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^ CHAPTER BIBLIOGRAPHY

- BIERZANEK Remigiusz, "The Responsibility of States in Armed Conflicts", in *Polish Yearbook of International Law*, Vol. 11, 1981-1982, pp. 93-116.
- D'ARGENT Pierre, "Responsabilité Internationale", in VAN STEENBERGHE Raphaël (ed.), *Droit international humanitaire : un régime spécial de droit international?*, Brussels, Bruylant, 2013, pp. 103-149.
- SASSÒLI Marco, "State Responsibility for Violations of International Humanitarian Law", in *IRRC*, No. 846, June 2002, pp. 401-434.

Introductory text

In conformity with the traditional structure of international law, violations are considered to have been committed by States and measures to stop and repress them therefore must be directed against the State responsible for the violation. Such measures can be foreseen in IHL itself, in the general international law of State responsibility, or under the UN Charter, the "constitution" of organized international society.

In IHL, Article 1 common to the four Geneva Conventions provides that "[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." Common Article 1 therefore has many links with the law on State responsibility for internationally wrongful acts and both should be considered together when dealing with violations of IHL. For instance, when it comes to the addressees of common Article 1, following the law of State responsibility, the article should be understood as creating an obligation to respect and ensure respect for IHL not only by State organs as defined by the internal law of the State but also by other persons or groups acting on its behalf, such as volunteer and militia forces within the meaning of Article 4A(2) of the Third Convention, other armed groups under the requisite control of the State, and in certain cases private military and security companies whose services are contracted by the State. (footnote: ICRC Commentary to Article 1 common to the four Geneva Conventions, para. 177). In addition, common Article 1 confirms that the Geneva Conventions create obligations *erga omnes partes*, i.e. obligations towards all of the other High Contracting Parties. Concretely speaking, Article 48(1)(b) of the 2001 Draft Articles on State Responsibility will be useful in implementing such *erga omnes*

obligations, as it considers that any State is entitled to invoke the responsibility of a State in breach of *erga omnes* obligations.

Yet, during armed conflict, violations of IHL can also be committed by non-State parties to an armed conflict, and common Article 1 has been interpreted to mean that High Contracting Parties to the Geneva Conventions (therefore States) also bear responsibility to ensure respect for the rules applicable in non-international armed conflict, including by non-State armed groups.

Before violations can be repressed, they have, of course, to be ascertained. The Conventions provide that an enquiry must be instituted into alleged violations if requested by a party to the conflict.[1] However, the procedure has to be agreed on between the parties. Experience shows that such an agreement is difficult to reach once the alleged violation has occurred – in particular between parties fighting an armed conflict against each other. Art. 90 of Protocol I therefore constitutes an important step forward, as it establishes the International Humanitarian Fact-Finding Commission[2] and its procedure. The Commission is competent to enquire into alleged violations of one party at the request of another party if both parties agree on its competence, either on an *ad hoc* basis or by virtue of a general declaration.[3] The Commission has declared its readiness to act in non-international armed conflicts as well, if the parties concerned agree. In conformity with the traditional approach of IHL, the enquiry is based on an agreement between the parties, and the result will only be made public with their consent. This may be one of the reasons why no request for an enquiry has ever been brought before the Commission, although some 70 States have made a general declaration accepting its competence. States have preferred to impose enquiries through the UN system, which produces a published report, or to establish *ad hoc* commissions of enquiry, but the results have not been much more convincing.

In the event of a dispute, all means afforded by international law for the peaceful settlement of disputes are available. A conciliation procedure involving the Protecting Powers is foreseen, but needs the agreement of the parties.[4] The Protecting Power system itself is an institutionalization of good offices. The general problem, however, is that a peaceful settlement of disputes on points of IHL between parties who prove by their participation in an armed conflict that they have been unable to settle their disputes in respect of *jus ad bellum* peacefully would be an astonishing occurrence and only rarely succeeds. Therefore, the use of coercive measures which can only be taken through the UN system seems more promising, but risks mixing *jus ad bellum* and *jus in bello*. Such a mix-up is natural for the UN, as its main role is to ensure respect for *jus ad bellum*, but it jeopardizes the autonomy, neutrality and impartiality required for the application of IHL.

When a violation occurs, not just the injured State, which is the direct victim, but – under common Art. 1 and the general rules on State responsibility[5] – every State may and indeed must take measures to restore respect. Those measures must themselves conform to IHL and to the UN Charter[6] and must be taken in cooperation with the UN as the frail embryo of a centralized international law enforcement system.[7] Cooperation between all States, however, does not mean that no reaction to violations is possible in the

absence of a consensus.

In keeping with the rules of the law of State responsibility, IHL recalls the general obligation to pay compensation.[8] According to a majority of writers and court decisions, this implies, in conformity with the traditional structure of international law, that the State responsible for the violation has to compensate the State injured by the violation; it does not confer a right to compensation on the individual victims of violations. This traditional implementation structure is at variance with internal armed conflicts, as in such cases victims of violations are often nationals of the State concerned. Thus, for a growing number of violations, International Human Rights Law requires that the State make reparation directly to the beneficiary of the rule.

For the rest, IHL prescribes some changes to the general rules on State responsibility (or makes clear that certain of its exceptions apply in this branch). It holds the State strictly responsible for all acts committed by members of its armed forces;[9] it prohibits reprisals against protected persons and goods and the civilian population,[10] reciprocity in the application of IHL treaties being excluded by the general rules; and it makes clear that, as the rules of IHL are mostly *jus cogens*, States may not agree to waive the rights of protected persons[11] nor may the latter renounce their rights.[12] Finally, as IHL is intended for application in armed conflicts, which are by definition emergency situations, and as many armed conflicts are fought in self-defence, while the same IHL must apply to both sides, necessity (except where explicitly stated otherwise in some of its rules[13]) and self-defence are not circumstances precluding the wrongfulness of IHL violations. [14]

^ CASES AND DOCUMENTS

- ICRC, Protection of War Victims (Para. 4)
- UN, Guidelines on the Right to a Remedy and Reparation for Violations of International Humanitarian Law and Human Rights Law
- The Netherlands, Responsibility of International Organizations
- Democratic Republic of the Congo, Conflict in the Kivus (Part III., Paras. 7, 29-60)
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (paras 273, 280, 283, 309-310)

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- PELLET Alain, "Can a State Commit a Crime? Definitely, Yes!", in *EJIL*, Vol. 10/2, 1999, pp. 425-434.
- SACHARIEW Kamen, "State's Entitlement to Take Action to Enforce International Humanitarian Law", in *IRRC*, No. 270, May-June 1989, pp. 177-195.

