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Victims of War and Their Right to Reparation for Violations of International Humanitarian Law

It is a well-established principle of international law that states bear responsibility for illegal acts attributable to them, and that such responsibility entails a duty to provide reparation.[2] Reparation aims at *"eliminating, as far as possible, the consequences of the illegal act and restoring the situation that would have existed if the act had not been committed"*.[3] This schema applies to all spheres of international law, including international humanitarian law (IHL). Here, however, its application raises a problem relating to the circle of right-holders entitled to reparation. *Does this circle remain limited to states, or does it include also individuals who suffered the actual physical, material or moral harm?* This is the question that will be dealt with in the current text.

Overview of the Main Sources of the Current Legal Regulation

The right to reparation is usually considered a secondary right *"deriving from a primary substantive right that has been breached"*.[4] In order to establish whether individuals can claim reparation for IHL violations, it is therefore necessary to find out first, whether they have primary rights under IHL, and, second whether they are entitled to claim reparation in case these rights are violated. Furthermore, it is necessary to look into whether they have corresponding procedural (tertiary) rights, i.e. whether they can seek the protection of the substantive rights before competent instances. Various scenarios result from the possible combinations of answers given to these three questions. Practically each scenario has its proponents and there is some evidence supporting it. What follows is an overview of this evidence, which is divided according to its sources into three blocks: international treaties, case law and other sources. This overview will show which scenario describes the current legal situation in the most reliable way.

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[2] *"It is a principle of international law, and even a general conception of the law, that any breach of an engagement involves an obligation to make reparation /…/."* PCIJ, *Chorzów Factory Case,* 1928, par. 103.

[3] E.-C. Gillard, *Reparation for violations of international humanitarian law,* IRRC, Vol. 85, No. 851, September 2003, p. 531.

[4] L. Zegveld, *Remedies for victims of violations of international humanitarian law,* IRRC, Vol. 85, No. 851, September 2003, p. 503.

a) International Treaties

Three main categories of international treaties are relevant here. The first covers ***general IHL conventions*** such as the Hague Conventions (1899, 1907), the Geneva Conventions (1949), the Additional Protocols to the Geneva Conventions (1977) and other multilateral treaties on various aspects of the Hague or Geneva law. The analysis of these texts brings us to three conclusions. *First,* the conventions are not completely clear on whether individuals are bearers of primary IHL rights. On the one hand, the vast majority of provisions markedly address only states or parties to the conflict. This is clearly reflected in the language, speaking either in terms of duties ('parties to the conflict should….') or in impersonal formulas ('civilians shall be protected'). On the other hand, several provisions, using 'rights-discourse', seem to treat individuals as more than mere objects of protection. This is, for instance, the case of common Article 6-6-6-7 of the four Geneva Conventions, which identifies *"rights /…/ conferred upon"* various groups of protected persons; and of Article 75 of Additional Protocol I, which enlists guarantees of human treatment recognised to protected persons not benefiting from more favourable treatment.

Second, a similar lack of clearness exists in the sphere of secondary rights. The stipulations that regulate reparation, especially Article 3 of the 1907 Hague Convention IV (*"A belligerent party which violates the provisions /…/ shall, if the case demands, be liable to pay compensation"*),[5] do not specify the beneficiaries thereof, and thus gives way to two different interpretations. According to the first one, Article 3 covers only state-to-state reparations, excluding individuals from its sphere of application. This is deduced from the text (no mention made of individuals), the context of adoption (the inter-state character of international law at the beginning of the 20th century) as well as the *travaux préparatoires.* Those allegedly show that there was no will to create *"any right of individuals to demand compensation for damages and injury caused by the violations /…/".*[6] The second interpretation claims on the contrary that individuals do have secondary rights under Article 3. Proponents of this opinion refer, again, to the text (no exclusion of individuals) as well as to the legislative history. Reminding of the original German proposal (*"A belligerent party which shall violate the provisions /…/ to the prejudice of neutral persons shall be liable to indemnify those persons for the wrong done to them"*[7]), they argue that the purpose of the article *"was from the outset to provide individual persons with a right to claim compensation for damages they suffer".*[8] Neither of the interpretations is *prima facie* unacceptable and it is necessary to look into the practice (as will be done later) to see which has found more support in the international community.

