THE NATURE AND SYSTEM OF LEGAL COERCION IN ENSURING MODERN INTERNATIONAL LAW

ALIYEV Rauf Zeynal oghlu - Doctoral student of the "Private international law and European law" department, Baku State University

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The principle of settling disputes by peaceful means is one of the important conditions for resorting to coercive measures as a means of realizing rights and interests, but it is not an absolute condition. Realization of the right of claim should also be ensured during countermeasures against damage. In order to realize the right of claim, one should apply to the institute of peaceful settlement of disputes.

Keywords: Azerbaijan Republic, international law, state, charter, trade.

One of the main features that distinguish modern international law from its predecessors has been the prohibition of unjust wars as a means of implementing foreign policy. The Kellogg-Briand Pact, which was adopted in 1928 and was attended by more than 60 states, "prohibition of aggressive wars" (Article 1) and "obligation for the exclusive peaceful settlement of disputes" (Article 2) [2] subsequently incorporated the principles of the UN Charter, which including the principle of "peaceful settlement of disputes". For the purpose (Article 1) and principles (Article 2) established in the UN Charter (Chapters VI-VII), it also defined the peaceful functioning mechanism of the modern international legal system. International obligations for the states to ensure international peace and security were formed on the said basis. However, even today, the absolute majority of the world community formally shows an inclination towards the goals and principles of the UN Charter and the international order, the guiding principles of peaceful coexistence and cooperation of the subjects of international relations in the world are regularly violated [3, p. 3]. Regular violation of the guiding principles in international relations is related to the conflict of different political and economic interests of the states. The world economic crises of the 1920s and especially the 1930s led many countries to raise tariffs and reduce quotas on imported goods. This was one of the main reasons for the outbreak of World War II. For example, Japan joined World War II after trade conflicts with European countries. It is interesting that after Japan started military operations, the US, which was not yet involved in the war, imposed sanctions on the shipment of oil products to Japan. The main task of the modern international legal system is to act as a means of reconciling the emerging disputes and mutual interests of the states, to achieve the resolution of these conflicts at the legal level, and one of the main mechanisms for ensuring them is international legal coercion measures. Already in the first half of the 20th century, such an idea was formed that economic sanctions could replace military operations in the system of international legal coercive measures, and sanctions became a widespread tool for achieving foreign policy goals in peacetime.

Implementation of international legal coercion is one of the main problems of modern international law science. The functioning mechanism of international legal coercion owes its characteristics to modern international law, which began in 1945, coinciding with the founding of the UN and the adoption of its Charter. Although not completely, modern in-

ternational law with all its positive and negative points is also accepted as the law of the UN Charter. This legal system, unlike the previous legal systems, is aimed at "providing a stable international order on compliance with the generally accepted norms of interstate relations". In order to ensure stable international order, peace and security, it has a specific method of implementation and a means of ensuring it – the coercion apparatus.

Although state coercion has a wider meaning than legal coercion, it gains legitimacy only within the framework of law. One of the main characteristics of law is its binding nature. Coercion acts as a guarantee for the implementation of the right. At the same time, it is necessary to connect the legal obligation not with the violation of the law, but with the legal dispute or with the legal guarantee, with its expectation. Legal coercion is used within the framework of dispute resolution even without a legal violation (for example, in Article XXIII of the General Agreement on Tariffs and Trade (GATT) on the "special situation") [4], even in the case of seizure of the defendant's property to ensure objective liability (compensation) unrelated to the violation of the obligation).

Whether coercion is effective or productive is already related to the question of the effectiveness of international law.

The main argument of those who questioned the effectiveness of international law as a legal system was that this system does not have a coercive mechanism, a single sovereign in domestic law... in this sense, it was noted that international law is not a "law", but a moral norm [5, p. 208].

The nihilistic concept of international law, which is being spread mainly by politicians and political analysts, is based on the lack of a coercive mechanism in it. Attention is drawn to the "absence of any coercion in its observation, other than the joint action of the states" [6, p. 7]. In recent times, the Azerbaijani media have been hearing similar opinions. However, the President of the Republic of Azerbaijan, Ilham Aliyev, has repeatedly given special attention to the importance of international law in his speeches, and noted that it is very important to try to ensure its functionality and effectiveness [1].

The international legal system operates on the basis of the principle of "sovereign equality of states" and "paren parem non habet imperium" excludes "paren parem non habet jurisdiction". International legal coercion is used according to the regulation method of international law.