Further reading:

- AUST Helmut Philipp, “Complicity in Violations of International Humanitarian Law”, in KRIEGER Heike (ed.), *Inducing Compliance with International Humanitarian Law - Lessons from the African Great Lakes Region*, Cambridge, CUP, 2015, pp. 442-469.
- BOUTIN Bérénice, “Responsibility in Connection with the Conduct of Military Partners”, in *Revue de Droit Militaire et de Droit de la Guerre = The Military Law and Law of War Review*, Vol. 56, No. 1, 2017-2018, pp. 57-91.
- BUTLER Jay, “Responsibility for Regime Change”, in *Columbia Law Review*, Vol. 114, No. 3, April 2014, pp. 503-581.
- DARCY Shane, “Assistance, direction and control: Untangling international judicial opinion on individual and State responsibility for war crimes by non-State actors”, in *IRRC*, Vol. 96, No. 893, 2015, pp. 243-273.
- FLECK Dieter, “International Accountability for Violations of the *Ius in Bello*: the Impact of the ICRC Study on Customary International Humanitarian Law”, in *Journal of Conflict and Security Law*, Vol. 11, No. 2, 2006, pp. 179-199.
- HAMMOND Daniel N., “Autonomous Weapons and the Problem of State Accountability”, in *Chicago Journal of International Law*, Vol. 15, No. 2, 2014, pp. 652-687.
- HATHAWAY Oona A., CHERTOFF Emily, DOMINGUEZ Lara, MANFREDI Zachary & TZENG Peter, “Ensuring Responsibility: Common Article 1 and State Responsibility for Non-State Actors”, in *Texas Law Review*, Vol. 95, No. 3, 2017, pp. 539-590.
- KLEFFNER Jann K., “Improving Compliance with International Humanitarian Law through the Establishment of an Individual Complaints Procedure”, in *Leiden Journal of International Law*, Vol. 15/1, 2002, pp. 237-250.
- LAGRANGE Philippe, “Drones militaires en opération et responsabilité internationale”, in FOUAD Eddazi (ed.), *Le droit à l'épreuve des drones militaires*, Paris, Librairie générale de droit et de jurisprudence, 2018, pp. 301-318.
- LONGOBARDO Marco, “State Responsibility for International Humanitarian Law Violations by Private Actors in Occupied Territories and the Exploitation of Natural Resources”, in *Netherlands International Law Review*, Vol. 63, No. 3, 2016, pp. 251-274.
- MACKENZIE Richard & SCOTT Gray, “State Responsibility for Complicity in the Internationally Wrongful Acts of Non-State Armed Groups”, in *Journal of Conflict and Security Law*, Vol. 24, No. 2, 2019, pp. 373-407.
- MILANO Enrico & PAPANICOLOPULU Irini, “State Responsibility in Disputed Areas on Land and at Sea”, in *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht = Heidelberg Journal of International Law*, Vol. 71, No. 3, 2011, pp. 587-640.
- PAYNE Cymie R., “Legal Liability for Environmental Damage: the United Nations Compensation Commission and the 1990-1991 Gulf War”, in BRUCH Carl, MUFFETT Carroll & S. NICHOLS Sandra (eds), *Governance, Natural Resources and Post-Conflict Peacebuilding*, London, Earthscan, pp. 719-760.

- QUIGLEY John, “State Responsibility for Ethnic Cleansing”, in *UC Davis Law Review*, Vol. 32/2, 1999, pp. 341-387.
- SHELTON Dinah & CUTTING Isabelle, “If You Break It, Do You Own It? : Legal Consequences of Environmental Harm from Military Activities”, in *Journal of International Humanitarian Legal Studies*, Vol. 6, Issue 2, 2015, pp. 201-246.
- ZWANENBURG Martin, *Accountability of Peace Support Operations*, Leiden, Boston, M. Nijhoff, 2005, 363 pp.

1. Assessment of violations

^ CASES AND DOCUMENTS

- Iran/Iraq, UN Security Council Assessing Violations of International Humanitarian Law
- Israel/Palestine, Operation Protective Edge (Gaza, 13 June - 26 August 2014)
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Para. 237)

1. a) **enquiry procedures** GC I-IV, Arts 52/53/132/149 respectively; P I, 90(2)(e)

^ CASES AND DOCUMENTS

- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- Israel/Gaza, Operation Cast Lead (Part II.)
- Israel, The Targeted Killings Case (Para. 40)
- Israel, Human Rights Committee’s Report on Beit Hanoun (Paras. 67-70)
- Israel, Report of the Winograd Commission (Para. 46)
- Case Study, Armed Conflicts in the former Yugoslavia (Para. 25)
- UN, Request for an Investigation on War Crimes
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia (Paras. 140-142)
- Central African Republic, Coup d’Etat
- Somalia: Deeply Flawed Rape Inquiry
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Colombia – Sexual violence
- Libya, NATO Intervention 2011
- Libya, Report of the Office of the UN High Commissioner for Human Rights (2014/15)
- United States, The US Plan to Mitigate Civilian Harm in Armed Conflicts

Suggested reading:

- BOUTRUCHE Théo, “Credible Fact-Finding and Allegations of International Humanitarian Law Violations: Challenges in Theory and Practice”, in *Journal of Conflict and Security Law*, Vol. 16, Issue 1, 2011, pp. 105-140.
- GARRAWAY Charles, “Fact Finding and States In Emergency”, in *ILSA Journal of International and Comparative Law*, Vol. 22, Issue 2, 2012, pp. 471-481.
- GRACE Rob & Bruderlein Claude, *HPCR Practitioner's Handbook on Monitoring, Reporting, and Fact-Finding : Investigating International Law Violations*, Program on Humanitarian Policy and Conflict Research, Cambridge, CUP, 2017, 334 pp.
- HENDERSON Christian (ed.), *Commissions of Inquiry: Problems and Prospects*, Oxford, Hart Publishing, 2017, 392 pp.
- LOVELL David W. (ed.), *Investigating Operational Incidents in a Military Context: Law Justice, Politics*, Leiden, Boston, M. Nijhoff, 2014, 259 pp.
- VITÉ Sylvain, *Les procédures internationales d'établissement des faits dans la mise en œuvre du droit international humanitaire*, Brussels, Bruylant, 1999, 485 pp.

