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THE LEGALITY OF UNILATERAL MEASURES IN REACTION TO HUMAN RIGHTS VIOLATIONS COMMITTED BY A THIRD STATE AGAINST ITS NATIONALS*

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Abstract. Currently, there is no universal international mechanism that would allow the international community to effectively react to flagrant human rights violations that a State commits against its own nationals. That is why States, aware of the shortcomings of the international legal system, often decide to unilaterally react to flagrant human rights violations committed in third States against the nationals of those States. In general, States can use two unilateral tools to react to violations of international law: retorsions and countermeasures. The question this raises is, however, whether they can also be used to address human rights violations as described above. The current paper is aimed at addressing this issue. The paper starts with general definitions of retorsions and countermeasures, and then moves on to discuss their applicability to cases of violations of human rights in third States committed against the nationals of those States.

Keywords: countermeasures; *erga omnes* obligations; human rights; retorsions.

INTRODUCTION

According to Our World in Data distribution of the human rights index, in 2024, the worst human rights situation in the world existed in North Korea.[1] Among the long list of gross human rights violations committed by the North Korean regime against its own nationals, the most significant issues concerned arbitrary or unlawful killings; torture or cruel, inhuman, or degrading treatment or punishment; arbitrary arrest; punishment of family members for alleged offences by a relative; sexual violence and trafficking

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[1] See https://ourworldindata.org/grapher/human-rights-index-vdem [accessed: 15.05.2025].

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in persons.[2] Unfortunately, the case of North Korea is not isolated, as equally dreadful human rights situations exist in other states, such as Afghanistan, Eritrea, and Nicaragua, to name just a few.[3]

Beyond naming and shaming regimes responsible for human rights violations in reports prepared by international non-governmental[4] and intergovernmental organisations,[5] the international community should also have the ability to react to such situations by adopting concrete measures. Nevertheless, there is currently no universal international mechanism that would allow for, e.g., the adoption of sanctions against a State that commits flagrant human rights violations against its own nationals. Despite the fact that the United Nations (UN) Security Council has recognised in the past that gross breaches of human rights amount to threats to the peace, which could pave the way to adopt measures from Article 41 of the UN Charter, "UN practice so far does not reflect a sufficiently broad consensus to extend the notion of a threat to the peace to grave violations of human rights as such, in the absence of the risk of armed conflict" [Krisch 2012, 1287]. As long as regional organisations, such as the European Union (EU), have tools to address worldwide human rights violations, like the EU Global Human Rights Sanctions Regime,[6] the measures they employ will never have the legitimacy that is comparable to sanctions supported by the entire community of States. Thus, such a state of international law is far from satisfactory. The current situation promotes the impunity of perpetrators of human rights abuses and contributes to claims about the ineffectiveness of international law.

That is why States, aware of the shortcomings of the international legal system, often decide to unilaterally react to flagrant human rights violations committed by third States against their own nationals. In general, States can use two tools to react to violations of international law: retorsions and countermeasures. The question this raises is, however, whether they can also be used to address human rights violations as described above. The current paper aims to address this issue through the legal dogmatic method. It seeks to resolve doubts concerning the legality of unilateral measures adopted in response to flagrant human rights violations committed by third

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[2] US Department of State, 2023 Country Reports on Human Rights Practices: North Korea, https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/north-korea/ [accessed: 15.05.2025].

[3] See https://ourworldindata.org/grapher/human-rights-index-vdem.

[4] See e.g. Amnesty International, North Korea 2024, https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/north-korea/report-korea-democratic-peoples-republic-of/ [accessed: 15.05.2025].

[5] See e.g. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea, A/HRC/58/11.

[6] Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, OJ L 410I 7.12.2020, p. 13.

States. The analysis primarily focuses on the Articles on Responsibility of States for Internationally Wrongful Acts and the works of legal doctrine, in order to better understand divergent views in this regard.

