The Line between Peaceful Settlement of Disputes and the Use of Force in International Law

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Abstract: In this article, we attempt to analyze the evolution of a conflictual situation between at least two international parties, examining each stage involved, with focus on peaceful solutions. However, what we observe is that no all disputes can be resolved through the use of common peaceful means. Refusing to accept violet methods of international conflict resolution and expressing faith in human values, freedom and fundamental rights of people, we believe that, in cases like these, imposing peaceful coercive measures in order to restore cooperation between states, becomes necessary. These actions specifically, represent the subject of this paper. First and foremost, we must understand that the international system is not a stand-alone one, but one that has evolved over the years from tribes, empires and colonies, being at this moment composed of sovereign nation states, most of them allies as part of inter-governmental organizations. We are currently witnessing the creating of a new subject of international law - the European Union - which does not aim to become a national state, an inter-state organization, or a federation of states. It selectively combines the features of these, creating a whole new international entity, whose evolution is still unknown, but that will undoubtedly change the system certainly in a gradual manner. In the midst of all these transformations of the international world lie the differences between mentalities and human behavior, or maybe even the similarities between them. These get translated into conflicts and their resolution is intended to be as least invasive as possible, eventually leading to the development of legal instruments designed to protect the freedom and sovereignty of the parties involved.

Keywords: Dispute; international law and principles; peaceful settlement of disputes; coercion

1. Introduction

The international system, as it is known today, had a spectacular evolution over the years, due to its perpetually close connection with the development of the human values, needs and interests. All these changes took place gradually, through adaptation, but also all of a sudden, as a result of events that called for immediate reactions, such as the two World Wars or the so-called *Cold War*. These events are evidence of the violent side of human nature, and led to massive destruction of

property, but more importantly, to a significant loss of life. Such situations are called *disputes* and they are the most advanced stage in conflict escalation, from peace to war. A dispute starts to exist when two parties begin to reveal their disagreements concerning a subject of matter and it goes through a series of stages of development, up to the maximum level of aggression, if no intervention is made and different solving mechanisms are not applied.

The most common and desirable solution for stopping a conflict to expand into a crisis is the peaceful settlement of disputes, fundamental principle of the international law, governed by The Charter of the United Nations. Preferable would be to intervene in the most proximal point of acknowledging the existence of a dispute, because the settlement can still occur under conditions of mutual respect and parties can still agree on finding a "*win-win*" solution. The distal point in this scale of solving disputes peacefully, with no imminent danger of violent demonstrations, is the transition from unstable peace in conflicts. From that point onwards, negotiations are slightly rigid, the parties no longer trust each other and soon peaceful settlement is to be entrusted to a third party that can guarantee impartiality.

At present, international law considers war of aggression, violence and all forms of manifestation of discord between international actors to be unlawful, and tools have been developed to sanction countries that use such methods for resolving their disputes. Therefore, international principles and legal rules in force recommend that all participants of the international system use only peaceful means of settling disputes between them. Subjects of international law, be it states or international organizations, have an equal right to choose, freely and on the prior expressed agreement, the peaceful means of resolving disputes arising between them. (Niciu, 1997, p. 338)

International law provides us with peaceful methods of conflict resolution like negotiations, good offices, mediation, investigation or conciliation that function by allowing involved parties to discuss their points of view, the ambiguities or incompatibilities in those, and to search for the least invasive and the more productive solution for the relationship between them, all in an assisted manner, or without any external interference. If none of these methods are chosen, or if the solution provided does not generate the expected results, the international actors involved may resort to arbitration or justice, procedures that are conducted by a

third independent and impartial party, invested with the power to oblige the engaged parties to accept and apply a definitive solution.

However, there are situations in which one of the parties to a dispute, usually guilty of causing damages, refuses to participate in any peaceful settlement mechanisms. The right to deny participation in such procedures is guaranteed for the subject of international law by all documents concerning peaceful settlement of disputes. In such cases, to repair damage or to stop the state guilty of committing unfriendly acts, it was necessary to create a system of countermeasures for the injured state. These are called coercive measures of peaceful settlement of disputes, and are required to cease once the damage was covered, in order not to be classified as illegal.

2. Coercive Measures of Peaceful Settlement of Disputes

The most popular means of peaceful coercion are retaliations, reprisals and the severance of diplomatic relations, and they have been accepted by international law for use only after repeated attempts to resolve the dispute by ordinary peaceful methods are made.