Third, the issue of tertiary rights also remains unclear. The relevant dispositions, mainly the above-mentioned Article 3, do not speak about the procedure to be employed by those seeking

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[5] See also Article 91 of the Additional Protocol I to the Geneva Conventions ("*A party to the conflict which violates the provisions /…/ shall, if the case demands, be liable to pay compensation*").

[6] Tokyo District Court, *Henson et al. v. State of Japan,* 9 October 1998, reprinted at the ICRC website (www.icrc.org/ihl-nat.nsf).

[7] Cit. in Tokyo District Court, *X. et al. v. State of Japan*, 30 November 1998, reprinted at the ICRC website (www.icrc.org/ihl-nat.nsf).

[8] F. Kalshoven, *{PRIVATE}Article 3 of the Convention (IV) Respecting The Laws and Customs of War on Land, Signed at The Hague, 18 October 1907,* Violence Against Women in War Network (http://www.hri.ca/partners/vawwnet/Article3.htm, 13 April 2007).

reparation. For some, this means that *"each State at the time /…/ took it for granted that reparation for injured individuals could be effectuated only through traditional diplomatic protection in accordance with the principle of international law"*.[9] Proponents of this opinion refer to the proclamation by the Swiss delegate made during the elaboration of Article 3 that *"the settlement of the indemnities in favour of /…/ ressortissants, as well as in favour if neutrals"* was to be arranged *"between belligerents"*.[10] For others, however, the silence is not in itself decisive, because Article 3 allegedly has a self-executing character. Those in favour of this opinion affirm that *"the drafting history leaves no room for doubt that the authors had in mind a provision available to individual victims of violations of the laws of war and which these persons /…/ could invoke without running the risk of technical difficulties of a domestic legal order being put in their way by domestic courts taking cognisance of their claims"*.[11] Again, both interpretations seem possible and there is a need to look into the subsequent practice (as will be done later) to identify the correct one.

The second category of treaties consists of ***special ad hoc treaties*** regulating issues of reparation in post-war contexts. These treaties tackle directly only the question of secondary and/or tertiary rights, touching upon primary ones only implicitly. Examples usually given in this framework include several post-World War I and II peace treaties (the 1919 *Versailles Treaty*, the 1951 *San Francisco Peace Treaty*, etc.) as well as some more recent texts (the 2000 *Agreement between Eritrea and Ethiopia*). Since all these documents grant individuals the possibility to get reparation for war damage, they are frequently cited as evidence of an individual right to reparation. Such an approach seems, however, disputable. As for the first group of treaties (peace treaties), these in principle deal only with classical war reparations, meaning reparations for having started an illegal war (the *jus ad bellum* level). In this respect, the mechanisms created by them (i.e. the Mixed Arbitral Tribunals after World War I) generally accept claims directed exclusively against one party to the conflict, the defeated one (Germany after World War II), and have the right to adjudge indemnification even for damage not caused unlawfully.[12] This group of treaties therefore does not concentrate on the *jus in bello* level, and as such cannot serve as evidence in our context.

The second group of *ad hoc* treaties is represented by the 2000 Eritrea-Ethiopia Agreement. The agreement created the *Eritrea-Ethiopia Claims Commission* (EECC), mandated to *"decide /…/ all claims for losses, damage or injury by one Government against the other, and by nationals /…/ of one party against the Government of the other party /…/ that are: a) related to the conflict /…/, b) result from violations of international humanitarian law /…/"*.[13] Despite the wording, individuals are not allowed to bring claims before the EECC directly, but only via their respective states. The EECC has nevertheless confirmed in its jurisprudence that *"the claim remains the property of the individual and /…/ any eventual recovery of damages should accrue to the person"*.[14] The individuals are thus seen as bearers of secondary (probably also primary) IHL rights, lacking only the

[9] *X. et al. v. State of Japan*, op. cit.
[10] Ibid.
[11] F. Kalshoven, op. cit.
[12] For example the Mixed Arbitral Tribunals could adjudge compensation for damage suffered by individuals by the application of 'exceptional war measures', defined as lawful measures taken with regard to enemy property.
[13] Cit. in E. Schwager, R. Bank, *An Individual Right to Compensation for Victims of Armed Conflicts?,* Version August 2005, ILA (http://www.ila-hq.org/pdf/Compensation%20for%20Victims%20of%20War/IndividualRight - Bank-Schwager.pdf, 12 February 2007), p. 15.
[14] Ibid.

procedural capacity to access the EECC.[15] As such, the EECC can be seen as an interesting, even if only treaty-based, mechanism recognising at least a limited legal personality of individuals under IHL.