The paper starts with general definitions of retorsions and countermeasures, and then moves on to discuss their applicability to cases of violations of human rights in third States committed against the nationals of those States. To highlight their use in order to address human rights violations in third States, in this paper, they will be referred to as third-party retorsions and third-party countermeasures, respectively.

1. GENERAL OVERVIEW

1.1. Countermeasures

Countermeasures are otherwise illegal measures taken against a State which is responsible for an internationally wrongful act.[7] The conditions of the legality of countermeasures were thoroughly discussed and established by the International Law Commission (ILC) during the works upon the Articles on Responsibility of States for Internationally Wrongful Acts.[8] The procedural conditions that define the legality of countermeasures are as follows: Firstly, a State must commit an internationally wrongful act to the detriment of another State [Siciliano. 1990, 7-8].[9] Secondly, before an injured State takes countermeasures, it must call upon the responsible State, giving it notice of its claim, in which it has to specify in particular the conduct that the responsible State should take to cease the wrongful act, if it is continuing, and the form of reparation [Cassese 2005, 302; Elagab 1986, 63].[10] If the responsible State does not cease the wrongful act or the dispute does not become pending before a court or tribunal which has the authority to make decisions binding on the parties (Article 52 (3) ARSIWA), and the injured State ultimately decides to resort to countermeasures, before taking any such steps, it must first notify the responsible State of such a decision and offer to negotiate with that State (Article 52 (1) ARSIWA). Thirdly, an injured State may take countermeasures

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[7] See International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, p. 128, par. 1 [hereinafter: DARSIWA].

[8] International Law Commission, Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 2001, vol. II (Part Two) [hereinafter: ARSIWA].

[9] See also Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), Judgment of 5 December 2011, I.C.J. Reports 2011, par. 164; Gabčikovo-Nagymaros Project (Hungary v. Slovakia), Judgment of 25 September 1997, I.C.J. Reports 1997, par. 83 [hereinafter: Gabčikovo-Nagymaros Project judgment].

[10] See also Article 43 ARSIWA; Gabčikovo-Nagymaros Project judgment, par. 84.

only against a State which is responsible for an internationally wrongful act [Ruys 2016, 34]. Fourthly, the aim of countermeasures may only be to induce the responsible State to comply with its obligations (Article 49 (1) ARSIWA; Gabčikovo-Nagymaros Project judgment, par. 87). Fifthly, countermeasures should be limited to "the non-performance for the time being of international obligations of the State taking the measures towards the responsible State" (Article 49(2) ARSIWA). That, in turn, means that countermeasures must be reversible in nature [ibid., 34].[11] Sixthly, countermeasures must be proportional "to the injury suffered, taking into account the gravity of the internationally wrongful act" and violated rights (Article 51 ARSIWA; Gabčikovo-Nagymaros Project judgment, par. 85-87). Finally, an injured State is obliged to terminate countermeasures as soon as the responsible State complies with its obligations in relation to the internationally wrongful act [ibid., 34; Gilas 2007, 23-24].[12]

However, this does not mean that a State may undertake any measures it wishes as long as it complies with these procedural requirements. Countermeasures cannot violate the injured State's duties stemming from the prohibition of the threat and use of force, fundamental human rights, *jus cogens* norms, as well as obligations of a humanitarian character prohibiting reprisals (Article 50(1) ARSIWA). Moreover, a State taking countermeasures is not relieved from fulfilling its obligations binding it "under any dispute settlement procedure applicable between it and the responsible State," as well as the duty "to respect the inviolability of diplomatic or consular agents, premises, archives and documents" (Article 50 (2) ARSIWA).

It is difficult to create a complete and comprehensive catalogue of measures which may be labelled as countermeasures. Such a qualification depends on the specific rights and obligations binding every State (also stemming from the bilateral treaties each State concludes), and needs to be assessed on a case-by-case basis. There is broad agreement that countermeasures may include different measures of, e.g., economic character (DARSIWA, p. 130, par. 6).

