Uncompleted countermeasures in international law

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Abstract

Countermeasures will resolve the responsibility of the government for redress. However, if the fail government could not injure in this way damages to compensate the party or all the method is not cross-over. Other peaceful means must be blocked, because grounds for adopting the ways provided by the letter of United Nations Charter and international law for security purposes and the prevention conflicts in international relations. Special situations International Court of Justice to look at legal issues to prevent the feeling of loss and its consequences in international relations, Special situations International Court of Justice to look at legal issues to prevent the feeling of loss and they are impressive consequences in international relations. Supposing your vote at the court relied on asymmetry and development of countermeasures against the responsible State and the injured with the criterion of the public conscience.

Key words: Judicial immunity of States and their property, the State’s international responsibility, the International Court of Justice, countermeasures, fitness.

1. Introduction

Judicial immunity of government and their property, including international law in 2004, has been in elevating the status of the convention and according to which all states have immunity from judicial proceedings in other countries. In other words, this rule prevents the exercise of jurisdiction of the court to address the issue of the sovereignty of other states and also governments have been prevented of implementation of such sentences.

In addition to, this Convention, control measures customary rule the responsibility of the state in developing the International law Commission that the plan in 2001 was referred to the general assembly that boundaries of customary international law explains concerning the responsibility of governments. In this design, materials and fit is dedicated to countermeasures. however, amendments to the domestic laws of the countries are applying for extra-territorial jurisdiction for domestic courts and Following its global policy of the valves that do not conform with international law but some countries have suffered from the actions of these countries to compensate for the harm they caused to the countermeasures that resolve the responsibility of their tools but the problem occurs when these countermeasures does not cover loss or in the implementation process does not lead to the end. In such conditions, due to the challenge of sovereign come equality and caused losses, any multi-national aspect and the government of any other Non-peaceful effort to bring the situation to an earlier state will not be spared, that naturally with the spirit of the charter of the United Nations in international security and conflict prevention. Are governments that faced with this situation for their rights can apply to the International court of justice? Global approach and procedures to deal with such cases is the Court? Two questions that will be addressed in this article.

2. Literature

2.1 Responsible government

A government that is internationally wrongful act harmful to people or other government has done and is in charge of the wrongful action.

2.2 The aggrieved government

A government that was surfed responsible for the wrongful act.

2.3 Countermeasures

All measures that the government is injured, the government is responsible to compensate the damage or responsible government to fulfill its urge international obligations.

2.4 Proportionality

Against losses suffered by the affected state and countermeasures against the responsible State.

3. Research Methodology

This fundamental research is attempting to rational argument and use deductive methods based on documentary research (literature).

4. Countermeasures and proportionality of the International Law Commission
International Law Commission that is responsible for the development and codification of international law, in the famous 2001 sketch on the international responsibility government described in Article 22, Chapter two of the third part of the 59-point plan to the State's international responsibility has pointed out countermeasures and Proportionality topics. According to the Convention:

The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of Part Three.

So “The purpose of retaliation, punishment of the guilty, but according to what Article 23 project, in the event of force majeure has been said, forcing the government is responsible to follow and abiding commitment to internationalization. Countermeasures to adopt a procedure that hurt the government for redress and restoration of legal relations with the state responsible which the act takes places in contrary to the disturbed, such a right, both by governments and the international judicial judgments and legal authorities is recognized (Rai, 2010).

On the recommendation of the International Law Commission, the codification of Legal Affairs of the Secretariat was formed under international law is responsible for recording rules, It has a wide range of specific issues related to the public interest, such as: law of the Sea, the law of treaties, nationality, diplomatic and consular law, international organizations, succession of States, non-navigational uses of international waterways, Judicial immunity and property governments, multilateral treaty making process and also the prevention and suppression of international terrorism has prepared 25 legal books that the treaty has collected and interpretive theory has to explain materials.


The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of Part Three (Wrongful, 2010).