Further reading:

- BOUTRUCHE Théo, “The Role of p Commissions of Inquiry in the Implementation of IHL: Potential and Challenges”, in DJUKIĆ Dražan & PONS Niccolò (eds), *The Companion to International Humanitarian Law*, Leiden, Boston, M. Nijhoff, 2018, pp. 98-114.
- DEVEREUX Annemarie, “Investigating Violations of International Human Rights and International Humanitarian Law through an International Commission of Inquiry: Libya and Beyond”, in LOVELL David W. (ed.), *Investigating Operational Incidents in a Military Context: Law Justice, Politics*, Leiden, Boston, M. Nijhoff, 2014, pp. 99-122.
- LESH Michelle, “A Critical Discussion of the Second Turkel Report and How It Engages with the Duty to Investigate Under International Law”, in *Yearbook of International Humanitarian Law*, Vol. 16, December 2013, pp. 119-145.
- MBENGUE Makane Moïse & BRIAN McGarry, “The International Commission of Inquiry on Darfur and the application of International Humanitarian Norms”, in JINKS Derek, MAOGOTO N. Jackson & SOLOMON Solon (eds), *Applying International Humanitarian Law in Judicial and Quasi-Judicial Bodies : International and Domestic Aspects*, The Hague, T.M.C. Asser Press, 2014, pp.451-478.
- SHARVIT BARUCH Pnina, “The Report of the Human Rights Council Commission of Inquiry on the 2014 Operation in the Gaza Strip - A Critical Analysis”, in *Israel Yearbook on Human Rights*, Vol. 46, 2016, pp. 29-102.
- STEWART James G., “The UN Commission of Inquiry on Lebanon: A Legal Appraisal”, in *Journal of International Criminal Justice*, Vol. 5, No. 5, November 2007, pp. 1039-1059.
- WALDMAN Adir, *Arbitrating Armed Conflict, Decisions of the Israel-Lebanon Monitoring Group*,

1. b) **the International Humanitarian Fact-Finding Commission** (See <http://www.ihffc.org>) P I, Art. 90

^ CASES AND DOCUMENTS

- ICRC, The International Humanitarian Fact-Finding Commission
- UN, Resolutions and Conference on Respect for the Fourth Convention (Part D.II.3)
- Case Study, Armed Conflicts in the former Yugoslavia (Paras. 7)
- UN, Report of the Secretary-General for the World Humanitarian Summit
- Afghanistan, Attack on Kunduz Trauma Centre

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CONDORELLI Luigi, "La Commission internationale humanitaire d'établissement des faits : un outil obsolète ou un moyen utile de mise en œuvre du droit international humanitaire?", in *IRRC*, No. 842, June 2001, pp. 393-406.
- DAVID Eric, "The International Humanitarian Fact-Finding Commission and the Law of Human Rights", in KOLB Robert & GAGGIOLI Gloria (eds), *Research Handbook on Human Right and Humanitarian Law*, Cheltenham, Northampton, E. Elgar, 2013, pp. 570-574.
- HAMPSON Françoise, "Fact-finding and the International Fact-Finding Commission", in FOX Hazel & MEYER Michael A. (eds), *Armed Conflict and the New Law*, Vol. II, *Effecting Compliance*, London, The British Institute of International and Comparative Law, 1993, pp. 53-82.
- KRILL Françoise, "The International Fact-Finding Commission: The ICRC's Role", in *IRRC*, No. 281, March-April 1991, 19 pp.
- MOKHTAR Aly, "To Be or not to Be: The International Humanitarian Fact-Finding Commission", in *Italian Yearbook of International Law*, Vol. 12, 2002, pp. 69-94.
- ROACH John A., "The International Fact-Finding Commission: Article 90 of Protocol I Additional to the 1949 Geneva Conventions", in *IRRC*, No. 281, March-April 1991, pp. 167-189.

Further reading:

- APARAC Jelena, "L'attaque sur l'hôpital MSF à Kunduz: quelles voies réalistes pour une justice effective?", in *La Revue des Droits de l'Homme*, 2016, 10 pp.
- HEINSCH Robert, "The Future of the International Humanitarian Fact-Finding Commission: a Possibility to Overcome the Weakness of IHL Compliance Mechanisms?", in DJUKIĆ Dražan & PONS Niccolò, *The Companion to International Humanitarian Law*, Leiden, Boston, M. Nijhoff, 2018, pp. 79-97.
- KUSSBACH Erich, "Commission internationale d'établissement des faits en droit international

humanitaire”, in *RDMDG*, Vol. 20/1-2, 1981, pp. 89-111.

- KUSSBACH Erich, “The International Humanitarian Fact-Finding Commission”, in *ICLQ*, 1994, pp. 174-185.
- MIKOS-SKUZA Elzbieta, “The International Humanitarian Fact-Finding Commission: an Awakening Beauty?”, in *Frieden in Freiheit = Peace in Liberty = Paix en liberté: Festschrift für Michael Bothe zum 70 Geburtstag*, Baden-Baden, Nomos; Zürich, Dike, 2008, pp. 493-504.
- REINISCH August, “The International Fact-Finding Commission to Article 90 Additional Protocol I to the Geneva Conventions and its Potential Enquiry Competence in the Yugoslav Conflict”, in *Nordic Journal of International Law*, Vol. 65, 1996, pp. 241-255.

2. Consequences of violations

▲ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BLISHCHENKO Igor P., “Responsibility in Breaches of International Humanitarian Law”, in *International Dimensions of Humanitarian Law*, Geneva, Henry-Dunant Institute/UNESCO, 1988, pp. 283-296.
- BLUM Gabriella, “The Crimes and Punishment of States”, in *The Yale Journal of International Law*, Vol. 38, No. 1, 2013, pp. 57-122.
- DECAUX Emmanuel, “The Definition of Traditional Sanctions: their Scope and Characteristics”, in *IRRC*, Vol. 90, No. 870, June 2008, pp. 249-257.

