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Introduction

1.1 The Object of the Study

Modern international law has witnessed the emergence of a fledgling multilateral public order based not so much on logic as 'some mixture of hope and experience'.[1] Indeed the general life of the law in the international system (as in the municipal system) is not logic but experience – even if, in this particular case, the amount of that experience is limited and mixed with a great deal of hope. The construction of a multilateral public order is based on the hope that law – more precisely, the law of State responsibility – would come to play an increasingly important role in the settlement of collective problems.[2] Experience nonetheless shows that tools of communitarian law enforcement are limited and highly contested. Moreover, even insofar as they do exist, they are rarely used. So has this multilateral construction been based merely on normative means?[3] Might Shakespeare's King Claudius have exclaimed, 'My words fly up, my thoughts remain below: Words without thoughts never to heaven go'?[4] What – if anything – can States do 'between war and words'[5] in defence of multilateral public order when confronted with massive human rights violations and other international crises?

Judicial or quasi-judicial means of settlement – even when available under human rights treaties – are rarely (if ever) used. The inter-State complaint procedure under Article 41 ICCPR has never been used and

[1] Crawford (2012), 591–593 (with further references).
[2] Compare UN Doc. A/C.6/56/SR.14, 5, para. 28 (Greece).
[3] See YbILC (2000), vol. I, 311, para. 78 (Mr. Brownlie); ILC Report (2000), UN Doc. A/55/10, 60, para. 365 ('developments in the international legal order depended on progress in the international community and not just in the development of norms'). Compare Crawford (2013a), 362 (noting that the Roman scheme of society and law famously expressed in Cicero's maxim (*Ubi societas, ibi jus*) may have been reversed – that is, 'international law develops more rapidly than international society does').
[4] Shakespeare, *Hamlet*, Act 3, Scene 3.
[5] UN Doc. A/59/2005, Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, 30, para. 109.

remains a dead letter: the enforcement mechanism in the ICCPR appears to be in serious need of CPR.[6] What is more, even if somehow resuscitated, it is no Sleeping Beauty: the 'sad reality' is that enforcement mechanisms in many human rights treaties are optional, cumbersome and ineffective.[7] As for the ICJ, States have rarely knocked on the door of the Court to enforce a communitarian norm, and even when they have done so, the Court has been reluctant to open it. Indeed the ICJ has only once opened its door to a claim involving the enforcement of a communitarian norm.[8] The Grotian notion of humanitarian intervention – whatever its pre-Charter status – is widely regarded today as unlawful.[9] The notion of the responsibility to protect is little more than a rhetorical device.[10] The enforcement mechanism in Chapter VII UNC is highly contingent: the UN Security Council has considerable (albeit not unlimited)[11] discretion to respond to breaches of communitarian norms and – given the limitations of its institutional design – it is (too) often paralyzed by political disagreements.[12] Thus it has been observed that 'leaving it up to the "organized international community", i.e. the United Nations, to react to breaches of obligations *erga omnes* border[s]

[6] See 'Human Rights Bodies – Complaints Procedures', Office of the High Commissioner for Human Rights, www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#interstate. Compare *Obligation to Prosecute or Extradite*, ICJ Rep. (2012), 422 at 484, para. 20 (Sep. Op. Judge Skotnikov).

[7] Meron (2003), 298; Tams (2011), 383–384. Also: 1989 IDI Santiago de Compostela Resolution (Art. 7).

[8] See *Obligation to Prosecute or Extradite*, ICJ Rep. (2012), 422; and further Section 2.1.