Finally, the third category of treaty sources includes ***international criminal law treaties,*** primarily the Rome Statute of the International Criminal Court (ICC). This Statute previews that the victims of the *"most serious crimes of concern to the international community as a whole"* (Art. 5, par. 1) under the ICC's jurisdiction may receive *"appropriate reparations /…/, including restitution, compensation and rehabilitation"* (Art. 75, par. 2). This reparation, however, is not supposed to be provided by the responsible state, but either by the individual perpetrator, or by the Trust Fund created by the Statute. This fact, reflecting the logic of the criminal prosecution, shows that the question of reparation can be dissociated from the link to the responsible state actor and brought to the level of the relation between victim and perpetrator or victim and the international community. The consequences of this shift will be discussed in the conclusion to this paper.

b) Case Law

There is now, both at the national and international levels, interesting case law relating to individual rights to reparation under IHL. This case law, similar to the special *ad hoc* treaties, concentrates mainly on the question of secondary and/or tertiary rights; however some rulings also pay attention to primary ones. The ***international case law*** remains for the moment rather limited. It includes the International Court of Justice (ICJ) decision on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) decision in the *Furundžija* case (1998).

In the former case, the ICJ decided that the construction of the wall gave rise to the obligation for Israel to *"make reparation for the damage caused to all the natural or legal persons"* (par. 152). The Court did not cite any concrete legal basis for the obligation, referring rather to *"a general principle to make reparations to individuals in case of a violation of their rights".*[16] While the acknowledgement of such a principle certainly constitutes a progress (and a confirmation that secondary rights logically follow from primary ones), it does not in itself resolve the problem. It is unclear first, whether the ICJ recognises the right to reparation in the framework of IHL or rather in that of human rights law, and second, whether the Court would grant individuals, in addition to not substantive (secondary) rights, also relevant procedural (tertiary) rights.

The latter point is taken up by the ICTY in the *Furundžija* Case. Focusing on the special category of the peremptory norms of international law (*jus cogens*), the Tribunal assumes that individual victims of the violation of such norms have automatically the right to claim reparation before any judicial instance available to them (national court, foreign national court, or international court if created). It is possible to deduce from this argument that, in the ICTY's view, at least the violations of such IHL norms that belong to *jus cogens* would be

[15] This, of course, does not say anything about their potential tertiary rights under general international law or under Article 3 of the Hague Convention.
[16] E. Schwager, R. Bank, op. cit., p. 17.

subject to individual reparation and that such reparation would be justiciable. Yet it remains unclear to what extent this view reflects the existing customary law, and to what extent it is just an attempt to achieve a progressive development thereof. The general practice rather indicates the latter option.

The ***national case law*** on reparation is richer but also more heterogeneous than the international one. It includes cases dealing with World War II war damages (decided immediately after the War or in subsequent decades) as well as some more recent cases. Almost all decisions are based on the interpretation of Article 3 of the Hague Convention. The analysis of the rulings shows that up to now national courts have mostly opted for a cautious approach and have denied any (or most) rights to individuals. What differs is just the extent of the rights concerned. Some courts affirm that individuals have no rights whatever under IHL. For instance, in the *Shimoda* Case (1963), the Tokyo High Court held that IHL treaties do not endow protected persons with individual rights and that *Article 3 /…/ should be interpreted /…/ to provide state responsibility between states, not individual right for compensation*".[17] Similarly, in the *Varvarin Case* (2003), the Bonn District Court found that *"there is no rule of international law /…/ that grants individuals an enforceable right to claim compensation for damages and /…/ pain and suffering against another State for the consequences of an armed conflict /…/"*.[18] In these cases, individuals are seen not as subjects of IHL but as its mere beneficiaries disposing only of an *"indirect international protection"*.[19]

In another group of cases, courts have mainly concentrated on the procedural aspects, leaving the question of substantive (especially primary) rights open. Thus in the *Goldstar* Case (1992), the US Court of Appeal states that *"the Hague Convention does not explicitly provide for a privately enforceable cause of action"* and that *"a reasonable reading /…/ does not lead to the conclusion that the signatories intended to provide such a right"*.[20] A similar position was adopted in the *Filipino 'Comfort Women'* Case (1998) by the Tokyo District Court, ruling that *"according to the ordinary meaning to be given to the terms in their context, Article 3 /…/ cannot be understood as a clause that entitles individual victims to bring a claim for compensation directly against a wrongdoing State"*.[21] Finally, some courts do recognise the existence of primary rights but at the same time deny the presence of secondary and tertiary ones. In the *Italian Military Internees* Case (2004), the German Federal Constitutional Court acknowledged that individuals enjoy rights under IHL, adding however that issues of reparation concern only states, not individuals.