Further reading:

- FLETCHER Laurel E., “A Wolf in Sheep's Clothing? : Transitional Justice and the Effacement of State Accountability for International Crimes”, in *Fordham International Law Journal*, Vol. 39, Issue 3, 2016, pp. 447-531.
- LA ROSA Anne-Marie & PHILIPPE Xavier, “Transitional Justice”, in CHETAIL Vincent (ed.), *Post-conflict Peacebuilding: a Lexicon*, Oxford, OUP, 2009, pp. 368-378.
- OWEN Mallory, “The Limits of Economic Sanctions under International Humanitarian Law: The Case of the Congo”, in *Texas International Law Journal*, Vol. 48, No. 1, 2012, pp. 103-122.

a. cooperation among the States Parties P I, Art. 89

▲ CASES AND DOCUMENTS

- International Law Commission, Articles on State Responsibility (Part A., Art. 41(1), 48 and 54)
- Case Study, Armed Conflicts in the former Yugoslavia (Para. 17)

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BRESLIN Andrea, “A Reflection on the Legal Obligation for Third States to Ensure Respect for IHL”, in *Journal of Conflict and Security Law*, Vol. 22, No. 1, 2017, pp. 5-37.
- BROLLOWSKI Hanna, “The Responsibility to Protect and Common Article 1 of the 1949 Geneva Conventions and Obligations of Third States”, in HOFFMAN Julia & NOLLKAEMPER André (eds), *Responsibility to Protect: From Principle to Practice*, Amsterdam, Amsterdam University Press, 2012, pp. 93-110.
- Diakonia International Humanitarian Law Resource Centre, *Everyone’s Business: Third Party Responsibility and the Enforcement of International Law in the oPt*, October 2016, 22 pp.
- KNUT Dörmann & SERRALVO Jose, “Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Violations”, in *IRRC*, No. 895, December 2015, pp. 707-736.

a. **compensation** Hague Convention IV, Art. 3; P I, Art. 91 [CIHL, Rule 150]

^ CASES AND DOCUMENTS

- ICRC, Protection of War Victims (Para. 4.3)
- International Law Commission, Articles on State Responsibility (Part A., Arts 28-33)
- UN, Guidelines on the Right to a Remedy and Reparation for Violations of International Humanitarian Law and Human Rights Law
- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory (Part A., para. 152)
- Israel, Human Rights Committee’s Report on Beit Hanoun (Paras. 67-78)
- Sudan, Report of the UN Commission of Enquiry on Darfur (Paras 593-600)
- UN Compensation Commission, Recommendations
- United States, *Kadic et al. v. Karadzic*
- Afghanistan, Assessment of ISAF Strategy
- India, *People’s Union for Civil Liberties v. Union of India*
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia (Paras 143-148)
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Afghanistan, Attack on Kunduz Trauma Centre

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BAZARGAN-FORWARD Saba, "Compensation & Proportionality in War", in FINKELSTEIN Claire, MAY Larry & OHLIN Jens David (eds), *Weighing Lives in War*, Oxford, Oxford University Press, 2017.
- BÍLKOVÁ Veronika, "Vers un droit des victimes des conflits armés à la réparation pour les violations du droit international humanitaire ?", in AKANDJI-KOMBÉ Jean-François (ed.), *L'Homme dans la société internationale : Mélanges en l'hommage au professeur Paul Tavernier*, Bruxelles, Bruylant, 2013, pp. 1203-1225.
- CAMINS Emily L., "Needs or Rights ? : Exploring the Limitations of Individual Reparations for Violations of International Humanitarian Law", in *International Journal of Transitional Justice*, Vol. 10, No. 1, 2016, pp. 126-145.
- D'ARGENT Pierre, *Les réparations de guerre en droit international public. La responsabilité internationale des États à l'épreuve de la guerre*, Brussels, Bruylant, 2002, 902 pp.
- EVANS Christine, *The Right to Reparation in International Law for Victims of Armed Conflict*, Cambridge, CUP, 2012, 277 pp.
- GILLARD Emanuela-Chiara, "Reparation for Violations of International Humanitarian Law", in *IRRC*, No. 851, September 2003, pp. 529-553.
- FERSTMAN Carla, "The right to reparation for victims of armed conflict", in LATTIMER Mark & SANDS Philippe (eds), *The Grey Zone: Civilian Protection between Human Rights and the Laws of War*, Oxford, Hart, 2018, pp. 207-229.
- MARXSEN Christian & Anne Peters (eds), *Reparation for victims of armed conflict: impulses from the Max Planck Dialogues*, Max Planck Institute for Comparative Public Law & International Law, Research Paper No. 2018-2019, 2019, 110 pp.
- PERRAKIS Stelios, "La réparation de victimes des violations du droit humanitaire et le droit individuel d'accès à la justice : état de lieu et perspectives d'avenir", in *International Law and the Protection of Humanity : Essays in Honor of Flavia Lattanzi*, Leiden, Boston, M. Nijhoff, 2017, pp. 279-293.
- RONZITTI Natalino, "Access to Justice and Compensation for Violations of the Law of War", in FRANCIONI Francesco (ed.), *Access to Justice as a Human Rights*, Oxford, OUP, 2007, pp. 95-134.
- RONZITTI Natalino, "Reparation and Compensation", in WHITE Nigel & HENDERSON Christian (eds), *Research Handbook on International Conflict and Security Law: Jus ad Bellum, Jus in Bello and Jus Post Bellum*, Cheltenham, Northampton, E. Elgar, 2013, pp. 638-659.
- SASSÒLI Marco, "Reparation", in CHETAIL Vincent (ed.), *Post-conflict Peacebuilding: a Lexicon*, Oxford, OUP, 2009, pp. 279-291.
- SCHWAGER Elke, "Reparation for Individual Victims of Armed Conflict", in KOLB Robert & GAGGIOLI Gloria (eds), *Research Handbook on Human Rights and Humanitarian Law*, Cheltenham, Northampton, E. Elgar, 2013, pp. 628-659.
- TOMUSCHAT Christian, "State Responsibility and the Individual Right to Compensation before National Courts", in *The Oxford Handbook of International Law in Armed Conflict*, Oxford, Oxford University Press, 2014, pp. 811-839.
- ZEGVELD Liesbeth, "Remedies for Victims of Violations of International Humanitarian Law", in *IRRC*, No. 851, September 2003, pp. 497-527.

