Under general international law, the responsibility of a State is engaged if the actions of its agents or actions otherwise attributable to it constitute internationally wrongful acts, in violation of its international obligations. Five circumstances may preclude wrongfulness and are listed in the ILC’s Articles on State Responsibility (Arts. 21-25). There are distinct legal consequences in the case that a State’s responsibility is engaged. The State is required to cease the unlawful conduct and to make reparation [1] for the injury caused by its wrongful conduct.

In terms of IHL, Common Article 1 to the Four Geneva Conventions demands that every State, whether party to an armed conflict or not, ensure respect [2] for the laws of war. Hence, if a violation [3] occurs, not only the injured State but every State may and must take measures to restore respect for IHL. When involved in armed conflict, a State bears responsibility for complying with IHL. To ascertain the existence of a violation, Article 90 of Protocol I establishes a Fact-Finding Commission [4] and sets out procedures for its functioning. If a State is found responsible, it has to compensate the injured State but, in conformity with the traditional structure of international law, no right to compensation arises for individual victims of violations. However, in situations of internal armed conflicts, victims are often nationals of the State concerned. Therefore, Human Rights Law requires that the State makes reparations directly to the beneficiary of the rule.

In the event that a State does not cease its unlawful conduct, injured States are entitled to
take countermeasures against the State that is in violation of its obligations. However, under IHL, reprisals against the civilian population or protected persons and objects are prohibited. Furthermore, certain circumstances precluding wrongfulness, such as consent and countermeasures, cannot be used to preclude the wrongfulness of acts that are violations of IHL.

See Reparation; Individual criminal responsibility; Reprisals; Sanctions;

OUTLINE
See Chapter 14, The International Responsibility of the State for Violations

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

CASES
The Netherlands, Responsibility of International Organizations

Democratic Republic of the Congo, Conflict in the Kivus (Part III., Paras. 7, 29-60)

United Kingdom, The Case of Serdar Mohammed (High Court Judgment) [paras 158-222]
ECHR, Al-Jedda v. UK (80-86) [15]

General Assembly, The use of drones in counter-terrorism operations [16]

UN, Report of the Secretary-General for the World Humanitarian Summit [17]


USA, Al-Shimari v. CACI Premier Technology, Inc. [21]

BIBLIOGRAPHIC RESOURCES

Suggested readings:


Further readings


[1] https://casebook.icrc.org/glossary/reparations