Conclusion

The present study seeks to shed light on the history of reprisals in international law by addressing the question of why the law of armed reprisals remained in a legal limbo of international law from the outset of the nineteenth century up to 1945.

The institution of reprisals arose in medieval times as a palliative to justice in an age when the free access to impartial justice was not necessarily ensured to aliens. The measure emerged outside the law as a form of private justice consisting of the forcible seizure of property belonging to the wrongdoer's countrymen in order to procure compensation to the aggrieved individual. At first, Sovereigns attempted to prohibit it within their realm because it encouraged brigandage and hampered commerce. However, given the fact that reprisals fulfilled an essential function of justice in cases where there was a cross-border element, a law of reprisals developed in medieval times as a necessity to prevent abuses. Thus, bilateral treaties and municipal law laid down rules limiting and controlling the use of reprisals. Initially, this newly-developed regulation was far from coordinated and harmonised. That is why Bartolus de Saxoferrato's treatise on the topic of reprisals can be viewed as the pinnacle of this regulation process. He formulated a sophisticated legal theory which not only justified reprisals as a legitimate measure, but also minutely dealt with every single aspect of the whole procedure.

This elaborate legal framework, nevertheless, did not resist the transformation of reprisals into a measure of the law of nations. In fact, since medieval reprisals served to protect private interests, the law aimed to provide the aggrieved individuals with a fair and predictable form of compensation under the supervision of the public authorities. But as the centralisation of power in the Sovereign's hands and the emergence of the modern State occurred, reprisals progressively began to be exclusively used in a State-to-State relation. In this context, political considerations often prevailed over the strict abidance by the rules governing reprisals. This phenomenon entailed a loss of standards in State practice, and hence the medieval regulation did no longer suitably respond to the new state of affairs.

During the period 1831–1863, the law of reprisals was even more in a state of dereliction as France and Great Britain —the great Powers at the time— began to resort to reprisals as a means of coercion against the small

and weak States of the globe. Indeed, because they pursued an informal imperialism, war was a measure too disruptive in many ways. On the contrary, reprisals were governed by unclear and general standards. This malleability favoured the great Powers' use of excessive armed force by way of reprisals against the target countries, while simultaneously enabling the former to claim the benefits of peace. There was, in fact, no restriction on the amount of force which could be resorted to in peacetime. Besides, the military superiority of the great Powers, as well as their preponderance in other fields like commerce, made any resistance from the target countries quite illusory and unadvisable. It, therefore, allowed the great Powers to act forcibly with impunity and press —often dubious— demands, whereas a small Power could not hope to act likewise without incurring the consequences of war.

Nonetheless, to guarantee the free use of armed reprisals and evade criticism on the expediency and execution of this measure in each case, the great Powers adroitly invoked arguments depicting the target countries as irresponsible or disreputable members of the family of nations. Non-legal considerations were then put forward to explain and justify the necessity to act, but also the departure from standards which might have governed and limited armed reprisals. Machiavelli's phrase "the end justifies the means" took on here its full meaning.

For all these reasons, the second third of the nineteenth century saw the emergence of armed reprisals as the measure short of war par excellence in international law. The great Powers, more or less consciously, reshaped the concept of reprisals through their practice and, hence, made the employment of this measure an informal privilege attached to their supremacy. This privilege persisted beyond the nineteenth century for want of clear-cut rules restricting State practice.

Another factor which accounts for the lack of legal clarity over the topic of armed reprisals is the lawyers' failure to firmly condemn the State practice of armed reprisals by adequately assessing and addressing the issue during the period 1848–1912. As a matter of fact, they oscillated between permissiveness and utter disapproval. Legal scholars actually proved faint-hearted and hesitant about tackling the issue.

In the late 1840s, Christian Friedrich Wurm and Laurent-Basile Hautefeuille were the first authors to sound the alarm on the danger of armed reprisals, especially in the form of blockades short of war. At the beginning, most lawyers rallied around the view that the so-called pacific blockades were tantamount to war. When, however, the Institute of International Law looked into the topic at the session of Heidelberg in 1887, the legal

community refrained from objecting to the practice of the great Powers through reaffirming the cornerstone principles of international law, such as the independence and equality of States. Lawyers, instead, agreed on a declaration which recognised pacific blockade as a rightful measure of international law as long as it did not impact third States. So, they preferred to generally treat armed reprisals as a better alternative to war.

However, later instances of armed reprisals between 1887 and 1912 — most notably the joint blockade of Venezuela in 1902/03 by Great Britain, Germany and Italy— highlighted the outrageous consequences of such an indulgent doctrine. Few like Thomas Baty called for the identification of armed reprisals with war, given their impact on the target country. But most legal scholars seemed overtaken until the adoption of the Drago-Porter Convention at the Second Hague Peace Conference in 1907 made them realise the importance of the issue and the need of a proper regulation for armed reprisals.

Finally, the interwar period witnessed the great Powers' obstruction to the attempts to limit the use of armed reprisals and, hence, their informal privilege. While the end of the First World War was supposed to augur a new era built on peace and cooperation between all the nations, the great Powers showed several times reluctance to yield the right to make use of force in peacetime, despite the growing efforts against war and violence in the international relations.

The year 1923 was fateful as acts of armed reprisals were exercised by France against Germany, on the one hand, and by Italy against Greece, on the other hand. Nevertheless, the respective situation was quite different. In the former case, France considered that it did not owe anybody an explanation because the reprisal provision in the Peace Treaty of Versailles and, more generally, international law offered a sufficient legal basis to justify the military occupation of the Ruhr valley. On the contrary, in the latter case, Italy walked a tightrope since the League of Nations felt entitled to intervene in a conflict involving two Member States, of which one — Italy— had a permanent seat on the Council. The Italian bombardment and occupation of Corfu raised criticism from the ranks of the small Member States. Nevertheless, Italy's strategy consisted of challenging the jurisdiction of the League in this affair and defending, due to the existing loophole in the Covenant, the legality of armed reprisals. On this point, Italy and the other great Powers proved to cling to their privilege as they prevented the League from laying down a clear and general principle condemning armed reprisals. In fact, they favoured an ambiguous answer, a

solution that allowed a case-to-case examination more subject to political influence.

A great legal achievement was, however, the regulation adopted by the Institute of International Law in 1934, which explicitly banned the employment of armed reprisals in the same conditions as the resort to war. But in spite of the fact that the legal community tried to overcome the legal vacuum, the IIL had no authority over the States and, unsurprisingly, its regulation did not receive a warm welcome from the great Powers. The result was, therefore, the absence of rules in the form of a convention.

Since the beginning of the nineteenth century, the legal situation of armed reprisals had been unclear. It was only after the Second World War that the UN-Charter sanctioned the prohibition of the use of force as one of the core principles of the new era of international law. As a consequence, the recourse to armed reprisals is no longer authorised today.

Perhaps more than any other measures of international law, armed reprisals enjoyed a close connection with the great Powers which accounts for the remarkable longevity of the legal grey zone surrounding them. The result of the present historical investigation is to have captured the cynicism with which actors of international law, namely the great Powers, worked to keep armed reprisals in a legal twilight zone until 1945. This topic, thus, teaches a great deal about the use of international law as a tool of power strategy. Therefore, against such a background, a general ban on the use of force in peacetime under the UN-Charter was certainly the best solution to prevent the oppression of the weak by the strong because it conveys the idea that the settlement of disputes must be non-forcible. This solution favours the respect of the principle of the independence and equality of States, although modern counter-measures may perhaps, today, no longer efficiently fulfil their role of coercion and, thence, ensure the respect for international law.