1.2. Retorsions

Retorsions are legal but unfriendly measures taken in reply to an unfriendly or illegal act[13]. In comparison to countermeasures, the regulation of retorsions under international law is far more controversial. In fact, it is submitted that "retorsions are, by definition, lawful, and hence unregulated acts that fall outside the scope of international law" [Hofer 2020, 414-15] or that

[11] See also Article 49(3) ARSIWA.

[12] See also Article 53 ARSIWA.

[13] See e.g. Cassese 2005, 310; Schachter 1982, 169; Zoller 1984, 5; Malanczuk 1985, 300-301; Ruys 2016, 24; Siciliano. 1990, 7-8; Villagrán Kramer 1997, 1771-772; Giegerich 2020, par. 4; Damrosch 1997, 54; Shaw 2008, 1128-129; Czapliński and Wyrozumska 2014, 836.

there is nothing like a "law of retorsions" under international law [Partsch 1986, 336]. Such claims may stem from the fact that retorsions "fall within the discretionary power of States" [ibid.]. Contrary to countermeasures, they can be taken "at any time and without any justification on the part of the state resorting to it" [Tzanakopoulos 2015, 627], and "need not be temporary and terminable" [Giegerich 2020, par. 8]. Retorsions do not have to be aimed at inducing the responsible State to comply with its obligations, but may also "have a punitive element, and retribution or deterrence" [ibid.].

As in the case of countermeasures, the catalogue of measures that may be qualified as retorsions is very broad. The most frequently discussed examples of retorsions include, but are not limited to, protest; measures of diplomatic character (e.g. summoning the ambassador, declaring diplomats or consular agents as *persona non grata*; downgrading diplomatic intercourse to the technical level; recalling the ambassador for consultations; breaking diplomatic relations) [ibid., par. 10; Białocerkiewicz 2007, 383]; measures of economic character ("economic embargoes outside the field of treaty obligations, non-admission of foreign vessels in national ports, termination of development aid, reduction of imports of certain goods") [Partsch 1986, 336]; or refusal to recognise certain situation [Giegerich 2020, par. 10].

In summary, States have several measures at their disposal which they may use to enforce international law outside international organisations. The nature of these measures may be economic, political, and diplomatic, among many other options. States are allowed to use these measures as long as they fall under the category of retorsions or countermeasures.

2. UNILATERAL MEASURES IMPOSED BY THIRD STATES IN THE CASE OF HUMAN RIGHTS VIOLATIONS

2.1. Third-party countermeasures

The legality of countermeasures adopted by third States in reaction to human rights violations committed by a State against its own nationals is a controversial and complex issue. It requires analysis of multiple factors connected both with the elements of countermeasures and general issues related to the enforcement of international law.

The possibility of the adoption of countermeasures in cases under review was briefly addressed but not decisively resolved by the ILC as a question relating to "measures taken by States other than an injured State" in Article 54 ARSIWA. This provision states as follows: "This chapter does not prejudice the right of any State, entitled under article 48, paragrap. 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured

State or of the beneficiaries of the obligation breached." According to Article 48(1) ARSIWA, referred to in Article 54, "[a]ny State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragrap. 2 if: (a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or (b) the obligation breached is owed to the international community as a whole."

Article 48(1)(b) is of special interest for the current study, as this provision was intended to give effect to the finding made by the International Court of Justice (ICJ) in the case concerning Barcelona Traction, Light and Power Company, Limited,[14] where the Court drew "an essential distinction" between obligations owed to particular States and those owed "towards the international community as a whole,"[15] meaning *erga omnes* obligations.