Article of the law 52 states that the circumstances of countermeasures:

Conditions relating to resort to countermeasures:

- Before taking countermeasures, an injured State shall: (a) call upon the responsible State, in accordance with article 43, to fulfil its obligations under part two; (b) notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.
- Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.
- Countermeasures may not be taken, and if already taken must be suspended without undue delay if: (a) the internationally wrongful act has ceased; and (b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.
- Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement Procedures in good faith.

The Commission's plan to balance approach in 2001, not punishment-centered, so that Article 53 of the termination of countermeasures, states.

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under part two in relation to the internationally wrongful act. But the Commission notes that the issue of Proportionality the countermeasures, while it has been applied proportionately more in conflict and "the principle of proportionality, the main feature of modern international law regulating armed conflict(LcupJames, 2016). The principle of "relative as a peremptory norm of international criminal law in article 76.78 of the constitution and article 145 of the code of procedure and is asked evidence of the International criminal court (Diligent Jafar Zarei, 2010). and the proportion between crime and punishment, which should be based on the type and extent of damage, the condition of victim, the offender and the circumstances of the crime and justice in the international community and country crime scene to restore lost mental balance of humanity and deterrence(Diligent Jafar Zarei, 2010), based on universal values and determination to achieve the objectives of effective criminal and useful but the international law commission on countermeasures [non-violence] described in article 51 has been forced to use the term. This means that the status is countermeasures in international law also considered the issue of proportionality. This means that in a non-sulk measures as well as any form of retaliation should follow the principle and country damaged to some harm that has been suffered, it is authorized to act against. The Commission announces in Article 51:
Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question (Wrongful, 2010).

And on the interpretation of article 51 of the State’s international responsibility plan explains that:

Article 51 establishes an essential limit on the taking of countermeasures by an injured State in any given case, based on considerations of proportionality. It is relevant in determining what countermeasures may be applied and their degree of intensity. Proportionality provides a measure of assurance inasmuch as disproportionate countermeasures could give rise to responsibility on the part of the State taking such measures (Wrongful, 2010).

5. Approach the International Court of Justice in cases with relevant countermeasures

According to there is no independent legislative basis in international law to modify the provisions of international law to pay, the Court must do that. As the main judicial body of the international community through the development of case law partner, in this way the Court applied the existing legal rules and making change social conditions. The international community knows that the Court should have a central role in the development of international law. Although the main task of the Court to resolve the dispute, in terms of the specific characteristics of the international community accepts the Court through reformulation participate in the development of international law (Habibi and Shamloo, 2014). Arbitration institutions, particularly the International Court of Justice as a last resort to peaceful governments for their rights and they know well lack of judgment and sentences, creates homesickness, that might be grounds for non-peaceful measures and if will not do, make sure the memory mental abuse suffered by the provisions hinder the country's participation in global and will be development of international law that unwritten goals contradict with the court in this regard. Thus the Court should be subject to scrutiny and comprehensive nobility and court arguments that the precedent will have the important benefit.

If in the file Gabčíkovo-Nagymaros case of a dispute between Hungary and Czechoslovakia, Hungary with action to stops the dam project because of environmental problems, and action diversion of Czechoslovakia on the Danube River as a countermeasure, the issue was referred to the court and "the court was asked, first for this part announces the vote. Does Hungary, the release of the project, Czechoslovakia, the implementation of Variant C [rivers siphoning] and Hungary, had the right to terminate the contract? In relation to the first allegation, the court stated that Hungary has cut the project's follow-up actions, has violated the contraction and cannot be used to justify breach of contract, under the pretext of the need for "environmental considerations" is invoked.

The second, Czechoslovakia's action to deprive Hungary of having "reasonable and equitable share" of the Danube, with practical implementation of Variant C was outlawed, finally, the Court ruled that the contract was invalid from Hungary (Syed Mehdi Mousavi, 2010)

International Court of Justice's reasoning Czechoslovakia retaliation against acts of these states Hungary.

In the view of the Court, an important consideration is that the effects of a countermeasure must be commensurate with the injury suffered, taking account of the rights in question (Adrienne, 2016).