Further reading:

- ACHTEN Nele, "Compensation Claims of Individuals for Violations of Rules on Conduct of Hostilities : Comment on a Judgment of the District Court Bonn, Germany : LG Bonn 1 O 460/11, 11 December 2013", in *Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict*, Vol. 28, 1/2015, 2015, pp. 34-41.
- AN-NA'IM Abdullahi Ahmed, "Toward a Universal Doctrine of Reparation for Violations of International Human Rights and Humanitarian Law", in *International Law Forum*, Vol. 5/1, February 2003, pp. 27-35.
- BENVENISTI Eyal, "Individual remedies for victims of armed conflicts in the context of mass claims settlements", in HESTERMEYER Holger P., KÖNIG Doris, MATZ-LÜCK Nele, RÖBEN Volker, SEIBERT-FOHR Anja, STOLL Peter-Tobias & VÖNEKY Silja (eds), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum*, Vol. 2, Leiden, M. Nijhoff, 2012, pp. 1085-1105.
- BOELAERT-SUOMINEN Sonja A.J., "Iraqi War Reparations and the Laws of War: A Discussion of the Current Work of the United Nations Compensation Commission with Specific Reference to Environmental Damage During Warfare", in *ZÖR*, 1996, pp. 225-316.
- BOISSON DE CHAZOURNES Laurence, QUÉGUINER Jean-François & VILLALPANDO Santiago (eds), *Crimes de l'histoire et réparations : les réponses du droit et de la justice*, Brussels, Bruylant, 2004, 401 pp.
- BUFALINI Alessandro, "On the Power of a State to Waive Reparation Claims arising from War Crimes and Crimes against Humanity", in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht = Heidelberg journal of international law*, Vol. 77, 2017, pp. 447-470.
- CASEY-MASLEN Stuart, "The right to a Remedy and Reparation for the use of Nuclear Weapons", in NYSTUEN Gro, CASEY-MASLEN Stuart & BERSAGEL Annie Golden (eds), *Nuclear Weapons Under International Law*, Cambridge, CUP, 2014, pp. 461-480.
- EIJKMAN Quirine & BAKKER Marlieke, "Access to an Effective Remedy and Reparations for Civilians Victims of Armed Drone Strikes", in CUSTERS Bart (ed.), *The Future of Drone Use: Opportunities and Threats from Ethical and Legal Perspectives*, T.M.C. Asser Press, 2016, pp. 289-300.
- FEIGHERY Timothy J., GIBSON Christopher S. & RAJAH Trevor M. (eds), *War Reparations and the UN Compensation Commission: Designing Compensation after Conflict*, New York, Oxford University Press, 2015, 405 pp.
- KLINZING Morgan L., "Denying Reparation for Slave and Forced Laborers in World War II and the Ensuing Humanitarian Rights Implications: a Case Study of the ICJ'S Recent Decision in Jurisdictional immunities of the State (Ger. v. It.: Greece Intervening)", in *Ga. J. Int'l & Comp. L.*, Vol. 41, No. 3, 2013.
- LAWRY-WHITE Meryll, "Victims of Environmental Harm during Conflict : the Potential for 'Justice'", in STAHN Carsten, IVERSON Jens and EASTERDAY Jennifer S. (eds), *Environmental Protection and Transitions from Conflict to Peace*, Oxford, Oxford University Press, 2017, pp. 258-273.
- McCARTHY Conor, "Reparation for Gross Violations of Human Rights Law and International

Humanitarian Law at the International Court of Justice”, in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, Leiden, M. Nijhoff, 2009, pp. 283-311.

- MEHRING Sigrid, “The Judgment of The German Bundesverfassungsgericht Concerning Reparations for the Victims of the Varvarin Bombing”, in *International Criminal Law Review*, Vol. 15, No. 1, 2015, pp. 191-201.
- PLAKOKEFALOS Ilias, “Reparation for Environmental Damage in Jus Post Bellum : the Problem of Shared Responsibility”, in STAHN Carsten, IVERSON Jens and EASTERDAY Jennifer S. (eds), *Environmental Protection and Transitions from Conflict to Peace*, Oxford, Oxford University Press, 2017, pp. 258-273.
- RONEN Yaël, “Avoid or Compensate? Liability for Incidental Injury to Civilians Inflicted During Armed Conflict”, in *Vanderbilt Journal of Transnational Law*, Vol. 42, No. 1, 2009, pp. 181-225.
- SANDOVAL Clara & PUTTICK Miriam, *Reparations for the Victims of Conflict in Iraq : Lessons learned from Comparative Practice*, London, Ceasefire Centre for Civilian Rights, Minority Rights Group International, 2017, 34 pp.
- STEIN Yael, *Getting Off Scot-Free: Israel's Refusal to Compensate Palestinians For Damages Caused by Its Security Forces*, Jerusalem, B'Tselem, 2017, 52 pp.
- STÖCKLE Philipp, “Recent Developments in German Case Law on Compensation for Violations of International Humanitarian Law”, in *German Yearbook of International Law*, Vol. 57, 2014, pp. 613-631.
- VORHEES Robert E., “Compensating Terrorists for Torture: an Anomalous Outcome under International Humanitarian Law?”, in *The Air Force Law Review*, Vol. 75, 2016, pp. 1-37.
- ZYBERI Gentian, “The International Court of Justice and Applied Forms of Reparation for International Human Rights and Humanitarian Law Violations”, in *Utrecht Law Review*, Vol. 7, No. 1, 2011, pp. 204-215.

a. **applicability of the general rules on State responsibility** [CIHL, Rule 149]

^ CASES AND DOCUMENTS

- International Law Commission, Articles on State Responsibility
- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory (Part A., paras 149-153)
- ECHR, Cyprus v. Turkey
- Former Yugoslavia, Special Agreements Between the Parties to the Conflicts (Part A., Art. 14(1))
- ICTY, The Prosecutor v. Tadic (Part C., paras 98-162; Part D.)
- The Netherlands, Responsibility of International Organizations
- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo (Paras. 213-214, 243, 245-250)
- Georgia/Russia, Human Rights Watch’s Report on the Conflict in South Ossetia (Paras. 76-78)

- UK, *Serdar Mohammed v. Ministry of Defence* (Paras. 158-187)
- ECHR, *Al-Jedda v. UK* (Paras. 80-86)
- Women and Sexual violence
- Somalia: Deeply Flawed Rape Inquiry
- The Netherlands, *Fighting in the Chora District* (Afghanistan)

▲ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CONDORELLI Luigi, “L'imputation à l'État d'un fait internationalement illicite : solutions classiques et nouvelles tendances”, in *Collected Courses of the Hague Academy of International Law*, Vol. 189/VI, 1984, pp. 9-222.
- JORRITSMA Remy, “When General International Law Meets International Humanitarian Law: attribution of conduct and the classification of armed conflicts”, in *Journal of Conflict and Security Law*, Vol. 23, No. 3, 2018, pp. 405-431.
- KONDOCH Boris & ZWANENBURG Marten, “International Responsibility and Military Operations”, in GILL Terry D. & FLECK Dieter (eds), *The Handbook of the International Law of Military Operations*, Oxford, Oxford University Press, 2015, pp. 559-577.
- SANDOZ Yves, “Unlawful Damages in Armed Conflicts and Redress Under International Humanitarian Law”, in *IRRC*, No. 228, June 1982, pp. 131-154.
- TOMUSCHAT Christian, “Specificities of Human Rights Law and International Humanitarian Law Regarding State Responsibility”, in KOLB Robert & GAGGIOLI Gloria (eds), *Research Handbook on Human Rights and Humanitarian Law*, Cheltenham, Northampton, E. Elgar, 2013, pp. 198-222.