Taking all points into account, under ARSIWA, to address human rights violations committed by the third State against its nationals, a State could adopt countermeasures only if the third State violated *erga omnes* obligations, and only to "ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached." Theoretically, allowing the adoption of third-party countermeasures only in cases of violation of *erga omnes* obligations limits the possible scope of cases when such measures could be used, when compared to the fact that, in general, a directly injured State can take countermeasures in reaction to any internationally wrongful act committed to its detriment. On the other hand, however, there are disputes about both the legal character of "*erga omnes* obligations" [Kammerhofer 2024, par. 1; Tams 2005, 99-116], as well as the list of such duties. Probably the most often mentioned examples of *erga omnes* obligations are those indicated by the ICJ in the Barcelona Traction case: prohibition of aggression, prohibition of genocide, and "principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination."[16] However, there are also proposals of extending this list to all human rights, the right to development, environmental law [Tams 2005, 119; Ragazzi 2000, 135-63], the right to self-determination,[17] or more generally "rules of humanitarian law applicable in armed conflict […] fundamental to the respect of the human person and 'elementary considerations of humanity'."[18] Thus, ultimately, one could argue for the legality of third-party countermeasures in a quite broad range of situations.

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[14] Hereinafter: Barcelona Traction.

[15] Barcelona Traction, Light and Power Company, Limited, Judgment of 5 February 1970, I.C.J. Reports 1970, par. 33.

[16] Ibid., par. 34.

[17] East Timor (Portugal v. Australia), Judgment of 30 June 1995, I.C.J. Reports 1995, par. 29.

[18] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, par. 157.

The ILC itself was well aware of the vagueness of these conditions of third-party countermeasures, and in the commentary to Article 54 ARSIWA, the Commission observed that "[t]he current state of international law on countermeasures taken in the general or collective interest is uncertain" (DARSIWA, p. 139, par. 6). To that end, Article 54 "includes a saving clause which reserves the position and leaves the resolution of the matter to the further development of international law" (ibid.). That means that Article 54 ARSIWA should not be treated as a declaration of the current state of international law, but rather a preview of the intended future development of international legal norms.

This uncertainty around the current state of international law is also visible in discussions of third-party countermeasures in the doctrine of law. Supporters of the legality of third-party countermeasures first claim, in connection with the ILC remarks, that if an *erga omnes* obligation is violated, the entire community is 'injured' by such a violation. In other words, "all States have a legal interest in the observance of some fundamental norms of international law" [Schachter 1982, 182-83] and should be allowed to adopt countermeasures in such a case. Secondly, "third-party countermeasures would contribute to strengthening the international rule of law, inasmuch as it would increase the cost of non-compliance with international law" [Ruys 2016, 47]. This refers especially to cases when there is no directly injured State (as in the cases under review here – when a State is committing widespread human rights violations against its own population), or where the State injured by the breach is not in a position to engage in countermeasures *vis-à-vis* a (more powerful) offending State. Thirdly, third-party countermeasures "constitute the decentralized forms of protection of a structurally collective interest. States are thus acting as organs of the international community, entrusted with the exercise of a function of public character" [Cannizzaro 2001, 914] which is even more important given the lack of any "developed institutional machinery capable of ascertaining and repressing […] offences to collective values" [ibid., 913] as mentioned earlier. Last but not least, Article 51 of the UN Charter allows for collective self-defence, and therefore supports forcible measures adopted by States not directly affected by an armed attack. If international law allows third-party action against one type of wrongful act, why shouldn't it allow third-party countermeasures in case of any other violation of international law [Akehurst 1970, 4]?

These claims should be juxtaposed with the following counterarguments: with regard to the first of the raised points, it was earlier noted that the notion of obligations *erga omnes* is vague and legally undefined, which could unduly extend the scope of cases where third-party countermeasures are adopted. Moreover, "the collective nature of the interests and values concerned

does not seem entirely consistent with the aim of individual response to 'ordinary' breaches, conceived as means of protection of rights and interests of the target state only" [Cannizzaro 2001, 913]. Opponents of third-party countermeasures also claim that leaving "the enforcement of collective interests at the mercy of individual States […], acting based on their own understanding of international legality, is a recipe for chaos and subjectivism, and […] escalation of disputes" [Ruys 2016, 47]. Notably, such a position, that third-party countermeasures reinforce existing global power asymmetries, is expressed by scholars representing the Global South or the Third World Approaches to International Law [Tzouvala 2023; Bâli 2023]. They claim that, due to these power asymmetries, some States are more vulnerable to third-party countermeasures, while the collateral costs of such measures remain relatively low for States imposing them. Additionally, they argue that target States are "unable to generate any leverage through the imposition of reciprocal sanctions against the powerful" [Bâli 2023].