[9] For limited support see UN Doc. S/PV.3988 (23 March 1999), 12 (United Kingdom); *Legality of Use of Force (Yugoslavia v. Belgium)*, Provisional Measures, ICJ Rep. (1999), 124, Verbatim Record, 10 May 1999, CR.1999/15, 15–17 (Belgium); 'Chemical weapon use by Syrian regime: UK government legal position' (29 Aug. 2013), www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position; and already Grotius (1646), Book II, Chapters XX, §40, XXV, §8. For widespread opposition see UN Docs. S/PV.3988 (24 March 1999), 12–13 (China), 13 (Russia), 15 (Belarus), 15–16 (India); S/PV.3989 (26 March 1999), 5 (Russia), 9 (China), 16 (India); Declaration on the Occasion of the Twenty-Third Annual Ministerial Meeting of the Group of 77 (New York, 24 Sept. 1999), para. 69, www.g77.org/doc/Decl1999.html. Also: *Nicaragua* case, ICJ Rep. (1986), 14 at 134–135, para. 268. Further: Brownlie (1963), 338–342; Chesterman (2001); Lowe and Tzanakopoulos (2011); Crawford (2012), 752–754 (all with many further references).

[10] See GA Res. 60/1 (16 Sept. 2005) (2005 World Summit Outcome), paras. 138–139; SC Res. 1674 (28 Apr. 2006); SC Res. 1373 (17 March 2011). Further: Stahn (2007), 99; Crawford (2013b), 355–357; Zifcak (2014), 509.

[11] See e.g. Frowein and Krisch (2002), 719–720 MN 4–5 (with further references).

[12] See e.g. UN Doc. A/59/565 (2 Dec. 2004), *A More Secure World: Our Shared Responsibility*, Report of the High-Level Panel on Threats, Challenges and Change, 56–57, paras. 197, 202.

on cynicism'.[13] Instead it seems that States frequently react by way of third-party countermeasures.

The third-party countermeasures taken by Western States against Russia in response to its military intervention in Ukraine provide a recent example.[14] The humanitarian calamity in Syria provides another apt reminder: the Security Council has repeatedly vetoed draft resolutions authorizing the adoption of non-military sanctions against Syria for the many atrocities President Al-Assad's regime stands accused.[15] This has not prevented the EU, the League of Arab States and many others from taking third-party countermeasures against Syria. In January 2012, France criticized the 'scandalous silence' of the Security Council. It explained:

> Of course, we have continued our efforts despite the Council's silence. The European Union has 11 times increased the sanctions on the [Syrian] regime and its leaders . . . However, the actions of the European Union or the Arab League, no matter how resolute, cannot replace action by the Council.[16]

In the last decade, the Security Council has also vetoed the adoption of non-military sanctions against Burma and Zimbabwe for the continuing serious human rights abuses taking place there.[17] In all these cases (as in many others), States have responded in a multitude of ways, including by way of third-party countermeasures.

The following questions arise: does international law allow individual States to act as self-appointed guardians of communitarian norms by way of third-party countermeasures? And if so, what are the safeguards against abuse? The object of this study is to answer these questions. The issues raised concern one of the great, unresolved questions of contemporary international law.[18]

1.2 Sources of Controversy

The terminology of countermeasures is relatively recent, but the concept itself (under the traditional term 'reprisals', to which I will return below)

[13] YbILC (2000), vol. I, 305, para. 31 (Mr. Simma). Similarly: YbILC (2001), vol. I, 41, para. 49 (Mr. Pellet).
[14] See further Section 4.2.21. [15] See further Section 4.2.20.
[16] UN Doc. S/PV.6710 (31 Jan. 2012), 15 (France).
[17] See further Sections 4.2.16 and 4.2.17.
[18] Compare Tams (2011), 390 ('one of contemporary international law's great debates'). Also: Alland (2002), 1223 ('one of the more crucial questions in the development of public international law').

refers to a form of unilateral measure of self-help which has long been recognized as a feature of a decentralized international system in which the judicial settlement of disputes is still not guaranteed and injured States may take otherwise unlawful action against the responsible State in order to seek enforcement of their rights.[19] Still, as a unilateral self-help measure which entitles the State to act as judge and sheriff in its own cause, countermeasures are ripe with the potential for abuse, and this potential is exacerbated by the factual inequalities between States.[20]

