

CORRESPONDENCE

January 30, 2008

TO THE EDITORS IN CHIEF:

I was disappointed with Michael Byers's October 2007 review of my monograph *Peremptory Norms in International Law*. I believe that the review misstates my views in certain respects, which I would like to correct.

The reviewer sees me as “arguing that third-party countermeasures are obligatory with respect to violations of *jus cogens*” (p. 914). In addition to nowhere making such an assertion, I express a more cautious approach to this same issue on page 287.

Though the reviewer takes me to task for summarily viewing *jus cogens* as a matter of necessity (p. 915), McNair and Lauterpacht, among others, took that same view, and I devote two chapters in the monograph to that very issue.

The review states that I “reject[] the ordinary meaning of Article 53 of the Vienna Convention—namely, that a norm, to become peremptory, must be accepted and recognized as such by the ‘international community of States as a whole’” (p. 915). Instead of rejecting the ordinary meaning of Article 53, however, I make a detailed effort on pages 104–08 to analyze just what that meaning is and what it implies.

In attributing to me the view that “[c]ustomary international law provides an unsatisfactory explanation for *jus cogens*” (p. 915), the reviewer refers to page 113 of the monograph. My view as stated on that very same page, however, and the overall position in that discussion (as is well apparent from my comments on page 126) is that customary law is among the most suitable sources of *jus cogens*.

The review claims that “in the absolutist sense” I hold that “a peremptory norm must be fully implemented through every conceivable mechanism, whether third-party countermeasures, the denial of state immunity, or direct effect in national courts” (p. 915). On countermeasures I have already mentioned such a view to be mistaken, and in the introductory section of chapter 18, I make clear that no such role is envisioned for national courts.

Finally, the reviewer sees me as favoring “the idea that *jus cogens* is rooted in natural law” (p. 915). But *mentioning* an idea is obviously different from *favoring* it, and the passage at page 38 provides an explanation of why natural law should *not* be seen as a basis for *jus cogens*.

I believe that these inaccuracies compromised the review and left the reader unable to determine the merits of my monograph. For that, I hope that the *Journal's* readers will turn to the book itself.

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