In contrast to this major group of cases, other cases seem to offer a different perspective and to recognise the individual right to reparation. These cases include the decision by the Munster Higher Administrative Court (1952) granting compensation to an individual injured by a vehicle of the British occupying power on the basis of Article 3 of the Hague Convention, and recent decisions of several courts in Greece (the *Distomo* Case, 1999, the *Margellos* Case, 2002)

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[17] District Court of Tokyo, *Shimoda et al. v. The State,* 7 December 1963, par. 626, cit. in Ibid., p. 9.
[18] N. Quénivet, D. Blocher, *Excerpts of the judgment of the Civil Court of Bonn of 10 December 2003,* Case No. 1 0 361/02, p. 4.
[19] Ibid., p. 5.
[20] Court of Appeal (Fourth Circuit), *Goldstar Case*, Judgement, 16 June 1992, cit. in J.-M. Henckaerts, L. Doswald-Beck (Eds.), *Customary International Humanitarian Law*, Volume II (Practice), Part II, International Committee of the Red Cross, Cambridge University Press, Cambridge, 2005, p. 3567.
[21] Tokyo District Court, *Filipino 'Comfort Women' Claims Case*, 9 October 1998, cit. in Ibid., p. 3564.

and in Italy (the *Ferrini* Case, 2004), implicitly admitting that individuals have the right to claim and receive reparation. Nevertheless, these cases remain relatively isolated and do not usually deal with the issue of rights in a clear and unambiguous way. Furthermore, they focus only on trials pursued in the victims' own country, not on those where individuals present claims directly to the responsible state's courts. In view of these facts, the latter groups of cases cannot overbalance the general score of the national case law, which goes towards the complete or near-complete denial of the individual right to reparation.

c) Other Sources

The last 'block' of evidence gathers what cannot be put into the two previous blocks. It is thus heterogeneous, including at the same time such elements as doctrine, national legislation, UN Security Council resolutions and soft law instruments. ***Doctrine*** seems relatively well disposed to treat individuals as more than mere objects of protection. Yet there is discord between those awarding individuals only substantive, eventually only primary, rights, and those who extend individuals' status to include procedural entitlements too. The former group may be represented by N. Quénivet, who claims that individuals hold rights under IHL but that *"at no stage, does the individual have any legal* [procedural] *standing in humanitarian law".*[22] The position of the latter group is demonstrated by C. Greenwood, who ensures that *"Article 3 /…/ confers rights upon individuals, including rights to compensation, in the event of a violation, which the individual can assert against the State of the wrongdoer".*[23]

Relevant ***national legislation*** comprises various reparation laws adopted mainly to compensate individual victims of atrocities committed during World War II. Good examples are offered by the *German Federal Law on Compensation* (1953) and *the Law on the Creation of a Foundation Remembrance, Responsibility and Future* (2000). These laws are sometimes viewed as recognising the individual right to reparation, but this approach is disputable for at least two reasons. First, from the substantive viewpoint, these laws do not address IHL violations as such but, instead, deal with certain selected crimes, often committed against specific groups of people, being thus closer to the human rights approach than to that of IHL. Second, from a formal viewpoint, these laws have never been taken by the respective states *"as complying with a legal but rather with a moral obligation".*[24] As such, they cannot be considered as evidence of individual rights existing at the international level.