The first modern reprisals date back to Ancient Greece. The Megarian Decree of 433/32 BC entailed the imposition of a trade embargo by the Athenian Empire and its leader Pericles on Megara, an ally of Sparta, in response to a trumped-up charge of illegality; it appears the real reason was to pressure Megara to abandon its military alliance with Sparta. The trade embargo barred the Megarians from the ports of the Athenian Empire and the market of Athens, resulting in the economic strangulation of Megara and starvation among its population. It is widely recognized that the Megarian Decree was a significant factor in triggering the Second Peloponnesian War (431–404 BC).[21] The distant echoes of Thucydides' realist account of the Melian Dialogue of 416 BC relating to the lessons of that war – 'the strong do what they can and the weak suffer what they must'[22] – still reverberate. Thus it is not surprising that, in more recent times, the topic of countermeasures – and especially its modern congener, third-party countermeasures – is extremely

[19] See 1934 IDI Paris Resolution (preamble); ARSIWA Commentary, Introductory Commentary to Chapter II of Part Three, §1; Art. 52, §2. This basic rationale for countermeasures can be traced back to at least da Legnano (1360), 307, who (following Bartolus) explained that reprisals were necessary as a 'subsidiary remedy' in the event of a denial of justice. Further: Grewe (2000), 116–118; Grabher O'Brien (2002), 25.

[20] See ARSIWA Commentary, Art. 22, §2; Introductory Commentary to Chapter II of Part Three, §2 (with further references); Topical Summary of Government Comments in the Sixth Committee, UN Doc. A/CN.4/513 (2000), 29, paras. 149–150. Also: Dickinson (1920), 269–274; Simpson (2004), 45–47, 57.

[21] The Megarian Decree was a blunt and ineffective instrument that did not achieve its aims; the war that ensued was a complete disaster for Athens. Further: Aristophanes, *The Acharnians* (425 BC), ln. 530–543 (ridiculing Pericles for having 'enacted laws, which sounded like drinking songs, "That the Megarians must leave our land, our market, our sea and our continent"'); Kagan (1969), 251–272; Hufbauer, Schott and Elliot (1990), 4–5; Lowe and Tzanakopoulos (2013), paras. 4–6.

[22] Thucydides, *The History of the Peloponnesian War* (trans. R. Crawley and R.C. Feetham, Avon, CT: Cardavon Press, 1974), Book V, 294. The dialogue did not have a happy ending: the men of Melos were executed, and the women and children sold into slavery. See also Crawford (2013b), 27–28 (discussing the realist challenge to international law ever since the Melian Dialogue).

controversial: it is inextricably linked to an ignominious past indelibly marked by empire, power politics and gunboat diplomacy.[23]

The topic of reprisals was discussed in many classical texts based on an underlying (if somewhat crude) conception of legal responsibility; however, discussions about basic principles of State responsibility in any recognizable modern form only emerged in the literature from the mid-nineteenth century onwards.[24] These writings on State responsibility were mostly concerned with the practical question of their time; namely, the treatment of aliens within the territory of the host State.[25] In addition to the technically distinct category of a formal state of war, various modes of redress by way of forcible self-help (known as 'measures short of war')[26] were subsumed – without a clear distinction between them – under the broad rubric of 'intervention' covering such notions as pacific blockades, hostile embargoes and reprisals.[27] The nineteenth century was 'the classic epoch of reprisals',[28] which often took the form of gunboat diplomacy.[29]

The infamous practice of gunboat diplomacy often involved the use of armed reprisals by the Great European Powers purportedly seeking to enforce the law on the treatment of aliens by way of diplomatic protection.[30] The so-called Don Pacifico affair of 1850 – in which the

[23] See Colbert (1948), 60–103; Brownlie (1963), 28–37; Grewe (2000), 525–530 (for a review of State practice during the nineteenth and early twentieth century). Also: Jennings (1961), 157–159; Crawford (2013a), 684.

