

# Obligation to Provide Access to Adequate Remedies to Victims of CBRN Events under IHL and IHRL

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## 1 Introduction

As spelled out in the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines or UNBPG),<sup>1</sup> victims' remedies encompass: i) equal and effective access to justice; ii) adequate, effective and prompt reparation for harm suffered; iii) access to relevant information concerning violations and reparation mechanisms.<sup>2</sup> The UNBPG have the merit of illustrating, in clear terms, which are the remedies to which individual victims are entitled to, not only in the aftermath of gross or serious violations<sup>3</sup> but, more generally, as a consequence of breaches of international law that affect them directly.<sup>4</sup> Hence, victims of violations of international law<sup>5</sup> that stem from chemical, biological, radiological and nuclear (CBRN) events are entitled to remedies, which are foreseen under the current international

1 UNGA, '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' (2006), A/RES/60/147.

2 Ibid para 11.

3 L F Damrosch, 'Gross and Systematic Human Rights Violations', in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2013); CF de Casadevante Romani 'International Law of Victims' (2010) 14 Max Planck UNYB 219. Notably, the terms are used, for example, in the jurisprudence of authoritative human rights bodies, but they are not defined in international binding instruments, although serious violations of international humanitarian law are classified as war crimes under the Rome Statute of the ICC. As specified in the Preamble to the UNBPG, gross violations of international human rights law and serious violations of international humanitarian law, by their very grave nature, constitute an affront to human dignity. UNBPG (n 1) Preamble. Thus, there is no closed list, but rather different factors that come into play to assess the gravity of a given violation, such as the character of the right, the magnitude of the violation, the type of victim (vulnerability) and the impact of the violation.

4 D Shelton, 'Human Rights, Remedies', in R Wolfrum (ed) (n 3).

5 Damrosch (n 3).

legal framework and represent the focus of this analysis.<sup>6</sup> Nonetheless, the venues and the mechanisms available are still scant and the focus so far has mainly been placed on inter-State disputes and secondary obligations deriving from breaches of norms at the inter-State level.<sup>7</sup>

The present contribution will not focus on the inter-State dimension nor on the municipal level,<sup>8</sup> but it rather aims at mapping and analysing the procedural and substantive aspects related to the international remedies that can be claimed directly by individual or groups of victims of CBRN-related violations as committed by States, private actors (eg terrorist organisations), business enterprises or individual perpetrators, in the various phases of a CBRN event.<sup>9</sup> In relation to those responsible for violations that directly cause (or contribute to) a CBRN event, it is worth underscoring that all the actors mentioned above bear an obligation to provide reparations, as spelled out by different sources of international law, eg the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).<sup>10</sup>

Generally speaking, the identification of said obligation is rather straightforward when it comes to States.<sup>11</sup> In relation to individuals, the rise of international criminal law (ICL) has paved the way for the recognition of their international responsibility,<sup>12</sup> ultimately leading to the pioneering approach of the International Criminal Court (ICC) and its reparations regime. However, it should be borne in mind that ICL still regards the role of domestic courts

6 See generally, F Capone, 'Remedies', in R Wolfrum (ed) (n 3); D Shelton, *Remedies in International Human Rights Law* (OUP 2015 3rd edn).

7 G Bartolini, *Riparazione per violazione dei diritti umani e ordinamento internazionale* (Jovene 2009); M Iovane, *La riparazione nella teoria e nella prassi dell'illecito internazionale* (Giuffrè 1990).

8 C Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* (CUP 2012) 39–43; J Sarkin, 'Reparation for Past Wrongs: Using Domestic Courts Around the World, Especially the United States, to Pursue African Human Rights Claims' (2004) 32 *International Journal of Legal Information* 426.

9 CBRN threats and events may include the use of chemical, biological, and nuclear weapons (weapons of mass destruction – WMD), both by State and non-State actors (including terrorist groups); the use of CBRN agents for smaller-scale crimes; industrial accidents involving release of CBRN agents into the environment; natural disasters or other calamities; and the disposal of toxic waste. See ch 1 by Frulli in this volume.

10 International Law Commission (ILC), 'Draft Articles on Responsibility of States for internationally wrongful acts, with commentaries' (2001) II(2) UNYBILC; D Shelton, 'Righting Wrongs: Reparations in the Articles on State Responsibility' (2002) 96 *AJIL* 833.