As in the legal system of many states, the Constitution of the Republic of Azerbaijan (Article 10) refers to the principles stipulated in the universally accepted international legal norms as the normative basis for the implementation of foreign policy [7]. As in the internal law of the states, the main act of modern international law – the UN Charter, defines the methods and forms of implementation of the foreign policy of the states in accordance with the principles stipulated in the generally accepted norms of international law. One of such principles is the principle of non-use of force and non-threat of force is of particular importance in ensuring international security. In the context of this principle, there is a need to determine the relationship between force and international legal coercion, all forms of use of force prohibited by international law. The main characteristic feature of international legal coercion is that, as an international legal institution, it is an element of international relations and is directly directed against the participants of international relations. International legal coercion ensures the return of persons to the level of international law by being addressed on behalf of the subject of international law. As we have already stated, coercion is the main element of the decentralized operation of international law. That is, it is not provided by any superior institution, unlike domestic coercion. Participants of international, interstate relations use coercion as a countermeasure against each other collectively or individually if necessary and possible. The agreed will of the states both creates a right in the social content and ensures the recognition of the legal coercion (legal content) of the created rule of conduct.

It is necessary to note that if international legal enforcement measures of a sanction nature are a response to an international law violation, non-sanction, treaty enforcement measures (eg, violations of GATT privileges) are associated with non-sanction liability. Unlike

other coercive measures, the liability measure is based on voluntariness and permanence as a primary security measure. It defines a more systematic case of the restitution framework.

In both cases, the terms used are conventional in nature. Non-sanction or contractual coercive measures also have an element of sanction for concluding an international agreement. When applying coercive measures, the state whose right has been violated or restricted applies to sanctions in the broadest sense of the word. The main issue is that the applied coercive measures are kept within the scope of international law.

It must be noted that self-defense, non-recognition measures are more specific coercive measures. J. Combacau notes that realization of the legal position during self-defense is ensured unilaterally. A similar situation is observed in the invalidity and insignificance of the state act related to the violation according to international law [8, p. 377]. In the latter case, coercive measures are implemented by non-recognition or condemnation of that act. As an example of the elimination of unilateral legal pressure by a court decision, the decision of the UN Court of Justice in the 1974 England-Iceland Fisheries dispute can be noted that the court did not have the right to assert the 50-mile exclusive fishing zone declared by Iceland against England [9].

As individual coercive measures, retortion in the sense of response, comparison, reevaluation is a response measure taken against the unfriendly behavior of another state against the state and its people, which is below existing standards [10].

The coercive measures taken are provided within the framework of international law and legislation. Part 2 of the Article 69 of the Constitution of the Republic of Azerbaijan states that, the rights and freedoms of foreigners and stateless persons permanently living or temporarily staying in the territory of the Republic of Azerbaijan may be limited only in accordance with the norms of international law and the laws of the Republic of Azerbaijan [7]. The idea expressed at the end of the article "... may be limited in accordance with international law and the laws of the Republic of Azerbaijan" includes other sanctions measures, including retortion. In contrast to retortion, the case of limiting the sphere of authority of the offending state or interfering with it is already manifested in the form of sanctions (international legal coercive measures) in the form of reprisals.

In contrast to retortion as individual coercive measures, reprisal is a more serious coercive measure and is a countermeasure against a violation of law. However, even in this case, it is a sanctioning measure against the subjective rights of the state that committed the violation, which are normally protected by international law. There is a tendency to differentiate between peaceful and military reprisal as a measure of international legal coercion. As a measure of international legal coercion, the limit of the application of reprisal has also been determined in order to expect proportionality and legitimacy. As a coercive measure of sanction nature in international common law, reprisal has a different feature from non-sanction coercion. For example, in the Agreement on Regulation of Dispute Settlement Procedures and Rules of the World Trade Organization (art. 22.8), the right of the violated state to apply for reprisal ends only with concessions or termination of obligations [11]. This case indicates that the regime of sanctions established in the Agreement has different characteristics from general international law. Due to the fact that the retaliatory measures of the violated state will not be effective or will have a negative impact on the economy of that state, sometimes those countermeasures are not implemented [12].

Prohibitions of reprisals in international common law are activated in case of non-recognition of imperative norms (prohibition of force), including the jus cogens element of fundamental human rights [13].

Since the United Nations Charter mentions only coercive measures, the issue related to their nature remains unresolved. Article 39 does not specify the circumstances that will be the basis for the application of the measures provided for in Articles 41 and 42. However, the practical manifestation of "coercive measures sanctioned (secondary)" and non-sanctioned (primary) nature of measures is visible depending on their purpose [14]. If the purpose of secondary or

sanctioned coercive measures is to prevent international law violations, the purpose of non-sanctioned (primary) measures is to determine international legal responsibility and measures to realize responsibility. The mentioned classification of international legal coercive measures is related to the attitude towards the responsibility of the subject of international law. When a subject of international law does not fulfill his duty (obligation) arising from his responsibility under international law (for example, if the execution of a legally binding decision of the UN International Court of Justice is not ensured by the Security Council in accordance with Article 94.2 of the Charter), a sanctioned (secondary) coercive measure can be applied. Thus, in this case, the sanctioned (secondary) coercive measure completes the responsibility realization measure.

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