[24] See Brownlie (1983), 1–9. Generally: Crawford (2013a), 3–44 (with many further references).

[25] Brownlie (1983), 8–9. This focus on the treatment of aliens and their property remained in the ILC's early work on the law of State responsibility until the Ago revolution of the 1960s: see further Section 3.1.

[26] See e.g. Hall (1890), 361; Westlake (1913), Pt. II, 1; Brownlie (1963), 45–47. Also: Oppenheim (1905), Vol. II, 29.

[27] See generally Brownlie (1963), 26–40, 44–47, 50, 219–225, 344 (at ibid., 47, noting the *ex post facto* and illogical nature of these classifications characterized by a 'hopeless confusion of terminology'). Similarly: Westlake (1913), Pt. II, 6; Parry (1938), 682–683; Jennings (1961), 158. Further: 1887 IDI Heidelberg Resolution; Hall (1890), 361–373; Rivier (1896), Vol. II, 189–199; Hogan (1908); Lawrence (1911), 334–344; Stowell (1921); Fauchille (1926), Pt. III, 685–713; 1934 IDI Paris Resolution (Art. 3); Neff (2005), 215–249; Farrall (2007), 47–52.

[28] de Visscher (1968), 296. Also: Colbert (1948), 60 (n. 1).

[29] See Bradford (2006), 574–575 (on the term 'gunboat diplomacy'). Some twenty pacific blockades were adopted from 1827 to 1927 almost exclusively by the Great European Powers against weaker ones: see Giraud M., 'A Memorandum on Pacific Blockade up to the Time of the Foundation of the League of Nations', LNOJ (July 1927), App. II, 841 (for a complete list of practice). Further: Hogan (1908).

[30] Compare Phillimore (1857), Vol. III, 12 ('It most commonly happens that *Reprisals* are resorted to for the purpose of redressing injuries inflicted upon the right of Individuals')

United Kingdom imposed a naval blockade on Piraeus following Greece's refusal to compensate a British subject for injuries inflicted by a violent mob – provides a notorious example.[31] Many other examples of gunboat diplomacy by powerful Western States during this period, especially against weaker countries in Latin America and East Asia, could also be mentioned.[32] In 1902–1903, a coalition of three European States (Great Britain, Germany and Italy) imposed a naval blockade and bombardment of Venezuelan ports in response to a controversy which arose over certain pecuniary claims of their subjects against Venezuela.[33] The incident prompted the Argentinean Foreign Minister, Luis María Drago, to request the diplomatic support of the United States based on the principle that public debts could not be enforced by military force – known as the Drago Doctrine.[34] A modified version of the doctrine influenced the first (albeit modest) step away from abusive uses of armed reprisals: the 1907 Hague Peace Conference adopted a multilateral treaty (the Drago-Porter Convention) prohibiting the employment of force for the recovery of contract debts unless an attempt to settle the dispute by international arbitration had failed.[35]

The use of force was gradually curtailed during the inter-war period (notably in the Covenant of the League of Nations and the

(emphasis in original); Borchard (1915), 331 (noting 'the all too frequent abuse, by strong States, of the rights of weaker countries' by way of armed reprisals); Hindmarsh (1932), 320 ('Under the guise or pretext of seeking redress for an international delinquency, states have resorted to the use of embargoes, pacific blockades, seizures of property, occupation of territory, bombardments, and intimidation by display or threat of force'); Colbert (1948), 61, 64–68.

[31] See Oppenheim (1905), Vol. II, 36; Colbert (1948), 69–71; Grewe (2000), 526; Paulsson (2005), 15–17. Further: Great Britain-Greece, Convention for the Settlement of Claims (18 July 1850), 104 CTS 159; Phillimore (1857), Vol. III, 29–33; Hogan (1908), 105–114; Ralston (1929), 228. It was doubtful whether Greece had actually committed a wrongful act since Mr. Pacifico had not even sought to exhaust local remedies: see e.g. Phillimore (1857), Vol. III, 29–33; Rivier (1896), Vol. II, 197; Oppenheim (1905), Vol. II, 36; Colbert (1948), 70; Brownlie (1963), 220 (n. 3).