11 *Factory at Chorzów (Germany v Poland)* (*Judgment of 13 September 1928*) (Merits), PCIJ, Ser. A, No. 17, para 78.

12 See ch 32 by Vierucci in this volume.

as central and the engagement of the ICC as limited, in accordance with the principle of complementarity.<sup>13</sup>

Less straightforward is the obligation placed on non-State actors (NSAs), like terrorist groups and business enterprises, for which the current international legal framework clearly identifies, *de lege lata*, a subsidiary responsibility incumbent upon States, especially in those instances where the responsible actors are not able to, or are blatantly not interested in, providing reparations, like in the case of terrorist groups;<sup>14</sup> whereas, *de lege ferenda*, recent developments, eg in the field of business and human rights, point towards the recognition of NSAs' direct responsibility to provide redress.<sup>15</sup>

Ultimately, the present chapter will address the following key issues: an overview of victims' rights (or lack thereof) as enshrined in the current international and regional legal regimes applicable specifically to CBRN events; the role of international human rights law (IHRL) and international humanitarian law (IHL); and the potential contribution of ICL.<sup>16</sup>

## 2 Victims' Rights under the Current International Legal Regimes Applicable to CBRN Events

Some preliminary caveats must be made in relation to the scope of the current analysis. First, it is worth stressing that, since the present study pursues an

13 C McCarthy, *Reparations and Victim Support in the International Criminal Court* (CUP 2012); F Capone 'An Appraisal of the Al Mahdi Order on Reparations and Its Innovative Elements: Redress for Victims of Crimes against Cultural Heritage' (2018) 16 *Journal of International Criminal Justice* 645. On the principle of complementarity in general, see JK Kleffner, *Complementarity in the Rome Statute and National Criminal Jurisdictions* (OUP 2008).

14 UNBG (n 1) para 15; C Rose; 'An Emerging Norm: The Duty of States to Provide Reparations for Human Rights Violations by Non-State Actors' (2010) 33 *Hastings Int'l & Comp. L. Rev.* 307.

15 L Moffett 'Beyond Attribution: Responsibility of Armed Non-State Actors for Reparations in Northern Ireland, Colombia and Uganda' in N Gal-Or, C Ryngaert and M Noortmann (eds), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings* (Brill 2015) 323; Human Rights Council, 'Guiding Principles on Business and Human Rights, Implementing the United Nations Protect, Respect and Remedy Framework' (21 March 2011) UN Doc. A/HRC17/31; C Lopez, 'The Revised Draft of a Treaty on Business and Human Rights: A Big Leap Forward', *OpinioJuris* (15 August 2018), <<http://opiniojuris.org/2019/08/15/the-revised-draft-of-a-treaty-on-business-and-human-rights-a-big-leap-forward/>> (all links were last accessed on 8 January 2021).

16 McCarthy (n 13).

'all-hazards approach',<sup>17</sup> it does not only address CBRN events from a security or counter-terrorism perspective, but it deals with other emergencies, such as natural disasters, pandemic outbreaks, or hazardous activities carrying the risk of transboundary damage. Second, it is worth noting that the relevant actors can commit violations that pertain to the various phases of a CBRN event, *ie* prevention, preparedness, response and recovery; however, since the present contribution focuses only on remedies, *ie* secondary norms of international law, the description of the different primary norms and the corresponding obligations will not be carried out as it falls outside the purpose of the present analysis.<sup>18</sup>

Thus, the scope of the enquiry is rather broad, since it covers areas such as the arms control and disarmament regimes,<sup>19</sup> counter-terrorism law, international environmental law (IEL), and international disaster law (IDL).<sup>20</sup> Notably, none of these fields is particularly known for its contribution to the advancement of victims' rights; hence the need to further expand the analysis and discuss in the next section the venues for remedies under the current IHL and IHRL regimes.

### 2.1 *Defining the Victims of CBRN Events*

With regard to the definition of victims, the Basic Principles and Guidelines define them as:

persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.<sup>21</sup>

17 See ch 1 by Frulli in this volume.

18 See Part 1 on general obligations in the different phases of a CBRN event in this volume.

19 In particular, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (1968), the Biological Weapons Convention (BWC) (1972), the Chemical Weapons Convention (CWC) (1993), and the Treaty on the Prohibition of Nuclear Weapons (TPNW) (2017) which will enter into force on 22 January 2021. Notably, the Comprehensive Nuclear-Test-Ban Treaty (CTBT) (1996) is not yet in force.

