Cyber Countermeasures and Effects on Third Parties: 
The International Legal Regime

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1. Introduction
A State victimised (the ‘injured State’) by another State’s (the ‘responsible State’) internationally wrongful act – an act that breaches an international legal obligation owed to the injured State – may respond proportionately with acts that would otherwise violate international law.1 The law of State responsibility labels such responses as ‘countermeasures’.2 It is indisputable that the law of State responsibility applies

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fully in cyberspace. Accordingly, an injured State may employ cyber or non-cyber countermeasures in response to a responsible State's internationally wrongful act, whether that act is cyber in nature or not.

This article explores a somewhat unsettled area of the law of State responsibility, the permissibility of countermeasures that have effects on third States or other third parties, such as individuals. The prospect of second, third and greater order effects is almost paradigmatic in the case of cyber countermeasures in that the interconnectivity and interdependency of cyber infrastructure and activities renders them highly vulnerable to effects that reverberate throughout networks. Consider a case in which State A launches denial of service attacks against an online banking site in State B in response to a violation of a multilateral free trade agreement. The response, which qualifies as a countermeasure, affects the ability of bank customers residing in State B to withdraw funds from their accounts. In addition, customers in neighbouring State C, which is also a party to the treaty, can no longer access their bank accounts. Since the bank involved is the largest in the country, the ensuing financial disruption and losses are significant, both for State C itself and businesses and individuals located there.

In this example, State C is uninvolved in the bilateral dispute between States A and B. State A’s countermeasure clearly breaches a legal obligation owed to State C under the treaty. Is that breach excused on the basis that attack qualified as a countermeasure? What of the financial hardships suffered by the businesses and citizens, as distinct from the State, of B and C? Do these hardships provide an independent basis for questioning the legal propriety of the countermeasure?

To assess such matters, the article begins with a brief introduction to the law governing countermeasures. It then turns to the distinction between rights and interests, which, as will be explained, is determinative of whether an injured State’s countermeasure that in some fashion affects a third State or other party, but which remains lawful as to the responsible State, is prohibited. The article concludes that only rights are imbued with legal significance in this regard. Since application of the resulting rule depends on whether the third State or other party qualifies as a beneficiary of the right in question, that topic will be examined, as will the questions of foreseeability and whether it matters that the act technically qualifies as a countermeasure with respect to the responsible State. Finally, the article will consider the legal significance of countermeasures that implicate *erga omnes* norms and those obligations which countermeasures may not involve.

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