[32] See generally Colbert (1948), 60–103; Brownlie (1963), 28–37; Grewe (2000), 525–530.

[33] The underlying dispute was ultimately settled by arbitration on terms favourable to the blockading powers: see *The Venezuelan Preferential Case (Germany, Great Britain and Italy v. Venezuela)* (1904), RIAA, vol. IX, 99. Further: Basdevant (1904), 362; Jennings (1961), 159; Brownlie (1963), 35–36.

[34] See Drago (1907), 692; Benedek (2007). Further: Hershey (1907), 26.

[35] See Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts (The Hague, adopted 18 Oct. 1907, entry into force 26 Jan. 1910) (Art. 1), 205 CTS 250. Further: Brown (1908), 78; Borchard (1915), 308–332; Benedek (2007).

Kellogg-Briand Pact),[36] but the legal status of armed reprisals in situations other than those contemplated in the Drago-Porter Convention was somewhat unclear.[37] In 1923, the Italian Navy bombarded and occupied Corfu in response to the assassination of Italian officials in Greece by way of reprisals. A Special Commission of Jurists was established by the Council of the League of Nations to determine whether such armed reprisals were consistent with Articles 12 to 15 of the Covenant of the League of Nations. The Commission provided a cryptic answer: armed reprisals 'may or may not be consistent' with the Covenant.[38] A proposal by Sweden to add some clarity on the matter by referring it to the PCIJ for an advisory opinion was unsuccessful.[39] The legal situation has since changed dramatically. In the modern period, the general prohibition of the unilateral use of force embodied in the UN Charter unambiguously excluded recourse to armed reprisals – a point repeatedly reaffirmed in categorical terms.[40] Still, these normative developments have only partially alleviated concerns about the possible role of third-party countermeasures in contemporary international relations.

The situation of colonial days is no longer relevant, and the use of force is generally prohibited; but the light which history shines on the topic is a lantern on the stern that nonetheless continues to 'colour the whole international approach to countermeasures'.[41] This light has illuminated but, at times, also blinded or even obscured the modern approach to countermeasures – especially, third-party countermeasures. This is perhaps not surprising given the passions stirred

[36] Covenant of the League of Nations (entry into force 10 Jan. 1920) (Arts. 10–16), 225 CTS 195; General Treaty for the Renunciation of War as an Instrument of National Policy (entry into force 5 July 1929) (Arts. I-II), 94 LNTS 57.

[37] See e.g. *Naulilaa (Responsibility of Germany for damage caused in the Portuguese colonies in the south of Africa) (Portugal/Germany)* (1928), RIAA, vol. II, 1011 at 1025–1028; Brownlie (1963), 84–92, 222 (with further references); Draft Articles Commentary, Art. 30, §10 (n. 589). Also: Giraud M., 'A Memorandum on Pacific Blockade up to the Time of the Foundation of the League of Nations', LNOJ (July 1927), App. II, 841–845 (with many further references). Compare 1934 IDI Paris Resolution (preamble; Arts. 3–4); de Visscher (1924), 382. For criticism of armed reprisals as a somewhat artificial category of justification, see e.g. Westlake (1913), Pt. II, 18; Brierly (1932), 308–309.

[38] See 'Interpretation of Certain Articles of the Covenant and Other Questions of International Law: Report of the Special Commission of Jurists', 5 LNOJ (Apr. 1924), 523 at 524. Further: Wright (1924), 536; de Visscher (1924), 213, 387; Politis (1924), 5; Strupp (1924), 255; Fauchille (1926), Pt. III, 695–696; Colbert (1948), 81–87; Brownlie (1963), 220–222; Neff (2005), 298–300.

[39] See 5 LNOJ (Apr. 1924), 523 at 525 (Mr. Branting).