The ***UN Security Council*** has adopted several resolutions frequently cited in this context. In addition to the resolutions establishing the two *ad hoc* international criminal tribunals, for the former Yugoslavia and Rwanda (endowed to grant the restitution of property to legitimate owners), it is especially the case of resolution 687 (1991). This resolution created the UN Compensation Commission (UNCC), mandated to implement Iraq's responsibility *"under international law, for any direct loss, damage /…/ or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait"* (par. 16). While the UNCC

[22] N. Quénivet, *The Varvarin Case: the Legal Standing of Individuals as Subjects of International Humanitarian Law,* Journal of Military Ethics, 2004, p. 183.
[23] Cit. in J.-M. Henckaerts, L. Doswald-Beck (Eds.), op. cit., p. 3592.
[24] E. Schwager, R. Bank, op. cit., p. 4.

is almost always mentioned among the examples of IHL reparation mechanisms, its nature is, as seen from its tasks, quite different. It is in fact much closer to the system of war reparations as based on various post-war peace treaties (see above). The only situation where reparation can be made for IHL violations concerns claims by members of the Allied Coalition Armed Forces who suffered mistreatment as prisoners of war. This limited regulation can be hardly seen as setting any important precedent in the sphere of *jus in bello*.

Finally, a set of ***soft law instruments*** deals with the individual right to reparation. These include several UN General Assembly[25] and UN Commission on Human Rights[26] resolutions, especially the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*[27] (hereafter Basic Principles) adopted by the UN General Assembly in 2005. The document guarantees to the victims of serious IHL violations *"adequate, effective and prompt reparation for harm suffered"* (par. 11, al. b). The reparation should be provided by the state responsible for the violation. If, however, the violation has been caused by non-state actors or individuals, the relevant reparation should be provided by them. This reparation can take the form of restitution, compensation, rehabilitation, satisfaction or guarantees of non-repetition. And it must be completed by equal and effective access to justice and access to relevant information concerning violations and reparation mechanisms. Although presented as the codification of customary law, the Basic Principles, especially in the part relating to IHL, represent rather an example of its progressive development. They can thus be taken not as confirmation of an existing individual right to reparation, but rather as a sign of the direction that evolution in this sphere may take.

Analysis of the Main Sources of the Current Legal Regulation

The overview of relevant sources has shown several important facts about the individual right to reparation. *First,* there is confusion between the *jus ad bellum* and the *jus in bello* levels. Cases of war reparations provided for by states having violated the prohibition on the use of force are often presented as cases of reparation for IHL violations. This happens, for example, with the post World War II peace treaties and the UN Compensation Commission. Such confusion has to be avoided because it distorts the whole conception of legal regulation and artificially increases the amount of evidence available. *Second,* there is frequently no clear distinction made between primary, secondary and tertiary rights. For instance, some courts and authors pretend to deny secondary rights to individuals, while in reality having doubts about their procedural capacity. As a result, some sources are difficult to analyse because they do not distinguish between the three concepts, and combine their elements incoherently. *Third,* the evidence is not homogeneous and cohesive. The available sources go in different directions and favour different approaches. It is therefore possible to find arguments in support of almost any legal position. Despite this, it is possible to identify certain features that characterise the

[25] Resolutions 48/153 and 49/196 on the former Yugoslavia recognise *"the right of victims of 'ethnic cleansing' to receive just reparation for their losses"* (par. 95 and 96).
[26] Resolution 1998/70 urges parties of the conflict in Afghanistan to respect IHL and *"to provide sufficient and effective remedies to the victims of grave violations and abuses of human rights and of accepted humanitarian rules"* (par 99).
[27] UN Doc. A/RES/60/47, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,* 21 March 2006.

international legal regulation in general, and to select certain trends determining the course of its evolution. These show that the regulation has passed through three main periods.

In the ***first period***, at the turn of the 19th and 20th century (when Article 3 of the Hague Convention IV was *inter alia* adopted), the position of individuals in IHL was construed analogously to the peace-time foreigners' law. Thus, IHL granted to individuals 'a minimum standard of treatment in times of war' (analogous to the 'minimum standard of treatment in times of peace' garanted to them by the foreigners' law) and, in case of the violation thereof, it gave them a right to reparation. This right remained limited to 'foreigners', i.e. citizens of neutral or enemy states. In view of the practical difficulties that they would face if asked to claim reparation before national courts of the responsible states, it was decided that the substantive 'rights' would not be directly justiciable but that it would be up to the states concerned to settle the issue of reparation owned to their nationals in bilateral negotiations, either during the armed conflict (in agreements between the responsible and the neutral state) or in its aftermath (in a peace treaty between the responsible and the enemy states). So in this system individuals could be seen as having primary and secondary rights (to the extent that this was true for the foreigners' law) but they had no direct access to foreign courts. Article 3 of the Hague Convention, which is the expression of this system, was thus addressed to individuals but was not self-executing. Furthermore, the regulation was dispositive so states could agree, in relation to their nationals, to whatever solution they saw fit, including the waiver of reparation. In the next decades, the regulation did not, anyway, really come into application, since the use was mostly made of war reparations for *jus ad bellum* violations.