Retaliation is used by a nation state or group of states when they are victims of a legal unfriendly act of another state. This method must respect prior established rules, such as reciprocity or proportionality, i.e. the act of retaliation must have the same subject or the same size as the original damage made. This type of "interaction" is without prejudice to international law, as long as it doesn't degenerate into inhumane treatment of individuals or any kind of illegal action. Thus, a state cannot decide to act illegally against a foreign ambassador on its territory, because his counterpart had received the same mistreatment (other examples can be the destruction of private property or arbitrary sentencing to death of prisoners of war or convicted foreigners) (Halleck, 1861). The punishment of such acts is governed by international law, and if a member commits any offense of this kind, in response to similar action by another state, both states are legally responsible for their actions.

A special case of imposing retaliatory measures is that of Israel against "Gaza Strip", initiated in 2008, after the latter decided to gain independence from Israel and to impose a separate sovereignty, in 2005. The Israeli state has not agreed with the action of the Gaza people, stating his inability to abandon its citizens, and

ceased the fuel and energy supply to the region, as retaliation. (Weiner & Bell, 2008)

Retaliatory measures were taken by the Romanian state in the summer of 2010, as a consequence of the Russian Federation deciding to declare a Romanian diplomat, first secretary of the Romanian Embassy in Moscow, *persona non grata* and asking him to immediately leave the Federal territory. In response to this, the Ministry of Foreign Affairs decided to take the same measure against a Russian diplomat, first secretary to the Russian embassy in Bucharest (Ministry of Foreign Affairs of Romania).

The international system continues to face conflicts that can't be solved peacefully through diplomatic or judicial methods, and creates favorable conditions for use of retaliatory measures, in order to restore friendly relations and cooperation between states. For example, in the autumn of 2011, Russia threatened the European Union with retaliatory measures if it doesn't continue to support preferential treatment for the Russian state company Gazprom. This was due to the adoption of the third legislative package on energy supply by the European Union, which provides that a gas supply company may have the right to carry that good to the destination, thereby ensuring fairness for the local carriers on the European market. The Russian government condemned the adoption of this EU law package and threatened to cease supply of gas in this region, as a retaliatory measure.

We stated that retaliatory measures are taken by a state when it is a victim of an unfriendly act, which cannot be condemned by the law in force. But what happens when the offensive act is an illegal one and the responsible state does not accept the applicable legal measures? Because the use of force is not the theme of this approach, we must mention another peaceful method of constraint, namely **reprisals**.

A victim state can use reprisals against another state when the latter commits an illegal unfriendly act, but these measures cannot exceed the size of the original actions. The legal point of view is an extremely important factor for this method of constraint. If the offensive act is unfair but legal, the victim state cannot use reprisals against it, because in that moment this state ceases to be a victim and begins to be culpable of illegal actions against another state. A state may only take reprisals against the state that has committed illegal unfriendly acts against it, and only after failed attempts to resolve the dispute by other peaceful means. Exceptions to this rule are UN member states, as they may also apply collective

reprisals against a state guilty of actions that endanger international peace and security.

We avoid creating confusion between peaceful reprisals, and armed, violent reprisals, used too often in this era and which are daringly-mentioned in this paper in hope of highlighting the importance of the former!

A special case of application of reprisals was encountered in 2007 between two major countries located south of the Mediterranean Sea, Egypt and Israel. When the persons designated to maintain the security of Egyptian nationals brought weapons within the "Gaza Strip", Israel took action and sent proofs of this to the US government, in order to suspend financial aid offered to Egypt (US subsequently decided to reduce financial aid for Egypt by 100 million dollars). In response to this, the government in Cairo accused Israel of sabotaging the US-Egypt relations and interests of the Egyptian people, and threatened to damage Israeli interests abroad through the use of reprisals. (Sharp, 2008) Thus, we are dealing with a dual use of reprisals by Israel and the US, to combat an unfriendly illegal act of Egypt, followed by retaliatory measure applied only to Israel. We specify that the threat of the Egyptian state to affect foreign interests of Israel is recognized as retaliation, not a reprisals, as it occurred after a lawful Israeli act against it.

The main manifestations of reprisals are **embargo** and **boycott**, both having a strong commercial and economic nature. The term "embargo" comes from the Spanish verb "*embargar"* (to retain) and represents an action of a state to prohibit the import, export, or departure of commercial vessels of another state, from its ports or territorial sea, until the guilty state does not cease the unfriendly illegal actions against it and does not compensate for the damage caused.

The most recent example of imposing an embargo as sanction for failure to comply with international obligations, after having tried to resolve it by political and diplomatic means, is the one imposed by the European Union on Iran. This meant banning exports of oil and oil products from Iran to European countries and freezing the Iranian bank assets in the Member States of the EU, since January 2012, as counterbalance to Iran's continued hesitation to reveal the true purpose of its new nuclear program. The European states are concerned about the possibility of extremely dangerous nuclear arming. The European Union noted that the decision to impose an embargo on Iran was not meant to aggravate the dispute

existing between parties, but to convince the Iranian government to peacefully return to direct negotiations.