Further reading:

- COLEMAN Andrew, “The ICJ's Role in determining Accountability for Violations of International Humanitarian Law”, in PETROVIC Jadranka (ed.), *Accountability for Violations of International Humanitarian Law: Essays in Honour of Tim McCormack*, 2016, pp. 243-266.
- D'ARGENT Pierre, “Responsabilité internationale”, in VAN STEENBERGHE Raphaël (ed.), *Droit international humanitaire : un régime spécial de droit international?*, Brussels, Bruylant, 2013, pp. 103-149.
- DE WET Erika, “Complicity in Violations of Human Rights and Humanitarian Law by Incumbent Governments through Direct Military Assistance on Request”, in *International and Comparative Law Quarterly*, Vol. 67, Part. 2, 2018, pp. 287-313.
- JORGENSEN Nina H.B., “The Concept of State Crimes in the Context of the Syrian Crisis”, in *The Palestine Yearbook of International Law*, Vol. 18, 2015, pp. 173-202.
- MACKENZIE-GRAY SCOTT Richard, “State Responsibility for Complicity in the Internationally Wrongful Acts of Non-State Armed Groups”, in *Journal of conflict and security law*, Vol. 24, No. 2, Summer 2019, p.373-407.

- MILANOVIC Marko, "State Responsibility for Genocide", in *EJIL*, Vol. 17, No. 3, 2006, pp. 553-604.
- N. TRAPP Kimberley, *State Responsibility for International Terrorism*, Oxford, Oxford University Press, 2011, 295 pp.
- TALMON Stefan, "The Responsibility of Outside Powers for Acts of Secessionist Entities", in *ICLQ*, Vol. 58, Part 3, July 2009, pp. 493-517.
- ZEGVELD Liesbeth, *Accountability of Armed Opposition Groups in International Law*, Cambridge, CUP, 2002, 290 pp.

aa) but strict responsibility for armed forces

^ CASES AND DOCUMENTS

- International Law Commission, Articles on State Responsibility (Part A., Art. 7 and commentary; and Part B.)
- Democratic Republic of the Congo, Conflict in the Kivus (Part III., Paras. 7, 29-60)
- India, Press release, Violence in Kashmir
- Private Military Security Companies
- United States, The US Plan to Mitigate Civilian Harm in Armed Conflicts

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BOSCH Shannon, "Private Security Contractors and State Responsibility: Are States Exempt from Responsibility for Violations of Humanitarian Law Perpetrated by Private Security Contractors?", in *The Comparative and International Law Journal of Southern Africa*, Vol. 41, No. 3, 2008, pp. 353-382.
- LEHNARDT Chia, "Private Military Contractors", in NOLLKAEMPER André, PLAKOKEFALOS Ilias & SCHECHINGER Jessica (eds), *The Practice of Shared Responsibility in International Law*, Cambridge, CUP, 2017, pp. 761-780.
- MOYAKINE Evgeni, "State Responsibility for Non-Compliance with Positive International Law Obligations", in *The Privatized Art of War: Private Military and Security Companies and State Responsibility for Their Unlawful Conduct in Conflict Areas*, Cambridge, Intersentia, 2015, pp. 303-392.

Further reading:

- SMITH Crispin, "Independent without Independence: the Iraqi-Kurdish Peshmerga in International Law", in *Harvard International Law Journal*, Vol. 59, No. 1, 2018, pp. 245-277.

bb) but necessity is not a circumstance precluding wrongfulness

^ CASES AND DOCUMENTS

- International Law Commission, Articles on State Responsibility (Part A., Arts 25(2) (a), 26 and commentary of Art. 25)
- Belgium, Law on Universal Jurisdiction (Part A., Art. 136(g))
- British Military Court at Hamburg, The Peleus Trial
- United States Military Tribunal at Nuremberg, United States v. Alfried Krupp *et al.* (Section 4. (iii))
- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory (Part A., para. 140)
- Israel, Methods of Interrogation Used Against Palestinian Detainees
- ICTY, The Prosecutor v. Strugar (Part B., Paras. 280 and 295)

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- ARAI-TAKAHASHI Yutaka, "Excessive Collateral Civilian Casualties and Military Necessity: Awkward Crossroads in International Humanitarian Law between State Responsibility and Individual Criminal Liability", in CHINKIN Christine & BAETENS Freya (eds), *Sovereignty, Statehood and State Responsibility : Essays in Honour of James Crawford*, Cambridge, CUP, 2015, pp. 325-339.
- D. SLOANE Robert, "On the Use and Abuse of Necessity in the Law of State Responsibility", in *American Journal of International Law*, Vol. 106, Issue 3, 2012, pp. 447-508.
- GARDAM Judith, *Necessity, Proportionality and the Use of Force by States*, Cambridge, CUP, 2004, 259 pp.
- HAYASHI Nobuo, "Requirements of Military Necessity in International Humanitarian Law and International Criminal Law", in *Boston University International Law Journal*, Vol. 28, Issue 1, 2010, pp. 39-140.
- HAYASHI Nobuo, "Contextualizing Military Necessity", in *Emory International Law Review*, Vol. 27, Issue 1, 2013, pp. 189-289.
- MACCOUBREY Hilaire, "The Nature of the Modern Doctrine of Military Necessity", in *RDMDG*, 1991, pp. 215-252.

Further reading:

- BEN-NATAN Smadar, "Revise your Syllabi: Israeli Supreme Court Upholds Authorization for Torture and Ill-Treatment", in *Journal of International Humanitarian Legal Studies*, Vol. 10, No. 1, 2019, pp. 41-57.
- CONNOLLY Catherine, "'Necessity Knows No Law': the Resurrection of *Kriegsraison* through the US Targeted Killing Programme", in *Journal of Conflict and Security Law*, Vol. 22, No. 3, 2017, pp. 463-496.
- ONISHI Kosuke, "Rethinking the Permissive Function of Military Necessity in Internal Non-

International Armed Conflict”, in *Israel Law Review*, Vol. 51, Issue 2, July 2018, pp. 235-253.