Last but not least, it should also be observed that third-party countermeasures would be legal only if a customary norm was formed allowing for them. However, it is very difficult and complex to ascertain the existence of practice and *opinio juris* of States in this regard. The most serious concern seems to be the qualification of certain measures as countermeasures, since third-party countermeasures, just like the countermeasures adopted by a directly-injured State, must also fulfil the conditions of their legality discussed above. For instance, in 1985, when the government of South Africa declared a state of emergency in large parts of the country, the US Congress adopted the Comprehensive Anti-Apartheid Act, which immediately suspended the landing rights of South African Airlines on United States territory. Such a measure was contrary to the terms of the 1947 United States of America and the Union of South Africa Agreement relating to air services between their respective territories (DARSIWA, p. 138). The USA claimed that they implemented this measure "to encourage that [South African] government to adopt reforms leading to the establishment of a non-racial democracy."[19] *Prima facie*, this case fulfils the conditions of countermeasures, as the USA violated international law in reaction to the breach of fundamental human rights by South Africa. However, there is no information available regarding whether the USA met any of the conditions of countermeasures enlisted above, e.g. whether they notified South Africa about the decision to suspend landing rights of South African Airlines on United States territory despite the binding agreement and offered to negotiate.[20] Thus, it is impossible

[19] Department of Transportation, *Termination of Air Carrier Operations between the United States and South Africa*, "International Legal Materials" 26, no. 1, p. 105.

[20] The case described here concerns a situation that occurred in 1985, while ARSIWA was adopted by the ILC in 2001. However, similar conditions of legality were also formed

to determine with certainty whether the suspension of landing rights amounted to countermeasures or whether it was simply an illegal act. Moreover, scholars have also raised a number of other issues which hamper the identification of a customary norm allowing for third-party countermeasures, such as the fact that States and international organisations generally refrain from explicitly qualifying their actions as "retorsions", "countermeasures by injured States" or "third-party countermeasures" [Ruys 2016, 46-47].

Taking all the claims into account, it seems that the arguments against the legality of third-party countermeasures are more convincing. If a customary norm was not formed, there is indeed no legal ground to apply third-party countermeasures. Violation of *erga omnes* obligations is too vague a condition for the use of third-party countermeasures, given especially the concerns about the legal character and examples of such duties. It is also questionable how the third State could fulfil the general requirements set out for countermeasures, including especially that of proportionality. Finally, the application of third-party countermeasures could run against the international rule of law and be a source of abuse by more powerful States.

2.2. Third-party retorsions

It was stated above that retorsions amount to unfriendly, but legal acts. Needless to say, there is no legal definition of what "unfriendly act" means. In the doctrine of law, "unfriendly acts" are defined as "disadvantageous to another State" [Weber 1982, 252], "unwelcome" [Crawford 2013, 677] or those which inflict "disregard or discourtesy on another subject of international law without violating any legal norm" [Richter 2013, par. 1]. In general, it may be stated that the adjective "unfriendly" can refer to very different attitudes: from being unkind, through lack of sympathy, ending up with hostile conduct. Even more important from the perspective of this study is that labelling an act as unfriendly is very subjective and always "depends on the perception and excitability of the target State" [ibid.]. Thus, a State may regard as unfriendly not only acts which directly affect it, but also any violation of international law, committed to the detriment of any State or even non-state actor (like some groups of nationals of one State), which touches, e.g., the values most appreciated by the reacting State. If a democratic State is a zealous advocate of human rights, it can perceive gross violations of human rights committed in another State as disadvantageous to the cause it supports and show its dislike through the adoption of retorsions.

