . In some respects the purpose provided in Article 49, the proportion of linked blogger was expressed . Pursuant to Article 49 , the purpose of countermeasures , forcing the government is responsible for the implementation of the commitment to. So no need to force this action because the government is responsible for the implementation of the commitments , but also a punitive purpose of the follow will be a disproportionate measure . However, on measures that could be justified under Article 49 In any event, the requirement of proportionality must be observed .

disproportionate retaliation retaliatory action whereby the extreme and should be considered illegal .

Restrictions resort to countermeasures

- nations in international law, there are certain obligations that its implementation can not be damaged by reciprocity. The injured State is obliged to comply with this obligation in its relations with the government, because as far as the law is concerned countermeasures, these commitments are an dent. These commitments include:

1) the obligation not to use force

Principle of non -use of force as one of the seven principles of the UN Charter tions set forth in Article Two of the most important topics in international law is the law . The system was created in 1945 following the adoption of the Charter stipulates that states have a duty to their differences from non violent ways to resolve the relationship between the use of force from any kind of having illicit sexual against each other, 's refusal to International . Indeed, the principle of non -use of force is prohibited war of aggression . According to international law, no state law has no right to reach their goals is to start a war . Exceed anything is doomed.:

" Governments are obliged from seeking recourse to reprisal involving the use of force should be avoided ."

The ban on the popular doctrine of judicial decisions as well as the number of inter national and other authorities are also accepted . The International Law Commission in the pre Nevis common materials to the international responsibility of States under Article 5 paragraph prohibiting the threat or use of force to - is explicitly emphasized . International Court of International Justice, in proceedings Nicaragua 's complaint against America asserted that inter - customary international law is part of the non -use of force .violated .

2) **lack of commitment to human rights violations human rights legislation**

Most human rights legislation known as jus cogens have. Respect to generation plumbing international community (Genocide) and apartheid as violations of jus cogens norms and responsibilities between national governments even when it member of the Convention relating to international crimes are inter - accepted . in the international system of human rights of every individual human beings and not a citizen of this or that state is taken into consideration . Paragraph of Article 2 of the International Covenant on Civil and Political Rights - considering this concept has decreed :

" The rights recognized in the present Covenant parties to the present Covenant to all individuals residing in its territory and subject to rule them no discrimination with respect to race, color, sex , language, religion , political belief or other opinion , national or social nobility , wealth , birth or other status ensures observe and do . "damage to act.

The most important issue of human rights and humanitarian obligations distinct from other international obligations - does not describe the conflict of obligations. Contrary to the international obligations that the represents the exchange between the state 's interests , human rights and humanitarian obligations , absolute and unconditional obligation to be and the nature of the transaction and not Stdy obligation to respect fundamental human rights , in other words the type - General obligation «Erga-omnes» is not no way in conflict .may . 's quite reasonable considering the dignity of the human person and based on these treaties is that the human person is respected and protected - that people have rights, not the government that their respective obligations

does the world operate. Rules of people - friendly, including human rights and humanitarian conscience arising from and aim to protect the interests of the people, not the interests of the state, so the implementation can not be conditional on the behavior of the other party. of international humanitarian law is stressed. article 3 of the Convention and the 1929 Convention - Geneva explicitly seeking reprisal for their support regarding issues such as the wounded, sick, health, and religious forces, civilians banned.

3) the obligation not to violate jus cogens

Serious violations of jus cogens in international inter primarily an internationally wrongful act is the second episode of the second season, and thus works for the wrongful acts of international inter - considered in violation of jus cogens in Surrey and current. Commission among the specific findings of violations of jus cogens norms of international law - the - way in relation to international commitments in relation to the state agency and the obligations of all states is identified. The compensation obligation under the rules set forth in Chapter II of this section pursuant to - be. "

Like other wrongful acts causing serious breaches of peremptory norms of state responsibility to seek to restore the situation to the former case, the loss compensation and self-gratification is seen in terms of the difference between the wrongful actions, can not see a - seen in the the Commission on the description of the material, it is clear that the type of " commitment " or "violation" occurred as a result of the wrongful act. For example, compensation arising from a breach of jus cogens, is usually much greater than the violation of other international obligations -. As soon as it became clear the wrongful act occurred, the infringer shall continue to perform the obligation breached is required to stop it .to work together to make these violations.