- ROMANO John-Alex, “Combating Terrorism and Weapons of Mass Destruction: Reviving the Doctrine of a State Necessity”, in *The Georgetown Law Journal*, Vol. 87/4, 1999, pp. 1023-1057.
- VENTURINI Gabriella, *Necessità e proporzionalità nell’uso della forza militare in diritto internazionale*, Milano, Giuffrè, 1988, 189 pp.

cc) but self-defence is not a circumstance precluding wrongfulness

^ CASES AND DOCUMENTS

- International Law Commission, Articles on State Responsibility (Part A., Arts 21, 26 and para. 3 of the commentary of Art. 21)
- France, Accession to Protocol I (Part B., para. 11)
- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory (Part A., paras 138-139)
- ICTY, The Prosecutor v. Martić (Part C., para. 268)
- ICTY, The Prosecutor v. Kupreskić et al. (Paras 511-520)

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CORN Geoffrey S., “Self-defense Targeting: Blurring the Line between the Jus ad Bellum and the Jus in Bello”, in *International Law Studies*, Vol. 88, 2012, pp. 57-92.
- GREEN James A. & WATERS Christopher P.M., “Military targeting in the context of self-defence actions”, in *Nordic Journal of International Law*, Vol. 84, No. 1, 2015, pp. 3-28.
- KALSHOVEN Frits & FONTEIN Thyla, “Some Reflections on Self-Defence as an Element in Rule of Engagement”, in MATTHEE Mariëlle, TOEBES Brigit & BRUS Marcel (eds), *Armed Conflict and International Law : In Search of the Human Face : Liber Amicorum in Memory of Avril McDonald*, The Hague, T.M.C. Asser Press, 2013, pp. 97-113.
- OKIMOTO Keiichiro, “The Cumulative Requirements of Jus ad Bellum and Jus in Bello in the Context of Self-Defense”, in *Chinese Journal of International Law*, Vol. 11, No. 1, 2012, pp. 45-75.

Further reading:

- ARIMATSU Louise, “The Law of State Responsibility in Relation to Border Crossings: an Ignored Legal Paradigm”, in *International Law Studies*, Vol. 89, 2013, pp. 21-53.
- BLANK Laurie R., “Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications”, in *William Mitchell Law Review*, Vol. 30, No. 5, 2011-2012, pp. 1655-1700.
- KOUTROULIS Vaios, “Of Occupation, Jus ad Bellum and Jus in Bello: a Reply to Solon Solomon’s “the Great Oxymoron: Jus in Bello Violations as Legitimate Non-Forcible Measures of Self-Defense :

the Post-Disengagement Israeli Measures towards Gaza as a Case Study”, in *Chinese Journal of International Law*, Vol. 10, No. 4, 2011, pp. 897-914.

- MOUSSA Jasmine, “Nuclear Weapons and the Separation of Jus ad Bellum and Jus in Bello”, in NYSTUEN Gro, CASEY-MASLEN Stuart & BERSAGEL Annie Golden (eds), *Nuclear Weapons under International Law*, Cambridge, CUP, 2014, pp. 59-87.
- ODLE John, “Targeted Killings in Yemen and Somalia: Can the United States Target Low-Level Terrorists?”, in *Emory International Law Review*, Vol. 27, No. 1, 2013, pp. 603-660.
- PAUST Jordan J., “Propriety of Self-Defense Targetings of Members of Al Qaeda and Applicable Principles of Distinction and Proportionality”, in *ILSA Journal of International and Comparative Law*, Vol. 18, 2011-2012, pp. 565-580.

dd) but no reciprocity [CIHL, Rule 140]

Quotation

Article 60. Termination or suspension of the operation of a treaty as a consequence of its breach

[...]

1. A material breach of a multilateral treaty by one of the parties entitles:
 - a. the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:
 - i. in the relations between themselves and the defaulting State; or
 - ii. as between all the parties;
 - b. a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
 - c. any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.
2. A material breach of a treaty, for the purposes of this article, consists in:
 - a. a repudiation of the treaty not sanctioned by the present Convention; or
 - b. the violation of a provision essential to the accomplishment of the object or purpose of the treaty. [...]
3. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

[Source: Vienna Convention on the Law of Treaties, U.K.T.S. 58 (1980), Cmnd. 7964]

^ CASES AND DOCUMENTS

- International Law Commission, Articles on State Responsibility (Part A., Arts 49-51)
- United States Military Tribunal at Nuremberg, The Ministries Case
- ICRC Appeals on the Near East (Part B.)
- Eritrea/Ethiopia, Partial Award on POWs (Part B., Paras. 148-163)
- ICTY, Prosecutor v. Martić (Part A., Para. 9)
- ICTY, The Prosecutor v. Kupreskić *et al.* (Paras. 517-520)
- Colombia, Constitutional Conformity of Protocol II (Para. 9)

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DARCY Shane, “Reciprocity and Reprisals”, in LIIVOJA Rain & McCORMACK Tim (eds), *Routledge Handbook of the Law of Armed Conflict*, London, New York, Routledge, 2016, pp. 492-505.
- PREUX Jean de, “The Geneva Conventions and Reciprocity”, in *IRRC*, No. 244, January 1985, pp. 25-29.

Further reading:

- CHU Jonathan A., “A Clash of Norms? How Reciprocity and International Humanitarian Law Affect American Opinion on the Treatment of POWs”, in *Journal of Conflict Resolution*, Vol. 63, No. 5, 2019, pp. 1140-1164.
- MEYROWITZ Henri, “Die Repressalienverbote des I. Zusatzprotokolls zu den Genfer Abkommen vom 12. August 1949 und das Reziprozitätsprinzip”, in *Neue Zeitschrift für Wehrrecht*, 1986, pp. 177-193.
- VANHULLEBUSCH Matthias, “Reciprocity under International Humanitarian Law and the Islamic Law of War”, in *Journal of Islamic State Practice in International Law*, Vol. 11, 2015, pp. 58.
- ZOMMER Matthew T., “The Role of Reciprocity in International Humanitarian Law Training: Examples from Historical and Contemporary US Practice”, in *Journal of Political and Military Sociology*, Vol. 46, No. 1, 2018, pp. 27-51.

ee) admissibility of reprisals [CIHL, Rules 145-147]

^ CASES AND DOCUMENTS

- International Law Commission, Articles on State Responsibility (Part A., Arts 49, 50 and 51 and Para. 8 of the commentary of Art. 50)
- United Kingdom and Australia, Applicability of Protocol I (Part C.)

