

Peacetime Unilateral Remedies: an Analysis of Countermeasures, by Elisabeth Zoller

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PEACETIME UNILATERAL REMEDIES: AN ANALYSIS OF COUNTERMEASURES. By Elisabeth Zoller. Dobbs Ferry, N.Y.: Transnational Publishers, Inc., 1984, 228 pp., \$35.00 (cloth).

This thoroughly researched and well-written volume provides a superb mixture of legal analysis and careful linguistic attention in assessing whether the recent increase in "countermeasures" or "peacetime countermeasures" is a valid development in the contemporary international legal order. In a tightly woven argument, Elisabeth Zoller explores the contemporary application of the doctrine of self-help, paying particular attention to the development of countermeasures as this concept has unfolded in recent international adjudication. Zoller focuses on the *Air Services Award* (U.S. v. France, 1978),¹ and on the International Court of Justice ruling in the U.S.-Iranian *Hostages* case (1980).² At the same time, she focuses on the subtle but important role that state diplomatic and legal arguments play in the process of gaining the acceptance of a phrase (and the actions it describes) into the working lexicon of international affairs. Zoller then poses the dilemma: "Words are not innocent in international relations. A language is of primary importance in the communication between nations. Did the international legal vocabulary need the new expression?" (p. xvii)

In examining the answer to this central query, the author divides her volume into two distinct sections of two chapters each. In an explication of the peacetime unilateral remedies approach in international law, Part One of the book places a good bit of old wine in refreshed, if not new, bottles. This includes a detailed discussion of concepts critical to the proper use of such remedies by a state: reprisals, retortion, reciprocity, and the suspension or termination of a treaty. The specification of countermeasures is an important component of this first section. The second half of the book explores the legal framework in which countermeasures are pursued, paying particular attention to the substance of the measure and questions of legal capacity and procedure. With such a division of topics, it will not be surprising to see that this work, which should be high on the reading list of *both* international relations specialists and international lawyers, will find the former most interested in Part One and the latter more attuned to Part Two.

In Chapter One Zoller devotes her attention to the range of claims and actions traditionally available to an injured state. Readers will find a solid and fair treatment of the major concepts here, with the author detailing the difficulties associated with reciprocity and the extent to which the United

1. *Air Services Award* (U.S. v. France), 18 R. Int'l Arb. Awards 415 (1978).

2. *United States Diplomatic and Consular Staff in Tehran* (U.S. v. Iran) 1980 I.C.J. 3 (Judgment of May 24, 1980).

Nations' Charter curtails reprisals in the post-1945 world order. The book contains a thorough discussion of options available to states in treaty suspension and termination in light of the Vienna Convention.³ American international relations analysts may believe that more wide-ranging examples of injury and more citation of the academic literature on self-help could be made; or that reference to the U.S. experience in the *Caroline Incident*⁴ is necessary, but such omissions are not at all damaging to the argument presented.

Chapter Two specifies the term countermeasures and discusses its application in the wake of states' foreign policy purposes when they resort to unilateral remedies. The dominant themes of the chapter, coercion and punishment, have great relevance to the consideration of "retaliation against terrorists" or "punishment of unlawful states" which dominate current U.S. discussions of foreign affairs. Here, as characterizes her style throughout the book, Zoller weaves together the clarity which has emerged from court and tribunal rulings with a carefully tuned sense of nuance in international affairs. Zoller defines countermeasures as "law enforcement measures which consist in a temporary dispensation from complying with law . . . placed within reparation and outside punishment . . . so as to avoid having this formidable device turn into a scourging power tantamount in every case to the imposition of the law of the strongest." (p. 75)

Entitled the "Substance of Countermeasures," Chapter Three details the principles under which states may resort to use of these special dispensations from expected behavior in the international arena. The rules governing such action are reasonably clear in Zoller's discussion and involve a consideration of general target rules, including issues of humanitarian concern, treaty dynamics and the general norms governing the use of force. But she also addresses a more elusive, if not increasingly important, aspect of self-help: who is to be the exact target. Here the discussion appropriately focuses on target states, but the issue of third party states and of striking at a state through its citizens and their property is also addressed. Zoller concludes the chapter with cautionary words regarding these rules, underscoring again that "countermeasures are only legitimate when they are aimed at a guilty state, no matter how difficult the guilt is to prove." (p. 101)

In the final chapter, Zoller discusses the conditions for embarking on countermeasures. She starts with the central principle that, as "a legal power [a countermeasure] cannot be without any control or it would no longer be legal; it would just be a freedom." (p. 103) This postulate is the

3. Vienna Convention on the Law of Treaties, Jan. 27, 1980, U.N. Doc. A/CONF. 39/27 at 289 (1960), reprinted in 8 I.L.M. 679 (1969).

4. 2 MOORE, DIGEST OF INTERNATIONAL LAW 412 (1906).

basis of her analysis of the legal capacity of a subject to employ counter-measures, for her consideration of the procedures states must follow, and the substantive conditions which must obtain when a government acts in such a manner. For specialists in the field this will be a most satisfying chapter, as the author brings to bear a thorough consideration of international legal sources on the issues at hand. Particularly useful is the clarity with which Zoller separates the principle of proportionality from the notion of equivalence, noting that in the final analysis, proportionality is case-specific and always must fit the requirements of equity.

Zoller does not equivocate in answering the query she poses at the outset of the book. She asserts: "One thing is indisputable: countermeasures take their place among the consequences of an internationally wrongful act." (p. 137) At the same time, she notes that the dilemma now faced by the international legal order is one in which the exact boundaries for, and rules governing use of, such acts are still less clear than they ought to be. Her own study has cast a solid background against which inquiry and interpretation can now unfold. Thus, the volume deserves close scrutiny from both the international affairs scholar and practitioner, as well as from the international law community.

It is difficult to assess this work as other than first-rate in substance and style. A plethora of research undergirds 138 pages of stimulating, lucid text. As the *Air Services* case sparks much of the book's concern, it is wise that this 1978 decision, with the important dissenting opinion of Paul Reuter, is reprinted in a thirty-five page appendix. Also included are a thorough bibliography and a competently composed index.

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