Of course is difficult to find the balance and the result is not recognized in the form of rules and have investigated the whole matter, but it was, as the Commission of the principle of proportionality in common, this issue also concluded that if the international law, "the Institute of International law stated in resolution 1934, that countermeasures the government should not be in conflict with the rules of human rights and conscience. In four Geneva Conventions of 1949 and the two Protocols also voted 1977 and 2004 on the legality of action Israeli separation wall, this topic was emphasized (Hypericum, 2010). Attention to the Institute of International law about countermeasures pause conscience, because the human rights law is invoked and relied on the word conscience, something that in frameworks of legal framework is not codified and analysis to understand the international community has been given a legal issue and can be used in common with the rest of it.

Here it is essential that public opinion should be regarded as a sanction of international law. This means that in international law, public opinion has a special place for various reasons and governments are trying to justify their actions to public scrutiny sense and show of the world. So public conscience is in terms of its status as a subsidiary source of international law. Of course explaining the public conscience because of prorogation in this paper but is broadly defined, that conscience, the review is a fair-minded and good faith efforts to find justice in the relationship intermediate.

In recent case of the Islamic Republic of Iran and the United States of America (United States of America to the Court by amending its laws to respect domestic courts universal jurisdiction in which trial courts in some countries, especially Iran was on the agenda. America in the execution of their courts to confiscate the property of the government in his country, but Iran did not have access to state property, to pay no damages. On this occasion, the issue of enforcement of court judgments America referred to the International Court of
Justice.), Iran's actions in the territorial jurisdiction of the trial court allowed states and also the government tried to make it as countermeasures should consider that countermeasures should be proportionate and when it is Countermeasures for the rights of be satisfied the sight in public conscience.

In this respect, although no measures against the Islamic Republic of Iran to the United States of America within the framework defined countermeasures. But the spirit of the principle of proportionality that governs countermeasures can be used, the inability of the law enforcement due to lack of funds from the government, according to the government's actions is not America, and when it is confirmed placed in the public consciousness.

Because the action was not completed, in other words, the likelihood of the plan's countermeasures against America, this thought and reasoning that due to the mismatch between Iran and the development of countermeasures against America (which they refer to as countermeasures unfinished) such that, in the public consciousness as the performance, persuasive and cannot be a cause for disqualification or not the court.

6. Conclusion

With a focus on sovereign immunity in cases that have been referred to the Court saw the reflection of the Court's approach, Court to resolve the dispute peacefully using common law rules and international law and in line with its mission, indicating the development of international law and recognizes that the consequences of the adoption of unilateral measures by countries which are not rooted in codified and customary rights. The structure can make challenge the international law. Therefore, in such cases, cautious and refuses to accept the acts that harm to sovereign immunity.

Approach the International Court of Justice in cases relating to the protection and responsibility of governments, it tries in line with global practices in accordance with relevant ideas and interpretations, unilateral actions does not recognize that countries have with the principles of safety and liability contrast.

A procedure that has created exception to the principle of sovereign immunity in the United States of America and some countries, such as Canada that have followed, the underlying problems in the structure of international law and consequently on international relations.

Following the unilateral amendments countries on the principle of immunity, global consensus, in the form of international conventions and to establish security in international relations is formed. Next consequences of the omission, the exercise of universal jurisdiction is for courts in different states under any excuse and pretext. Countermeasures will follow other countries.

Countermeasures itself because it fit his twists and interpretations on the ground for a future conflict, except with the consent or handle will not be high the legal authorities. The next issue of countermeasures that cannot harm your views entirely or in proportion to the harm that has been created to do, the country responsible for the country to overcome the international wrongful act and compel it to comply with its international non-legal nature peaceful solutions will be pursued, which will be incompatible with the letter and spirit of the UN Charter and, of course, the Court rejected the principle of the unfinished countermeasures seek other ways to trim their countermeasures Which can be a precursor to security threats in international relations. Court records and policy on similar topics showed that tends to be overlooked is the principle of sovereign immunity, the Court is well aware that for waiver of customary international law of sovereign immunity, will create legal chaos and legal structure will be challenged.

References:


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