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in relation to reprisals, which term preceded the use of the notion of 'countermeasures' [Schachter 1982, 170; Tomuschat 1973, 186-87; Wengler 1977, 21]. Moreover, it is claimed that provisions of ARSIWA largely constitute part of customary international law [Hofbauer and Janig 2022, 320].

These observations are consistent with the views presented by scholars who explicitly recognise that third States can undertake retorsions against other States' acts, even if they are not directly injured by them [Schachter 1982, 183; Wengler 1977, 19-20; Akehurst 1970, 14-15]. However, one should differentiate between two situations: retorsions can be a reaction to both conduct which is merely unfriendly, but in line with international law, as well as unfriendly and illegal conduct. Theoretically, every State can always take actions such as declaring a diplomatic representative *persona non grata* or cancelling a state visit, without providing any reasons for such conduct. However, it would be very hard (if not impossible) to find an example when, in reaction to a merely unfriendly act adopted by one State against another, third States have employed retorsions in solidarity with the latter against the former. In practice, States show much more restraint and in the overwhelming majority of cases adopt retorsions only when legal norms were violated, especially those such as the prohibition of aggression or human rights. Some authors even claim that third-party retorsions may be undertaken solely in cases of violation of international law, or more specifically, only in cases of violation of *erga omnes* obligations [Schachter 1982, 183; Karl 1986, 321-22]. Since the verification of the second part of this view may be hampered by the unclear legal character of *erga omnes* obligations, one may conclude by saying that when adopting third-party retorsions, States generally exercise self-restraint and rather react only to "violations that are well substantiated and important" [Schachter 1982, 183], including when basic human rights and fundamental international legal norms were breached.[21]

A clear case of the application of third-party retorsions in reaction to the violation of human rights occurred after the 2012 massacre involving governmental forces in the Syrian town of Houla, which left more than 100 people dead (nearly half of them children). Following a wave of international condemnation, a number of States (including the United States, Australia, Great Britain, France, Germany, Italy, Spain, Bulgaria and Canada) declared high-ranking Syrian diplomatic representatives *personae non gratae* and expelled them from their respective territories.[22] Another example may be the response to the assassination of journalist Jamal Khashoggi in the Saudi consulate in Istanbul in 2018. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions established that the murder of Khashoggi

[21] In this respect, see Global Magnitsky Human Rights Accountability Act, https://ofac.treasury.gov/media/5721/download?inline [accessed: 29.10.2025] and similar acts adopted by other States, including the USA and Canada. However, the exact legal character of the measures envisaged in these acts depends on the specific legal obligations that States adopting this legislation have toward foreign States. Thus, in some cases, the adopted measures may amount to a violation of international law.

[22] *U.S., allies expel Syrian diplomats after massacre*, https://edition.cnn.com/2012/05/29/world/meast/syria-unrest/index.html?hpt=hp_t1 [accessed: 15.05.2025].

amounted to a violation of international human rights binding on Saudi Arabia (including the right to life, possibly also the prohibition of torture).[23] In reaction to Khashoggi's murder, the UK, France, and the Netherlands withdrew from participation in a major economic forum in Saudi Arabia, while Germany and Denmark halted arms sales to the State.[24]

Summing up, third States are allowed to adopt retorsions in cases of violation of human rights. Such a finding derives from the fact that retorsions consist of legal measures which are a reply to an unfriendly act. Thus, States can determine that a violation of human rights in a third State also amounts to such an unfriendly act and adopt retorsions.