[40] See further Section 6.2.1.1.

[41] YbILC (2000), vol. I, 282, para. 46 (Mr. Sreenivasa Rao).

by experience. In the *Barcelona Traction* case, Judge Padilla Nervo summed it up thus:

> The history of the responsibility of States in respect to the treatment of foreign nationals is the history of abuses, illegal interference in the domestic jurisdiction of weaker States, unjust claims, threats and even military aggression under the flag of exercising rights of protection, and the imposing of sanctions in order to oblige a government to make the reparations demanded.[42]

Critics have raised several policy objections against third-party countermeasures. They have notably feared that third-party countermeasures would provide a 'further pretext for power politics in international relations' contrary to the traditional principle that countermeasures can only be taken by States directly injured by an internationally wrongful act.[43] In particular, they have expressed the concern that third-party countermeasures might be used as a pretext for the adoption of unilateral measures such as armed reprisals and other forms of intervention.[44] Thus it is said that legal recognition of third-party countermeasures would add a new and dangerous category of justification that might eventually extend to the use of force – a development which would threaten the collective security system of the UN Charter and provide a superficial legitimacy for the bullying of small States on the claim that human rights or other communitarian norms must be respected.[45]

The modern practice of unilateral humanitarian intervention and implied UN Security Council authorization as alleged justification for the use of force appears to have reinforced these concerns. For example, during the debate in the Sixth Committee, Cameroon, seemingly alarmed by the unilateral action taken by Western States against the FRY during the Kosovo crisis, expressed concern that recognition of third-party countermeasures would create overlapping legal regimes that

[42] *Barcelona Traction*, ICJ Rep. (1970), 3 at 246 (Sep. Op. Judge Padilla Nervo). See also Dugard, First Report, 212; ADP Commentary, Art. 1, §8.

[43] Topical Summary of Government Comments in the Sixth Committee, UN Doc. A/CN.4/513 (2000), 33, para. 175. Further: UN Doc. A/CN.4/515, 69–70 (China).

[44] Topical Summary of Government Comments in the Sixth Committee, UN Doc. A/CN.4/513 (2000), 29, para. 149.

[45] See e.g. YbILC (2001), vol. I, 35, para. 2 (Mr. Brownlie); Koskenniemi (2001), 340; and further Section 3.2.1.3(i). Also: Brownlie (1963), 220.

> could weaken the [UN] as a whole or marginalize the Security Council, particularly in the light of the recent and disturbing tendency of some States to take action, including armed intervention, without the Council's consent.[46]

In February 2013, Russia officially adopted foreign policy guidelines that, in relevant part, state:

> Another risk to world peace and stability is presented by attempts to manage crises through unilateral sanctions and other coercive measures, including armed aggression, outside the framework of the Security Council.[47]

Russia appears to suggest that the adoption of third-party countermeasures outside the framework of the Security Council would even be a 'risk to world peace'. At a minimum, others have objected that the relationship between the Security Council and third-party countermeasures is unclear.[48]

Critics have also expressed the closely related concern that third-party countermeasures – even if limited to non-forcible means of enforcement – might encourage ill-founded or spurious actions based on ulterior motives. Such actions would pose a serious threat to sovereignty by way of coercive interference with the *domaine réservé* of target States contrary to the principle of non-intervention.[49] The said principle is 'one of the most potent and elusive of all international principles',[50] and this is especially so in the controversial debate on third-party countermeasures.

[46] UN Doc. A/C.6/55/SR.24, 11, para. 64 (Cameroon); Topical Summary of Government Comments in the Sixth Committee, UN Doc. A/CN.4/513 (2000), 33, para. 176. See further Section 3.2.1.3(ii).

