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**RETORSION AND REPRISAL UNDER COERCIVE SETTLEMENT
OF INTERNATIONAL DISPUTE****-Deeksha G. Karunakar¹****ABSTRACT**

If the settlement disputes can be resolved by using coercive methods, the organizations that are helping to maintain the relationship between different nations, were annihilated as their basic ethics aren't being followed. These controversial disputes are a part of culture, since based on these disputes treaties are formed in order to maintain peace. However, the coercive methods contravene the principle of peace and security which is provided under the U.N. Charter.

Such coercive methods include retaliation and counterattacks. These kinds of illegal acts have been intervened by the U.N. Charter to resolve any kind of coercive means of international dispute. This paper is a way to contribute to the study of international dispute under coercive settlement, focusing on Retorsion and Reprisal methods used by the States.

Keywords - Coercive; Counterattack; Dispute; Reprisal; Retorsion; U.N. Charter

Literature Review

The main focus of this paper is to understand why States adopt such forcible and coercive means to settle a dispute rather than in any peaceful manner. The study has been supported by secondary data and documents on International Settlement and their findings.

The research is further supported by different case studies that showcase matters and a possible solution for the same.

2.1. Aim:

The main aim of the paper is to:-

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- Understand the retorsion and reprisal methods under coercive settlement of International Dispute.
- Understand the situations leading towards the adoption of coercive means to settle disputes between the States.
- Understand the steps taken by U.N. Charter to avoid any settlement dispute between the States.
- Find possible solutions to avoid any such forcible means of settlement.

INTRODUCTION

Disputes and international relations have an integral connection between them. The disputes not only occur between states but also states and other entities like international organizations and other non-state entities. To settle such disputes, the United Nations Charter lays down that “*all Member States have to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered*”.²

The Charter of the United Nation was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945.³

But the U.N. Charter does not direct the method to resolve such settlement disputes. The Charter does provide different options to resolve disputes like mediation, negotiation, conciliation, judicial settlement, etc.⁴ The Charter also provides the responsibility to the Security Council to call upon the parties when it deems necessary to settle the disputes by any mentioned peaceful means in the charter.⁵

In fact, Kofi Annan, Secretary-General of the United Nations at the time of 2003 Iraq conflict, has written: “No principle of the Charter is more important than the principle of the non-use of

² U.N. Charter, Art.2, Cl. 3.

³ “Introductory Note.” United Nations. United Nations. Accessed October 4, 2019. <https://www.un.org/en/sections/un-charter/introductory-note/index.html>.

⁴ U.N. Charter, Art. 33, Cl. 1.

⁵ U.N. Charter, Art. 33, Cl. 2.

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force as embodied in Article 2, paragraph 4 Secretaries General confront many challenges in the course of their tenures but the challenge that tests them and defines them inevitably involves the use of force”.⁶

Even though it is preferable in the Charter to resolve the settlement disputes between different state entities through peaceful means, sometimes the disputes are settled through coercive methods. These coercive methods are also known as non-peaceful methods for the settlement of disputes. Such methods involve force on a state to settle a dispute. These compelling measures don't only include usage of armed forces but also these measures include retaliation and illegal acts of a state.

The coercive methods continue to develop agitation between the states and cause distress in their relationship with each other. The distress in their relationship not only harms their present but future as well, lowering down the possibility of any kind of settlement and infringing the principle of peace and security.

DEFINITION

As per Collins English Dictionary, “*Coercive measures are intended to force people to do something that they do not want to do*”.⁷

As per Cambridge Dictionary, Coercive means “*using force to persuade people to do things that they are unwilling to do*”.⁸

“*When methods of Pacific Settlement of disputes fail, states adopt coercive methods Short of War which include reprisal; retorsion; embargo; boycott; blockade; intervention; and collective security*”.⁹

⁶ R. Zacklin, *The United Nations Secretariat and the Use of Force in a Unipolar World: Power v. Principle* (2010), pp. xii-xiii.

⁷ “Coercive Definition and Meaning: Collins English Dictionary.” Coercive definition and meaning | Collins English Dictionary. Accessed October 4, 2019. <https://www.collinsdictionary.com/dictionary/english/coercive>.

⁸ “COERCIVE: Meaning in the Cambridge English Dictionary.” Cambridge Dictionary. Accessed October 4, 2019. <https://dictionary.cambridge.org/dictionary/english/coercive>.

⁹ Jan, Mohammad Naqib Ishan. *International Dispute Settlement Mechanisms*. Kuala Lumpur, Malaysia: IIUM Press, 2011.

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As per U.N. Charter, “that agreements can result in Security Council non-military actions, all of which can be defined as coercive”.¹⁰

COERCIVE METHODS

Coercive methods are of two types:-

4.1. Coercive Methods Short of War¹¹: States only use coercive, violent methods to resolve disputes if the desired outcome is not reached through peaceful procedures. Most of these methods have their final coercive influence on the emotional domain, although they are represented by the dynamics of the diplomatic process. By various State actions – recall of diplomatic personnel; dismissal of ambassadors, denial of recognition, the breach of diplomatic ties; termination of agreements etc. – such non violent coercive tactics may be adopted. Such steps are taken using one of the following methods: reprisal; retorsion; embargo; boycott; blockade.