CONCLUSIONS

One of the major shortcomings of the current state of international legal regulations is the lack of a universal mechanism allowing for the adoption of enforcement measures against States violating the human rights of their own citizens. For this reason, the present paper aimed to find out whether, given this situation, States can unilaterally address such human rights violations by adopting countermeasures or retorsions. The analysis showed that third-party countermeasures are not currently allowed under international law. However, one should note some recent developments, such as the proposal to include the topic "Identification and Legal Consequences of Obligations Erga Omnes in International Law" in the long-term programme of the ILC's work. Under this topic, ILC member Masahiko Asada proposed that the Commission also consider the question of third-party countermeasures as a consequence of *erga omnes* obligations.[25] Thus, the ILC could contribute in the future to a gradual crystallisation of the limits and conditions of third-party countermeasures. If to add to this the broad range of measures adopted by third States against Russia after the escalation of the armed conflict in Ukraine in February 2022, despite "the persistent ambiguity in sanctions

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[23] Human Rights Council, Annexe to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi, A/HRC/41/CRP.1, par. 222, 232.

[24] *UK and US pull out of Saudi event over alleged murder of Jamal Khashoggi*, https://www.theguardian.com/world/2018/oct/18/liam-fox-pulls-out-of-saudi-event-over-alleged-of-jamal-khashoggi; *Dänemark stoppt Waffenlieferungen an Saudi-Arabien wegen Fall Khashoggi*, https://web.archive.org/web/20181122143651/https://www.zeit.de/news/2018-11/22/daenemark-stoppt-waffenlieferungen-an-saudi-arabien-wegen-fall-khashoggi-20181122-doc-1b10bj [accessed: 15.05.2025].

[25] International Law Commission, Report of the International Law Commission Seventy-sixth session (28 April–30 May 2025), Annexe III, p. 182, par. 50.

practice and the absence of clear *opinio juris*" [Hofer 2025, 290], ultimately, all these developments may lead to the formation of a customary norm.

Above all, States can use third-party retorsions to react to human rights violations. To this end, it is sufficient that a State recognises flagrant breaches of human rights committed by a third State against its own citizens as an unfriendly act against the latter's interests and replies with unfriendly but legal measures of its own.

REFERENCES

Akehurst, Michael. 1970. "Reprisals by Third States." *British Yearbook of International Law* 44:1-18.

Bâli, Aslı Ü. 2023. "Weapons Against the Weak." *The Law and Political Economy Project*, https://lpeproject.org/blog/weapons-against-the-weak/ [accessed: 29.10.2025].

Białocerkiewicz, Jan. 2007. *Prawo międzynarodowe publiczne*. Toruń: TNOiK.

Cannizzaro, Enzo. 2001. "The Role of Proportionality in the Law of International Countermeasures." *European Journal of International Law* 12 no. 5:889-916.

Cassese, Antonio. 2005. *International Law*. 2nd edition. Oxford: Oxford University Press.

Crawford, James. 2013. *State Responsibility: The General Part*. Cambridge: Cambridge University Press.

Czapliński, Władysław, and Anna Wyrozumska. 2014. *Prawo międzynarodowe publiczne: Zagadnienia systemowe*. Warszawa: C.H. Beck.

Damrosch, Lori F. 1997. "Enforcing International Law Through Non-forcible Measures." *Collected Courses of the Hague Academy of International Law* 269:9-250.

Elagab, Omer Y. 1986. "The Legality of Non-Forcible Counter-Measures in International Law." Thesis submitted to the Board of the Faculty of Law, University of Oxford. https://ora.ox.ac.uk/objects/uuid:bbb45168-8338-447a-bf4a-fe4e47834e3e/files/m5be14f40d271e5376e77f4e7314fe1e1 [accessed: 30.10.2025].

Giegerich, Thomas. 2020. "Retorsion." In *Max Planck Encyclopedias of International Law*. http://opil.ouplaw.com [accessed: 30.10.2025].

Gilas, Janusz. 2007. "Czyn w prawie międzynarodowym." *Kwartalnik Prawa Publicznego*, nr 1-2:7-26.

Hofbauer, Jane A., and Philipp Janig. 2022. "State Responsibility." In *Elgar Encyclopedia of Human Rights*, edited by Christina Binder, Manfred Nowak, Jane A. Hofbauer, et al., 320-27. Cheltenham, Northampton, MA: Edward Elgar Publishing.