20 Other contributions in this book analyse responses connected to specific ambits, see ch 9 by Perrone, ch 5 by Bakker, ch 13 by Bakker, ch 30 by Corcione in this volume, and Part 3 on CBRN weapons.

21 UNBG (n 1) para 8.

The definition provided by the UNBPG is very wide and finds application in different settings, including IHRL and IHL violations that stem from CBRN events. Although no attempt has been made to draft a definition of victims of CBRN events, it is worth elaborating more on the different fields under investigation. The current arms control and disarmament regimes and the existing IEL framework fail to provide a definition of victim, and nor does IDL, in spite of the strong focus placed by the Draft Articles on the Protection of Persons in Event of Disasters on 'victims of disasters'.<sup>22</sup> Counter-terrorism law, a term traditionally used to refer to both the 'sectoral treaties'<sup>23</sup> and the relevant UN SC Resolutions,<sup>24</sup> is also silent on the definition of victims of terrorist offences. A notable exception at the regional level is represented by the European Union (EU) framework,<sup>25</sup> which provides a definition of victim of terrorism originally included in Directive 2012/29/EU<sup>26</sup> and later embedded in the 2017 Directive on combating terrorism.<sup>27</sup> According to this definition, the term victim refers to:

a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, insofar as that was directly caused by a terrorist offence, or a family member of a person whose death was directly caused by a terrorist offence and who has suffered harm as a result of that person's death.<sup>28</sup>

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- 22 ILC, 'Draft Articles on the Protection of Persons in Event of Disasters' (2016) 11(2) UNYBILC. On the Draft Articles see G Bartolini, 'A Universal Treaty for Disasters? Remarks on the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters' (2017) 99(3) *International Review of the Red Cross* 1103; D Tladi, 'The International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters: Codification, Progressive Development or Creation of Law from Thin Air?' (2017) 16(3) *Chinese Journal of International Law* 425.
- 23 D O'Donnell, 'International Treaties against Terrorism and the Use of Terrorism during Armed Conflict and by Armed Forces' (2006) 88(864) *International Review of the Red Cross* 853, 854–859.
- 24 D Moeckli, 'The Emergence of Terrorism as a Distinct Category of International Law' (2008) 44 *Texas International Law Journal* 157; B Saul, *Defining Terrorism in International Law* (OUP, 2006).
- 25 See, in particular, ch 10 by Villani in this volume.
- 26 Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.
- 27 Directive 2017/541/EU of 15 March 2017 on combating terrorism (2017 EU Directive on combating terrorism).
- 28 *Ibid* recital 27.

Lacking a more specific definition of victims of CBRN events, the current contribution favours the most comprehensive and general one, which is provided in the UNBPG.

## 2.2 *Victim Assistance in Lieu of Reparations within the Arms Control and Disarmament Regimes?*

Having dealt with those preliminary, although crucial, issues, the present analysis can now shift towards the venues and mechanisms in place for victims to claim remedies and reparations in the aftermath of a CBRN event. Prior to delving into the relevant instruments, it is worth stressing that, in some domains, when victims are mentioned the focus is always on victim assistance, and never on reparations. This represents a crucial point as it builds on the well-known difference between reparations, which are measures that are judicial in character and must address the harm caused by the violation committed by a specific actor, and provisions of assistance, which is a broader term that can refer to a number of measures provided in response to victims' needs.<sup>29</sup> As far as the arms control and disarmament regimes are concerned, it must be noted that victim assistance is nowadays regarded as a key provision of humanitarian disarmament treaties, placing a positive obligation on the States to ensure that victims' needs are met.<sup>30</sup> More specifically, the term 'victim assistance' first appeared in the text of the 1997 Mine Ban Treaty (MBT)<sup>31</sup> and, since then, it has been used in several humanitarian disarmament treaties.<sup>32</sup> As noted by some authors, the provision has gained momentum and evolved enormously, especially over the last two decades.<sup>33</sup>

In fact the 'core conventions', *ie* the NPT, the BWC and the CWC are all silent on the issue of victims' rights or needs, the only reference to victims appears in Article x of the CWC (assistance and protection against chemical weapons), according to which '[i]f the information available from the ongoing investigation or other reliable sources would give sufficient proof that there are

29 F Capone, *Reparations for Child Victims of Armed Conflict: State of the Field and Current Challenges* (Intersentia 2017) 125–130; PJ Dixon, 'Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo' (2015) 10(1) *the International Journal of Transitional Justice* 88, 93–95.