4.2. Coercive Methods through War¹²: The systematic use of military aggression has always been a last alternative to the settlement of conflicts throughout the international system. The war can be waged by tacit agreement in the sense of the International System's terms of reference and restraint and be linked to the command equilibrium or could potentially be destructive by attempting to radically and permanently alter relationships. Two specific categories of war can be fought – The Limited War and the Total War.

RETORSION

Retorsion is one of the coercive methods used for settlement disputes. It refers to an act of retaliation taken by one nation against another as reprisal.¹³ This occurs when a state, and civilians of which are subject to strict and stringently regulated laws or mistreatment by a foreign

¹⁰ U.N. Charter, Art. 41 and 42.

¹¹ AuthorUnknown. “Compulsive / Coercive Modes of Settlement of International Disputes.” SRD Law Notes. Accessed October 5, 2019. <https://www.srdlawnotes.com/2017/08/compulsive-coercive-modes-of-settlement.html>.

¹² Ibid.

¹³ US Legal, Inc. “Retorsion Law and Legal Definition.” Retorsion Law and Legal Definition | USLegal, Inc. Accessed October 5, 2019. <https://definitions.uslegal.com/r/retorsion/>.

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state, treats its citizens equally within its boundaries. Retorsion currently encompasses only those expressions that do not conflict with the international law of targeted State's rights.¹⁴

The principle that follows under retaliation is tit for tat.¹⁵ But the acts done under retaliation by the States are not illegal per se. So retorsion is authorized under International Law.

The retorsion act usually occurs when one State unfairly treats another State and another State does the same later. Such instances usually include unfair treatment to citizens, restriction of the entry in one state, levy heavy tariff duty by a State, when a State declares *persona non grata* to a diplomatic agent of another State, etc.

5.1. Cases:

5.1.1. Corfield v. Coryell (1825)¹⁶

The U.S. Constitution laid down Privilege and Immunities clause¹⁷, which prevented a state from treating other states in any discriminatory manner. This case particularly focused on one nation only, but it is an example of citizens of one state being treated unfairly.

Bushrod Washington claimed that, however, it was not meant to preclude differentiation between residents and non-residents on less fundamental issues such as recreational opportunities but in order to prevent discrimination on crucial issues such as the right to practice a profession within another state.¹⁸ This case allowed one state of the U.S. can't discriminate against another state of U.S.

5.1.2. US to end preferential trade treatment for India

This is one of the recent cases of retorsion. India was asked to provide equitable and reasonable access of its market to U.S., but as India didn't assure, the Trump administration terminated

¹⁴ "Retorsion." Oxford Public International Law, August 29, 2019. <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e983>.

¹⁵ Aggarwal, H O. *Public International Law*. 22nd ed. Central Law Publication, 2019.

¹⁶ Linder, Doug. State Discrimination Against Non-Residents. Accessed October 5, 2019. <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/priv&immart4.htm>.

¹⁷ U.S. Constitution, Art. IV, Sec. 2, Cl. 1.

¹⁸ Ibid.

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India's designation as a beneficiary developing nation under the Generalized System of Preference trade programme, with effect from 5th June, 2019.¹⁹

The tit-for-tat principle followed by the U.S. caused a disruption between India-U.S. Trade relations.

5.1.3. India declared *persona non grata* on Pakistan two High Commission

Persona non grata means, “a person who is unacceptable or unwelcome”.²⁰

In December 1992, two of the Pakistan High Commission officials were unwelcomed to India by the declaration of *persona non grata*, in retaliation Pakistan did the same for three Indian officials.

The similar circumstances happened in 2003, Pakistan expelled four Indian High Commission staffers including three diplomats and were asked to leave Pakistan within 48 hour in vengeance India did the same to the same number of Pakistani High Commission staffers.²¹

REPRISAL

Reprisal is an event of a prior violation of international humanitarian law by an enemy with the intent of stopping the enemy's breach is a violation of international humanitarian legislation that would otherwise be unconstitutional, but in exceptional cases it is deemed to be valid as an enforceable instrument.²²

Reprisals are aimed at putting pressure on the enemy to ensure that International Humanitarian Law is upheld by the enemy. In other words, if one state had a dispute with the other due to an unjustified act, the other state adopted a coercive method to settle the dispute. Reprisals methods though can be considered legal in some conditions, it does forbid under areas like seizure of the

¹⁹ “US to End Preferential Trade Treatment for India from June 5; What It Means and Will It Affect Country?” Business Today, June 13, 2019. <https://www.businesstoday.in/current/economy-politics/us-to-end-preferential-trade-treatment-for-india-from-june-5-what-it-means-and-will-it-affect-country/story/352851.html>.