Hofer, Alexandra. 2020. "The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?" *Nordic Journal of International Law* 89:399-421.

Hofer, Alexandra. 2025. "Third-Party Countermeasures: Making Custom Out of Ambiguous Practice?" *International and Comparative Law Quarterly* 74:287-317.

Kammerhofer, Jörg. 2024. "Obligations erga omnes." In *Max Planck Encyclopedias of International Law*. http://opil.ouplaw.com [accessed: 30.10.2025].

Karl, Wolfram. "Protest." In *Encyclopedia of Public International Law*, vol. 9, edited by Rudolf Bernhardt, 320-22. Amsterdam/New York/Oxford/Tokyo: North-Holland.

Krisch, Nico. 2012. "Article 39." In *The Charter of the United Nations: A Commentary*, edited by Nikolai Wessendorf, Bruno Simma, Daniel-Erasmus Khan, et al., 1238-271. Oxford: Oxford University Press.

Malanczuk, Peter. 1985. "Zur Repressalle im Entwurf der International Law Commission zur Staatenverantwortlichkeit." *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 45:293-323.

Partsch, Karl J. 1986. "Retorsion" In *Encyclopedia of Public International Law*, vol. 9, edited by Rudolf Bernhardt, 335-37. Amsterdam/New York/Oxford/Tokyo: North-Holland.

Ragazzi, Maurizio. 2000. *The Concept of International Obligations Erga Omnes*. Oxford: Oxford University Press.

Richter, Dagmar. 2013. "Unfriendly Act." In *Max Planck Encyclopedias of International Law*. http://opil.ouplaw.com [accessed: 30.10.2025].

Ruys, Tom. 2016. "Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework." In *Research Handbook on UN Sanctions and International Law*, edited by Larissa van den Herik, 19-51. Cheltenham, Northampton, MA: Edward Elgar Publishing.

Schachter, Oscar. 1982. "International Law in Theory And Practice: General Course in Public International Law." *Collected Courses of the Hague Academy of International Law* 178:3-395.

Shaw, Malcolm N. 2008. *International Law*. 6th edition. Cambridge: Cambridge University Press.

Sicilianos, Linos-Alexandre. 1990. *Les réactions décentralisées à l'illicite: Des contre-mesures à la légitime défense*. Paris: LGDJ.

Tams, Christian J. 2005. *Enforcing Obligations Erga Omnes in International Law*. Cambridge: Cambridge University Press.

Tomuschat, Christian. 1973. "Repressalie und Retorsion. Zu einigen Aspekten ihrer innerstaatlichen Durchführung." *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 33:179-222.

Tzanakopoulos, Antonios. 2015. "The Right to Be Free from Economic Coercion." *Cambridge Journal of International and Comparative Law* 4, no. 3:616-633.

Tzouvala, Ntina. 2023. "Successful Failures: Economic Sanctions, Humanitarianism, and the Undoing of Post-Colonial Sovereignty." *The Law and Political Economy Project*, https://lpeproject.org/blog/successful-failures-economic-sanctions-humanitarianism-sovereignty/ [accessed 29.10.2025].

Villagrán Kramer, Francisco. 1997. "Retorsión y represalias por violaciones a los derechos humanos." In *Amicorum Liber: Persona Humana y Derecho Internacional*, edited by Héctor Gros Espiell, 1765-1799. Bruxelles: Bruyant.

Weber, Hermann. 1982. "Unfriendly Act." In *Encyclopedia of Public International Law*, vol. 4, edited by Rudolf Bernhardt, 252-253. Amsterdam/New York/Oxford/Tokyo: North-Holland.

Wengler, Wilhelm. 1977. "Public International Law: Paradoxes of a Legal Order." *Collected Courses of the Hague Academy of International Law* 158:9-85.

Zoller, Elisabeth, 1984. *Peacetime Unilateral Remedies: An Analysis of Countermeasures*. New York: Transnational Publishers Inc.