Boycott are those coercive measures implemented by a state, victim of unfriendly illegal acts, against the culpable state, and may include complete or partial interruption of trade between states, of rail, sea, postal or any kinds of communication. The United Nations Organization empowers the Security Council to take such measures in respect of UN member states, "as a means of coercion against a state which has committed an act of threat to the peace, breach of peace or aggression" (The U.N. Charter, Art. 41, 1945). Also, another reason why a state may impose boycott on another state, can be the deterrence of inhumane actions against citizens of the latter state, while the former state holds a demonstration of leadership in the international system, although it is not directly affected by those acts. For example, the policy followed by the United States against states that do not respect human rights, against apartheid (racial discrimination) in south Africa, against countries that did not comply with international rules on nuclear non-proliferation and people guilty of terrorists acts, are all instances of boycott.

One of the most famous cases of boycott is that of a member state of the Arab League against Israel, launched in December 1945, whose statement reads: "*Hebrew products and goods manufactured by them will be considered undesirable in Arab countries. All institutions, organizations, traders, Commission officials and individuals are required to refuse maintenance of contractual relations, distribution or consumption of goods produced or manufactured in Zionist space*." (Bard, 2007). The main reason for imposing the boycott was the Jewish desire to form a new Palestinian state: Israel. Since 1948, the Arab states' boycott against Israel consisted of three main components:

- Ban on direct trade between the two sides;
- Interruption of the relations of companies that trade with Israel;
- Inclusion on the "black list" of firms that maintain trade relations with companies engaged in direct trade with Israel.

More recently (March 2012), around 30 national states, including China, US, Russia and Japan, have signed a declaration of boycott against the EU taxation project on exceeding a certain limit of carbon emissions by international aircrafts. With regard to this, China stated that such a tax system would lead to economic collapse of the national transport sector.

The third measure of constraint in peaceful dispute resolution, that can be taken as a singular act of punishment or included in a different coercion method, is the severance of diplomatic relations. Its purpose is to break diplomatic contacts with the guilty state and stop any negotiation or agreement on its interests. In this way, the latter would be forced to cease hostilities and to repair damage, followed by the resumption of negotiations on a common interest.

First and foremost, the severance of diplomatic relations refers to the act of calling back the diplomatic mission of the victim state from the territory of the state guilty of unfriendly and illegal actions against it. (Tănăsescu, 2009, p. 212) This type of act is a right of each state under its sovereignty and can be used whenever there is a belief that international rights of a nation or of its citizens have been violated, with no need to provide reasons for taking such a decision. Also, international law does not oblige the victim to expressly notify the guilty state of this measure of severing the diplomatic relations between them.

Although international custom requires that peaceful coercive measures are used to resolve international disputes, only after repeated attempts are made to resolve such disputes through political, diplomatic and judicial means, we must highlight that, regarding the severance of diplomatic relations between two states, prior conduct of dialogue between parties not necessary, nor are negotiations or legal processes in order to reach consensus. This is due to the fact that this action represents a discretionary act of the sovereign state! However, as a recommendation, the UN Security Council is able to oblige the member states to appeal to a conciliation procedure before deciding to break diplomatic relations with another state.

Important to mention is that the cessation of diplomatic relations between two countries does in no way imply the cessation of legal relations imposed by bilateral or multilateral treaties ratified by them, unless maintaining these relations is essential to the applicability of that agreement (art. 63 of the Vienna Convention of 1969). (Aust, 2010, p. 97)

A recent example of this coercive method being used was in 2008, when Georgia decided to cease cooperation at diplomatic level with the Russian Federation, as the latter formally recognized Abkhazia and South Ossetia as independent states. A year later, Morocco decided to take the same measure of constraint on Iran, as a consequence of the Iranian diplomatic involvement in the internal religious affairs of Morocco. Then, in 2010, the diplomatic relations between Columbia and Venezuela reached a stopping point, when Venezuelan authorities requested it after

accusing Colombia of tolerating the set-up of bases by the Revolutionary Armed Forces of Colombia (FARC). (Dorr & Schmalenbach, 2012, pg. 1271-1272)

In 2011, Lithuania threatened Austria with the severance of diplomatic relations, following the release from prison of a former KGB agent (State Security Committee - USSR), whose arrest was requested by the authorities in Vilnius on charges of actions of suppression that preceded the independence of Lithuania.