30 Other positive obligations relevant for this book's analysis are, of course, obligations to prevent, see ch 3 by Venier in this volume.

31 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (1997) art 6.

32 Convention on Cluster Munitions (2008) art 5.

33 B Docherty, 'A Light for All Humanity: The Treaty on the Prohibition of Nuclear Weapons and the Progress of Humanitarian Disarmament' (2018) 30(2) *Global Change, Peace & Security* 163.

victims of use of chemical weapons and immediate action is indispensable; the Director-General shall notify all States Parties and shall take emergency measures of assistance. Notably, in 2011, the Organisation for the Prohibition of Chemical Weapons (OPCW) set up the International Support Network for Victims of Chemical Weapons and a voluntary trust fund to provide support to the victims of chemical weapons.<sup>34</sup> Whilst still framing the issue as 'assistance' and not reparations, the OPCW seems, at least, inclined to include victims on the non-proliferation and disarmament agenda. Quite surprisingly though, in the Ieper Declaration, issued by the OPCW in 2015 on the Occasion of the Centennial Commemoration of the First Large-Scale Use of Chemical Weapons, there is no reference to victims, but only the restatement of a 'strong conviction that those responsible for the use of chemical weapons should be held accountable'.<sup>35</sup>

With regard to the most recent treaties, whereas the CTBT includes no provision concerning victims,<sup>36</sup> the TPNW combines a comprehensive ban on nuclear weapons with obligations to assist victims and remediate the environment affected by use and testing. In so doing, the treaty aims both to prevent future harm and to address harm that has already occurred.<sup>37</sup> Drawing heavily from the Convention on Cluster Munitions (CCM),<sup>38</sup> the TPNW imposes comparable obligations on States Parties to provide assistance for nuclear weapons victims. The most relevant provisions are enshrined in Article 6 (victim assistance and environmental remediation)<sup>39</sup> and Article 7 (international cooperation and assistance). The latter has a much broader focus, which can be split into two different ambits. Article 7(4) of the TPNW places on each State

34 OPCW Conference of the States Parties, 'The Establishment of the International Support Network for Victims of Chemical Weapons and the Establishment of a Voluntary Trust Fund for this Purpose' (2011) UN Doc. C-16/DEC.13. No information is available on the activities carried out to support victims of chemical weapons and, currently, the Trust Fund for the International Support Network for Victims of Chemical Weapons stands at EUR 109,789. See OPCW Report by the Director-General 'Status of Implementation of the International Support Network for Victims of Chemical Weapons' (2019) UN Doc. EC-92/DG.17.

35 Declaration on the Occasion of the Centennial Commemoration of the First Large-Scale Use of Chemical Weapons at Ieper (Ieper Declaration) (2015) UN Doc. S/1262/2015.

36 T A Ruff, 'The Humanitarian Impact and Implications of Nuclear Test Explosions in the Pacific Region' (2015) 97(889) *International Review of the Red Cross* 775, 811–812.

37 N Singh, 'Victim Assistance under the Treaty on the Prohibition of Nuclear Weapons: An Analysis' (2020) 3(2) *Journal for Peace and Nuclear Disarmament* 265.

38 Convention on Cluster Munitions (2008) art 5, which places explicit obligations on States Parties affected by cluster munitions to provide assistance to victims in their territory and provides detailed guidance on how those obligations should be implemented.