²⁰ “Persona Non Grata.” Merriam-Webster. Merriam-Webster. Accessed October 5, 2019. [https://www.merriam-webster.com/dictionary/persona non grata](https://www.merriam-webster.com/dictionary/persona%20non%20grata).

²¹ Ibid.

²² “Reprisals.” Reprisals | How does law protect in war? - Online casebook. Accessed October 6, 2019. <https://casebook.icrc.org/glossary/reprisals>.

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property or person, bombardment, occupation of territories of a State, seizure of ships, freezing of assets of its citizens and taking any kind of property belonging to them.²³

Unlike retorsion, reprisal is limited for a particular time. They are considered legal only when a state failed to perform its secondary obligation and not continue to honor the same. Furthermore, reprisals are limited in scope by the principle of proportionality as stated in Naulilaa Arbitration.²⁴

6.1 Cases

6.1.1. Naulilaa Incident

In 1928, Portuguese mistakenly killed three Germans lawfully in Portuguese territory and in retaliation German military raided on the colony of Angola which led to destruction of the property in Angola. This incident led the Special Arbitral Tribunal to lay down three main conditions which are required to make reprisals lawful in nature:

- The state against which an action is taken must be guilty of a breach of Public International Law;
- An adequate attempt has been taken to obtain redress without success;
- Measures taken under reprisals should not be excessive, though no need to be proportionate to the offence.²⁵

In this case, the Tribunal held that the reprisals resorted to by Germany had violated International Law because the Portuguese didn't kill the Germans willfully but unintentionally; the Germans didn't made a request of peaceful settlement before the usage of force; and the force used by them was excessive and out of proportion.²⁶

6.1.2. U.S. Attack on Iraqi Intelligence Headquarters

The incident dates back to April, 1993 when U.S. President George Herbert Walker Bush was on his visit to Kuwait and faced an attempted assassination. The U.S. forces came into decision that the plot was sponsored by Iraq, and counterattacked in June, 1993, by launching 23 cruise

²³ Jain, Shilpa. *Introduction to Public International Law*. Eastern Book Company, n.d.

²⁴ Ibid.

²⁵ Tandon, M P. *Public International Law*. 17th ed. Faridabad, Haryana: Allahabad Law Agency, 2012.

²⁶ Ibid.

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missiles from USS Paterson and USS Chancellorsville in the Red Sea and Persian Gulf against Iraqi Intelligence Headquarters in Baghdad.²⁷

Even though the nature of the use of force was violating the principles of U.N. Charter²⁸, the Security Council failed to adopt any resolution regarding this case, possibly due to the higher political power of the U.S.²⁹

PROBLEMS IN PRESENT ERA

The main issue of such coercive methods is the illegal acts involved for the settlement of the dispute between the states. These coercive acts lead to distress in the relations between the states for present and future. Once such an incident leads to the unjustified act to reach a settlement, the relationship between the states already comes to an end by that time.

The friction that has been caused by the act of one State leads to the loss in future development of the state as well. Like the recent case stated above, the U.S. ending their preferential trade with India caused quite a loss to the market of both U.S. and India. India, still being a developing country faced the loss of being terminated as a beneficiary developing nation under the Generalized System of Preference trade programme since it can't be considered as a developed country.

The distortion caused once can't be repaired. There is an eternal war between the states whether influenced politically or personally. The friendly relation is hard to be adopted by either state. This leads to infringing on the basic principle of peace, security and harmony.

CONCLUSION

Based on the research, it can be said that retorsion and reprisal under coercive settlement of international dispute, is not only illegal and unjustified but also conflicting and raising the probability of war between the states. For every state it is essential to maintain its peace and security, though the competition between the states is higher which causes such disputes. Every

²⁷ Kapoor, S K. *International Law & Human Rights*. 19th ed. Central Law Agency, n.d.

²⁸ U.N.Charter, Art.2, Para. 4.

²⁹ Ibid.

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state has their own way to showcase superiority over the other, few of which lead to the adoption of illegal methods.

These methods include retorsion and reprisal. Even though few principles lay down for reprisal acts to be legal but the legalization of the same are under strict principles. This shows how greed and power plays an important role in the causing of the disputes between the states.

The superiority of the state is measured by their power and development, which is disturbed when there is a dispute. Every state wants to be considered as powerful and wants to protect their position. These disputes can occur based on personal outrage but most of the international disputes takes place due to the political indignation.

The U.N. Charter is formed to prevent any situations of such disputes, if any such disputes occur they lay down acceptable way to settle such disputes without raging any kind of short or long wars between states.

It has been rightly stated *“Peace can be promoted by the limitation of arms and by the creation of the instrumentalities for peaceful settlement of controversies. But it will become a reality only through self-restraint and active effort in friendliness and helpfulness”*. To maintain any relations between states and for equal development it is necessary to promote peace and avoid any coercive means for the settlement of International Dispute.

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