The ***second period***, covering the years of the Cold War, was marked by a strongly state-centric approach towards IHL. IHL was seen as regulating relations *"from State to State"* exclusively,[28] or from one party to the conflict to the other. Individuals remained outside the IHL's sphere of application and were treated not as subjects but as beneficiaries, enjoying objective protection, not subjective rights. This applied also to reparation issues, considered purely inter-state affairs with no place for individuals. Hence concrete victims had neither a substantive right to reparation, nor the procedural entitlement to claim it. That position was held mainly by states and found its expression in new treaties (the Geneva Conventions of 1949, the Additional Protocols of 1977) as well as in national legislation and national *case law*. In those sources, individuals were mostly, either explicitly or implicitly, denied any rights whatever under IHL and saw themselves reduced to mere objects of protection. Despite that, some entities, especially the International Committee of the Red Cross (ICRC), stayed loyal to the original concept and promoted the idea that individuals had the right to reparation,[29] even if they could not claim it before the responsible state's judicial bodies.[30] Moreover, the ICRC tried to claim that the individual right to reparation was absolute and the relevant states could not waiver it. Those ideas, however, did not receive greater support among states.

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[28] Federal Supreme Court, *Distomo Case*, 26 June 2003, cit. in J.-M. Henckaerts, L. Doswald-Beck (Eds.), op. cit., p. 3561.

[29] See the ICRC commentary on Article 91 of the Additional Protocol I of 1977, stating *that "those entitled to compensation will normally be Parties to the conflict or their nationals* (emphasis added)*".*

[30] See also the ICRC commentary on Article 148 of the Geneva Convention IV of 1949, according to which *"only a State can make /…/ claims on another State /…/".*

Finally, the ***third,*** contemporary ***period*** (since 1990) brings a strengthening of the position of individuals in IHL, and in international law in general. Individuals stop being seen as mere passive objects of protection and turn more and more into active subjects of rights. As such, they are considered to have the full range of both substantive and procedural rights. This shift has been taking place mainly under the influence of human rights law, which pushes IHL towards the adoption of an individual-oriented perspective, putting the victim first; and at the same time promotes the justiciability of any recognised rights for individuals. For the moment, it does not seem that the change of the legal regulation would have been accomplished and individuals would have become true subjects of IHL entitled to claim reparation for damage suffered.

Yet there is an *"increasing trend in favour of enabling individual victims of violations of IHL to seek reparation directly from the responsible State",*[31] which seems to gradually modify the regulation, reinforcing the position of individuals. Furthermore, the approach to reparations starts being significantly marked by developments in international criminal law. This brings into IHL a distinction between reparations for serious violations thereof (to be provided to the victim in each case, whether by specific perpetrators, the responsible state or, eventually, the international community as a whole) and reparations for other violations (to be covered by the responsible state). The distinction, advanced by the doctrine, NGOs and international organisations, is reflected in soft law instruments (the 2005 *Basic Principles*) and treaty mechanisms (the ICC Statute, the Eritrea-Ethiopia Compensation Commission). It nevertheless does not seem to have found its way into de *lege lata* regulation yet.

Conclusion

On the basis of the analysis undertaken in the previous chapters, it is possible to say, answering thus the question asked at the beginning of this text, that *the circle of right-bearers entitled to claim reparation under IHL remains limited to states, but that this circle is slowly enlarging to include the individual victims of IHL violations.* This shift is more than desirable, since reparation is *"an important part of enforcement and can play a significant role in deterring future violations".*[32] Moreover, it can help ensure that victims of IHL violations will get a minimum of redress and, on a more general level, it can constitute *"a first element in a process of reconciliation with the past".*[33] For all these reasons, it is definitely worth supporting and promoting.

[31] J.-M. Henckaerts, L. Doswald-Beck (Eds.), *Customary International Humanitarian Law*, Volume I (Rules), International Committee of the Red Cross, Cambridge University Press, Cambridge, 2005, p. 541.
[32] E.-C. Gillard, op. cit., p. 530.
[33] E. Schwager, R. Bank, op. cit., p. 5.

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