39 TPNW (n 19) art 6(1) (emphasis added).

Party, in a position to do so, an obligation to provide assistance for the victims of the use or testing of nuclear weapons *or other nuclear explosive devices*. The scope of this provision is definitely wider than that of Article 6(1), which deals generally with ‘victim assistance’, as it encompasses both victims of nuclear weapons and victims of other nuclear explosive devices, *ie* any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used.<sup>40</sup> Article 7(6) lays down the obligation on States, which have used or tested nuclear weapons or any other nuclear explosive devices, ‘to provide adequate assistance to affected States for the purpose of victim assistance and environmental remediation’. This provision is a landmark in the field, as no other humanitarian disarmament treaty has put such an obligation on user States.<sup>41</sup> Nonetheless, it has been questioned whether the sentence ‘shall have a responsibility to provide adequate assistance’ actually undermines the effort by referring to a moral responsibility rather than a legal one.<sup>42</sup>

### 2.3 *Victims’ Remedies under International Environmental Law and the Centrality of Civil Liability*

With respect to IEL, while the subject of reparation has been the focus of considerable attention in recent times, this has not yet resulted in the elaboration of detailed principles regarding the nature and quantification of reparations for environmental harm.<sup>43</sup> A preliminary consideration is that the main objective of international rules on the environment is to prevent damage rather than to provide the victim with an entitlement to receive redress.<sup>44</sup> Therefore, in addition to the principles of international law governing international responsibility, which apply also to obligations relating to environmental protection, the ILC’s efforts have primarily been geared towards the issue of prevention of transboundary harm that results from activities not prohibited under international law.<sup>45</sup> Indeed, the ILC Articles on prevention fail to incorporate relevant

40 Singh (n 37) fn 13.

41 Ibid 271.

42 S Casey-Maslen, *The Treaty on the Prohibition of Nuclear Weapons: A Commentary* (OUP 2019) 224.

43 A Boyle, ‘Reparation for Environmental Damage in International Law: Some Preliminary Problems’ in M Bowman and A Boyle (eds), *Environmental Damage in International and Comparative Law: Problems of Definition and Valuation* (OUP 2002) 17.

44 T Scovazzi, ‘State Responsibility for Environmental Harm’ (2002) 12(1) *Yearbook of International Environmental Law* 43, 49. On CBRN risks and State obligations under IEL see ch 29 by Antoniazzi in this volume.

45 ILC, ‘Draft Articles on prevention of transboundary harm from hazardous activities’ (2001) II(2) UNYBILC (ILC Articles on prevention).



provisions on how to ensure reparations and compensation for harm arising out of activities *not prohibited by international law*.<sup>46</sup> However, the Commission did later take on the task of drafting a set of principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.<sup>47</sup> Both sets of provisions deal with activities not prohibited under international law, thus meaning that their scope of application is separated from that of the ARSIWA; nonetheless the non-fulfilment of the duty of prevention prescribed by the draft articles on prevention could engage State responsibility, meaning that the State ultimately will incur the well-known consequences of an internationally wrongful act.<sup>48</sup>

The ILC Principles allocate the liability for loss due to harm resulting from lawful economic or other activities, when the relevant State has complied with its due diligence obligations to prevent transboundary harm. More specifically, the principles provide a general framework for States to adopt domestic law or conclude international agreements to ensure prompt and adequate compensation for the victims of transboundary damage caused by lawful hazardous activities.<sup>49</sup> The principles support existing State practice, which largely channels liability to the owner or operator (or the State itself, if it is the operator)<sup>50</sup> and demands financial guarantees against future harm. Notably, the principles do not address the issue of how to guarantee victims' access to remedies, as they merely stress that to 'render access to justice more widespread, efficient and prompt suggestions have been made to establish special national or international environmental courts'.<sup>51</sup> Lacking an international environmental court, it is clear that said claims must be brought before domestic bodies, since, as part of arrangements for permitting hazardous activities within their jurisdiction and control, it is widely expected that States would make sure that adequate mechanisms are available to respond to claims for compensation in case of any damages.<sup>52</sup> This approach is in line with the one previously outlined by the Institute of International Law in its 1997 Resolution on Responsibility and

46 Ibid, Commentary to Draft Article 15, 167.

47 ILC Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (2006) 11(2) UNYBILC (ILC Principles on allocation of loss).

48 Ibid, Commentary to Principle 1, 62. Scovazzi (n 44) 50.

49 ILC Principles on allocation of loss (n 47) Commentary to Draft Principle 4, 76–81. D L Shelton and A Kiss, 'Strict Liability in International Environmental Law', in TM Ndiaye and R Wolfrum (eds) *Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum Judge Thomas A. Mensah* (Brill 2007) 1131, 1141–1145.