[47] 'Concept of the Foreign Policy of the Russian Federation' (12 Feb. 2013) (unofficial translation), para. 15, http://archive.mid.ru/ns-osndoc.nsf/osnddeng. In the words of President Putin, 'unilateral sanctions that circumvent the United Nations Charter have almost become the norm': UN Doc. A/70/PV.13 (28 Sept. 2015), 26 (Russia). See also 'The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law' (25 June 2016), para. 6, http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2331698 ('The adoption of unilateral coercive measures by States in addition to measures adopted by the United Nations Security Council can defeat the objects and purposes of measures imposed by the Security Council, and undermine their integrity and effectiveness').

[48] See Topical Summary of Government Comments in the Sixth Committee, UN Doc. A/CN.4/513 (2000), 35, para. 190; Crawford (2013a), 706; and further Section 3.2.1.3(ii).

[49] See above n. 45. For a definition of prohibited intervention see *Nicaragua* case, ICJ Rep. (1986), 14 at 108, 126, paras. 205, 245. Generally: Jennings and Watts (1996), 427–430, §128. Jamnejad and Wood (2009), 345; Ziegler (2012).

[50] Lowe (2007) 104.

In the Sixth Committee, Botswana observed a 'glaring problem': third-party countermeasures were 'open to abuse by powerful States against a weaker State that they might particularly dislike for other reasons'.[51] More specifically, the key implication is seemingly that recognition of third-party countermeasures might facilitate 'the exploitation and distortion of human rights issues as a means of interference in the internal affairs of States'.[52] Target States have regularly protested that the adoption of third-party countermeasures against them – supposedly 'in the name of certain noble doctrines or ideals'[53] – is merely a thinly veiled 'political tool'[54] based on 'trumped-up claims'[55] and 'unavowed objectives'.[56] These problems are compounded by the indeterminacy of communitarian norms (the content of the category of obligations *erga omnes* being far from settled), which invites further abuse of third-party countermeasures.[57] It thus seems that serious concerns about a possible erosion of the basic organizing principles of non-use of force, collective security and non-intervention largely explain the normative pull away from the legitimation of third-party countermeasures as a possible means of enforcement for communitarian norms.

Commentators have warned that a regulation of third-party countermeasures would constitute a '*lex horrenda*'.[58] It has been claimed that 'the stability of the international legal order would be threatened'[59] by legitimizing third-party countermeasures. Crawford has cautioned that empowering States to take third-party countermeasures 'could generate pernicious effects for political stability and undermine the function of international law as a system that regulates interstate relations'.[60] Put differently, in the words of Brownlie, 'in certain political circumstances, the result may be to give the appearance of legitimacy to questionable

[51] UN Doc. A/C.6/55/SR.15, 10, para. 63 (Botswana). Compare Topical Summary of Government Comments in the Sixth Committee, UN Doc. A/CN.4/513 (2000), 27–28, para. 144.
[52] GA Res. 36/103 (9 Dec. 1981), Principle II(l). See also Section 6.1.3.1.
[53] UN Doc. S/PV.3692 (28 Aug. 1996), 6 (Burundi).
[54] UN Docs. A/66/138 (14 July 2011), 11 (Burma); A/HRC/20/G/3 (15 June 2012) (Syria); A/68/211 (22 July 2013), 6 (Syria). See further Sections 4.2.16 and 4.2.20.
[55] UN Doc. S/2012/242 (Belarus). Also: UN Doc. S/2008/199 (Cuba on behalf of the Non-Aligned Movement). See further Section 4.2.18.
[56] UN Docs. S/PV.3692 (28 Aug. 1996), 3–5; S/1996/788, 2 (Burundi). See further Sections 4.2.13; 6.1.3.1; and 6.2.
[57] See Topical Summary of Government Comments in the Sixth Committee, UN Doc. A/CN.4/513 (2000), 26, 33, paras. 137, 175. Further: Sections 3.2.1.3(ii) and 5.2.6.
[58] YbILC (2001) vol. I, 35, para. 2 (Mr. Brownlie). [59] Hutchinson (1988), 202.
[60] Crawford (2012), 584 (and also 589).