In addition to these three methods of peaceful coercion, international custom also recognizes the existence of auxiliary means of peaceful settlement of disputes between states, such as exclusion from international conferences/organizations or peaceful maritime blockade.

Regarding the exclusion from international conferences/organizations, it is important to highlight the legal aspect of this situation. In order for it to be legal in terms of international law, it is necessary that no provision of the organization membership status or any treaty between parties forbids such practices or requires unanimous mandatory presence of all parties. As an example, we look back at 1939, when the Soviet Union was expelled from the League of Nations as a result of the aggression initiated on Finland, which disregarded the fact that both sides had signed a treaty of mutual assistance and friendship.

Then, in 1962 Cuba was excluded from the Organization of American States (OAS) following the accession to power of a self-declared Marxist-Leninist government, incompatible with the rules and principles of the inter-American system. This exclusion was only temporary, given the fact that the members wanted to replace the undemocratic Cuban government, but not to permanently remove Cuba from OAS. The suspension was lifted in 2009.

As regards the peaceful maritime blockade, this method of constraint is seen as the last means of settling international disputes without using force, though often it is used as a threat that can have violent consequences for the state that is guilty of illegal acts against another state.

We consider an instance of a peaceful maritime blockade to be when two litigants are not conducting a war, but the victim state decides to strategically position its warships in one of its seaports in order to block the access of vessels belonging to the guilty state. We note that the legal limit of this blockade is represented by any form of violence exercised by the victim state over the guilty one or over its vessels. Also, if the culprit tries to forcibly enter the territory of the victim state, it

is deemed as a violation of the fundamental principles of international law (such as the principle of territorial integrity, the non-aggression principle or the principle of settlement of disputes by peaceful means). From that moment forward, this state must answer for its illegal acts and the victim state is granted the right to use force in self-defense, but in such cases the other rules of international law are not covered by our present study.

The Paris Declaration of 1856 provides that, to meet the character of legality and to create obligations between parties, a maritime blockade must be declared and effective, therefore all states must receive written notification that effect, and the actions of peaceful maritime blockade must be effectively implemented. (Joyner, 2005)

An example could be the peaceful maritime blockade imposed by the US on the Cuban state in 1962, or, more recently, in early 2012. The United States, at the Israeli proposal, considered imposing a maritime blockade on Iran, in case the Iranian state would not return to negotiations on its nuclear program. Iran turned offensive by bringing into discussion its own maritime blockade on the Strait of Hormuz.

3. Conclusion

In conclusion, the international world is still in transition to the perfect operating system, in which states can cooperate efficiently without any impediments, and when the welfare of many countries depends on a one element, it intervenes so that the dispute can be solved by using various methods, preferably peaceful, be they political, diplomatic, judicial or coercive. Therefore, we believe that the aim of this work was achieved, i.e. to make known the means of resolving conflicts between states in terms of international law, thus guaranteeing international peace and security. Moreover, we continue to appeal to the human values and dignity, aspects that have an essential role in ensuring the appropriate performance of the international system of today and tomorrow.

4. References

Aust, A. (2010). *Handbook of international law.* Cambridge: Cambridge Univerisity Press.

Bard, M. (2007). *The Arab Boycott*. Retrieved from Jewish Virtual Library: http://www.jewishvirtuallibrary.org/jsource/History/Arab_boycott.html.

Dorr, O., & Schmalenbach, K. (2012). *Vienna Convention on the Law of Treaties. A commentary.* Berlin.

Halleck, H. W. (1861). *International law: or, Rules regulating the intercourse of states in peace and war*. San Francisco: H. H. Bancroft & Company.

Joyner, C. C. (2005). *International Law in 21st Century: Rules for Global Governance.* UK: Rowman and Littlefield Publishers.

Niciu, M. (1997). *Drept internaţional public/Public International Law.* Arad: Servosat.

Sharp, J. M. (2008, February). *The Egypt-Gaza Border and its Effect on Israeli-Egyptian Relations*. Retrieved from Foreign Press Center, U.S. Department of State: http://fpc.state.gov/documents/organization/101806.pdf.

Tănăsescu, T. (2009). *Drept internaţional public/Public International Law.* Craiova: SITECH.

The U.N. Charter, Art. 41. (1945). U.N. Security Council.

Weiner, J., & Bell, A. (2008). *International Law and Fighting in Gaza, Jerusalem Center for Public Affairs.* Retrieved from Jerusalem Center for Public Affairs: http://www.jcpa.org/text/puzzle1.pdf(n.d.).

Ministerul Afacerilor de Externe al României/Ministry of Foreign Affairs of Romania: http://www.mae.ro/.