50 Ibid 1139.

51 ILC Principles on allocation of loss (n 47) 77–78.

52 Ibid 77.

Liability under International Law for Environmental Damage.<sup>53</sup> As stressed in the Resolution, 'civil liability of operators can be engaged under domestic law or the governing rules of international law regardless of the lawfulness of the activity concerned if it results in environmental damage'.<sup>54</sup> The Resolution further highlights that environmental regimes should include specific rules on responsibility and liability in order to ensure their effectiveness in terms of both encouraging prevention and providing for victims' restoration and compensation.<sup>55</sup> In other words, without precluding the application of rules of general international law, *ie* the principles governing international responsibility, environmental regimes should normally assign primary (civil) liability to operators.

In addition to the general framework delineated by the work of the ILC and the Institute of International Law, it is possible to find additional rules that follow this pattern in the relevant conventions. Across the many conventions that impose liability for damages to the environment, it is worth noting, for instance, that a number of multilateral treaties have been adopted in order to harmonise national laws in the area of civil liability for nuclear damage. Said treaties include the Paris Convention on Civil Liability of 1960 and the Vienna Convention of 1963, along with their amendments.<sup>56</sup> In 2015, the Convention on Supplementary Compensation for Nuclear Damage (CSC) entered into force,<sup>57</sup> marking a crucial milestone for the creation of a 'global nuclear liability regime'.<sup>58</sup> The CSC aims at establishing a minimum national compensation amount and at further increasing the amount of compensation through public funds to be made available by the Contracting Parties should

53 The Institute of International Law 'Resolution on the Responsibility and Liability under International Law for Environmental Damage' (1997) Session of Strasbourg.

54 *Ibid*, art 1.

55 *Ibid*, art 2.

56 The Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention) (1960), under the auspices of the Organisation for Economic Co-operation and Development (OECD); the Vienna Convention on Civil Liability for Nuclear Damage (Vienna Convention) (1963) under the auspices of the International Atomic Energy Agency (IAEA). In addition to the various protocols, and following the Chernobyl accident, a Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention (Joint Protocol) was adopted in 1988, under the joint auspices of the OECD and the IAEA, in order to create a 'treaty link' between the States Parties to the Paris and the Vienna Conventions.

57 Convention on Supplementary Compensation for Nuclear Damage (1997).

58 J Bellamy, 'Civil liability for nuclear damage in countries developing nuclear new build programmes' (2019) 12(1) *The Journal of World Energy Law & Business* 108.

the national amount be insufficient to compensate the damage caused by a nuclear incident.

According to the CSC, the so-called 'Installation State' is responsible for the redress of the following damages: loss of life or personal injury, and loss of or damage to property.<sup>59</sup> Moreover, compensation for nuclear damage shall be distributed by the Installation State equitably and without discrimination on the basis of nationality, domicile or residence.<sup>60</sup> Notably, the Convention is open not only to States Parties to the Paris and Vienna Conventions but also to other States, provided that their national legislation is consistent with uniform rules on civil liability laid down in the Annex to the Convention.<sup>61</sup> Under the international legal regime set up by the aforementioned treaties, some key principles have been established, including the strict and exclusive liability of the operator of a nuclear installation (meaning that the victims are not required to prove that the liable person was at fault); the existence of a minimum amount of liability; and the exclusive jurisdiction of one State, normally where the incident occurs, so that the victims, nationals as well as foreigners, do not need to bring their claims before multiple fora.<sup>62</sup>

Also relevant is the framework governing land-based activities, *ie* the Basel Convention on Hazardous Waste and its Liability Protocol.<sup>63</sup> The Protocol aims to provide a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from transboundary waste movements, including illegal traffic. The Basel Protocol imposes strict liability on, first, the person who provides notification of a proposed transboundary movement according to Article 6 of the Basel Convention, and, thereafter, the disposer of the waste. The competent courts are those of the State where the damage was suffered, or the incident occurred, or the defendant has his habitual residence or has his principal place of business.<sup>64</sup>

Liability is also affirmed in relation to lawful activities taking place at sea that may involve CBRN elements. For example, the 1971 Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material provides

59 CSC (n 57) art 1(f).

60 *Ibid* art 3(2)(a).