The word " all of the ' All governments, like trespassing is included .international community is committed states and other governments to end the serious violations of jus cogens norms to cooperate. obviously if the wrongful act to stop trespassing commitment to serve, the duty to cooperate in bringing an end to serious violations of jus cogens shower every state lapses - and therefore the implementation of paragraph 1 of Article 41 shall be subject Salbh to Antfay. If the government will not seek to end or prevent the violation, other states need to work together to end the wrongful act.

Paragraph (2) of Article 41, the Commission plans two negative obligation for all countries in the face of serious breaches of peremptory international law recognizes the commitment made in consequence of the failure to identify the status of jus cogens violations and lack of commitment to assist in keeping the Vmsadt .Social isolation has the strength to break the law.

So the function of the collective recognition of the rights between the internasubstandard, and illegal practice of denying the validity of the results it is. For example: During a Security Council resolution 216, which calls on all countries " Nshand regime of South Africa in Namibia do not recognize. And similar expressions, as requested in resolution of 217 to repeat.

International Court of Justice in response to the General Assembly that the legal effects arising from the construction of the wall being built by Israel, the occupying power soon spread across occupied Palestine, including East Jerusalem, is inside the area commented:

All states are required to make illegal Tavzyt wall Azahdas recognized no assistance to keep the situation created as a result do not build walls

4) Commitment to resort to methods of peaceful settlement Disputes

In this context, the second paragraph of Article 50 of the draft material responsibility among stipulates that national governments: the state of the countermeasures attempted to resolve the obligations arising from any other faith that the government he applicable charge is not innocent.

This clause applies to the dispute settlement between state losses losses have seen the state government is responsible - deals. Faith means to solve VfI noted that differences between related discussion and other issues unrelated -, not among the states.

It is an accepted principle that regulates - dispute resolution should be considered valid even if inserted in the treaty, which is itself controversial and continuing validity or effect of in doubt. In other words, the rules on dispute settlement to Even if the provisions of the treaty stipulated that its validity is disputed between the executive and the parties shall be.

"If any particular kind of pre-existing dispute settlement is not there, the damage can be proposal or negotiation of their differences with the United Nations addressed to the competent machine only when committed acts contrary to the refuses to negotiate or resort to other ways of preventing the Qsdvaradh dispute is resolved, the losses can be seen in perfect good faith assume that no other option but to resort to the non violent countermeasures does not exist "

When a state losses seen before resorting to any cross, which is responsible for all phases of the solution - the dispute is over, in that case, it can be said that the state - a disadvantage in relation to the charge of being 's.

System prior recourse to dispute settlement mechanism see largely at the expense of the loss is. To avoid this situation greater flexibility should be implemented. Moreover, the government may refer to other rules of international law, the law can - not be the subject of countermeasures to agree with each other, regardless of

whether it is considered a common law by virtue of international law - whether or not. Subject to the special rule allowing provision of Article 55, is responsible for the project. Article 55 of the draft materials about responsibility among national governments are provided:

"To the extent that these materials fulfill the conditions between the wrongful act - or the content or implementation of the international responsibility of the international inter-, subject to special rules of international law, interna is not be applied."

A bilateral treaty, the possibility of resorting to countermeasures in the event of violation of its provisions or in connection with the subject to reject it. It said the EU Treaties, which have their own operating system, is true. Under the WTO dispute settlement system - before the State party's failure to respond to prior authorization reference must resolve to do Zvaqdamy government - has to WTO dispute.

Conclusions

International Countermeasures closely tied to the issue of responsibility among particular reference to responsibility. The action refers to - act as enforcement and a means of forcing the action against the infringer to cease, compensation and apology are likely. State Responsibility, 2001). The inherent conflict that arises - which is the attempt to judge their actions. This provides the possibility of abuse of resorting to countermeasures to -. Interests and the international community because - requires that legal logic and terms of countermeasures is given.

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