- Switzerland, Prohibition of the Use of Chemical Weapons (Para. 2)
- ICTY, The Prosecutor v. Martić (Part B., Paras. 464-468)
- ICTY, The Prosecutor v. Kupreskić *et al.* (Paras. 517-520)

▲ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DARCY Shane, “The Evolution of the Law of Belligerent Reprisals”, in *Military Law Review*, Vol. 175, March 2003, pp. 184-251.
- DARCY Shane, “Reciprocity and Reprisals”, in LIIVOJA Rain & McCORMACK Tim (eds), *Routledge Handbook of the Law of Armed Conflict*, London, New York, Routledge, 2016, pp. 492-505.
- DE HEMPTINNE Jérôme, “Prohibition of Reprisals”, in CLAPHAM Andrew, GAETA Paola & SASSÒLI Marco (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford, Oxford University Press, 2015.
- GREENWOOD Christopher, “The Twilight of the Law of Belligerent Reprisals”, in *Netherlands Yearbook of International Law*, 1989, pp. 35-70.
- KALSHOVEN Frits, *Belligerent Reprisals*, Geneva, Henry-Dunant Institute, Leiden, M. Nijhoff, 2005, 390 pp.
- NEWTON Michael A., “Reconsidering Reprisals”, in *Duke Journal of Comparative and International Law*, Vol. 20, No. 3, 2010, pp. 361-388.
- SANG YK Brian, “Regulation of Belligerent Reprisals in International Humanitarian Law: Historical Development and Present Status”, in *African Yearbook on International Humanitarian Law*, 2012, pp. 134-184.
- SUTTER Philip, “The Continuing Role for Belligerent Reprisals”, in *Journal of Conflict and Security*, Vol. 13, No. 1, 2008, pp. 93-122.

Further reading:

- BÍLKOVÁ Veronika, “Belligerent Reprisals in Non-International Armed Conflicts”, in *International & Comparative Law Quarterly*, Vol. 63, Issue 1, January 2014, pp. 31-65.
- CASEY-MASLEN Stuart, “The Use of Nuclear Weapons as a Reprisal under International Humanitarian Law”, in NYSTUEN Gro, CASEY-MASLEN Stuart & BERSAGEL Annie Golden (eds), *Nuclear Weapons Under International Law*, Cambridge, CUP, 2014, pp. 171-190.
- BIERZANEK Remigiusz, “Reprisals as a Mean of Enforcing the Laws of Warfare: The Old and the New Law”, in CASSESE Antonio (ed.), *The New Humanitarian Law of Armed Conflict*, Napoli, Editoriale Scientifica, Vol. I, 1979, pp. 232-257.
- HAMPSON Françoise, “Belligerent Reprisals and the 1977 Protocols to the Geneva Conventions of 1949”, in *ICLQ*, Vol. 37/4, 1988, pp. 818-843.
- NAHLIK Stanislaw E., “Le problème des représailles à la lumière des travaux de la Conférence diplomatique sur le droit humanitaire”, in *RGDIP*, Vol. 82, 1978, pp. 130-169.

^ CASES AND DOCUMENTS

- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996 (Protocol II to the 1980 Convention)
- Belgium, Law on Universal Jurisdiction (Part A., Art. 136(g))
- United Kingdom and Australia, Applicability of Protocol I (Part C.)
- United States, President Rejects Protocol I
- Germany/United Kingdom, Shackling of Prisoners of War
- Israel, Cheikh Obeid et al. v. Ministry of Security

- no reprisals against the civilian population

(See *supra*, Conduct of Hostilities, II. The protection of the civilian population against the effects of hostilities, 6. Prohibited attacks, d. attacks against the civilian population (or civilian objects) by way of reprisals))
P I, Arts 51(6), 52(1), 53(c), 54(4), 55(2) and 56(4)

- no reprisals against protected persons:

GC I-IV, Arts 46/47/13(3)/33(3) respectively; P I, Art. 20 [CIHL, Rules 146 and 147]

- conditions for reprisals where they are admissible:

[CIHL, Rule 145]

^ CASES AND DOCUMENTS

- United Kingdom and Australia, Applicability of Protocol I (Part C.)
- ICTY, The Prosecutor v. Martić (Part B., Paras. 464-468)

- aimed at compelling the enemy to cease violations
- necessity – proportionality
- preceded by a formal warning
- decided at the highest level

ff) IHL obligations are erga omnes obligations

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- LONGOBARDO Marco, "The Contribution of International Humanitarian Law to the Development of

^ CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory (Part A., paras 155-157)

Footnotes

- [1] See GC I-IV, Arts 52/53/132/149 respectively
- [2] See Commission’s web page: <http://www.ihffc.org>
- [3] As of December 2010, 71 States Parties have made such a declaration comparable to the optional clause of compulsory jurisdiction under Art. 36(2) of the Statute of the International Court of Justice.
- [4] See GC I-GC III, common Art. 11; GC IV, Art. 12
- [5] See supra for nuances, Implementation Mechanisms V. The Obligation to Ensure Respect(Common Article I, with references to the Articles on State Responsibility, adopted by the International Law Commission, see International Law Commission, Articles on State Responsibility
- [6] See notes 360 and 361 above
- [7] See P I, Art. 89, which is analogous to Art. 56 of the UN Charter
- [8] See Hague Convention IV, Art. 3; P I, Art. 91
- [9] See Hague Convention IV, Art. 3; P I, Art. 91
- [10] See GC I-IV, Arts 46/47/13(3)/33(3) respectively; P I, Arts 20, 51(6), 52(1), 53(c), 54(4), 55(2) and 56(4)
- [11] See GC I-III, Art. 6; GC IV, Art. 7
- [12] See GC I-III, Art. 7; GC IV, Art. 8
- [13] See, e.g., GC I, Art. 33(2); GC IV, Arts 49(2) and (5), 53, 55(3), and 108(2); P I, Art. 54(5)
- [14] See International Law Commission, Articles on State Responsibility (Part A., Arts 21, 26 and para. 3 of the commentary of Art. 21; Art. 25(2)(a) and para. 19 of the commentary of Art. 25)