61 Notably, an online calculator has been developed, which applies the formula in art IV of the CSC and assists users in running scenarios of actual and potential Contracting Parties to the CSC to determine the amounts to be contributed to the international fund in such cases, <<https://www.iaea.org/publications/documents/treaties/convention-supplementary-compensation-nuclear-damage/online-calculator>>.

62 Shelton and Kiss (n 49) 1141–1142.

63 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989) and the Basel Protocol on Liability and Compensation (1999).

64 *Ibid* art 17.

for shipowner liability if the shipowner committed or omitted an act with intent to cause damage.<sup>65</sup> Furthermore, the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention), and its amending Protocol of 2010, deal with claims for damage arising from the carriage, defined as that period during which the substances are on the ship or ship's equipment, of such substances at sea. Notably, the Convention's wide definition of hazardous and noxious substances makes it relevant for CBRN materials, with the exclusion of nuclear ones as they are covered by the 1971 treaty.<sup>66</sup> Under the 2010 HNS Convention, the shipowner is liable for the loss or damage up to a certain amount, which is covered by insurance (1st tier). A compensation fund (*ie* the HNS Fund) will provide additional compensation where the victims do not obtain full compensation from the shipowner or its insurer (2nd tier).<sup>67</sup>

Ultimately, what emerges from this overview of IEL's response to victims' rights, is that, in this field, there is a set of well-established principles and norms dealing with States and NSAs' civil liability and compensation obligations in cases of activities not prohibited under international law.<sup>68</sup>

#### 2.4 *Victims' Rights under International Disaster Law*

With respect to disasters, man-made or natural,<sup>69</sup> the attention towards victims has grown significantly over recent decades, resulting in the effort to strengthen the connection between disasters and human rights.<sup>70</sup> However, as reflected by the contemporary view of the international community,<sup>71</sup> the focus rests mainly on the adequate and effective response to disasters and reduction of the risk, rather than on the rights of victims.<sup>72</sup>

65 International Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (1971).

66 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (1996) as amended in 2010.

67 Ibid Preamble, para 8.

68 See ch 29 by Antoniazzi in this volume.

69 See ILC Draft Articles on the Protection of Persons in Event of Disasters (n 22) Article 3. G Bartolini, 'Il progetto di articoli della Commissione del diritto internazionale sulla "Protection of Persons in the Event of Disasters"' (2017) 100 *Rivista di diritto internazionale* 677.

70 See F Zorzi Giustiniani and others (eds), *Routledge Handbook of Human Rights and Disasters* (Routledge 2018).

71 Sendai Framework for Disaster Risk Reduction 2015–2030, (2015) UN Doc A/CONF.224/L.2.

72 ILC Draft Articles on the Protection of Persons in Event of Disasters (n 22) art 2.

Thus, the work of the ILC on the protection of persons in the event of disasters, places the emphasis, first and foremost, on the measures that States must adopt to prevent, mitigate and prepare for such disasters. Furthermore, in the provisions dealing with human dignity (Article 4) and the protection which persons affected by disasters are entitled to under IHRL (Article 5), there is no explicit reference to victims' remedies and reparations. However, the importance of human rights protections in disaster situations is demonstrated by the increased attention paid to the issue by human rights bodies established under the auspices of the United Nations, as well as by regional courts. Hence, as will be discussed in Section 3, it is before those bodies that victims whose rights have been violated in a disaster context can claim redress.<sup>73</sup>

### 2.5 *Victims' Rights in the Counter-Terrorism Framework*

In the aftermath of the 9/11 attacks, the international community adopted the first-ever common strategic approach to combat terrorism, *ie* the UN Global Counterterrorism Strategy (UNGTS).<sup>74</sup> Beyond establishing mechanisms to fight the terrorist threat, the UNGTS recognised the importance of enhancing the rights of victims of terrorism, in order to counter the phenomenon in an effective way. Nevertheless, guarding the rights of victims of terrorism within a human rights framework has been largely neglected so far and few efforts have been made by States to answer the call of the UN strategy.

A bold and, unfortunately, isolated move in this sense is represented by the 2021 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, who attempted to lay down the 'framework principles for securing the human rights of victims of terrorism'.<sup>75</sup>

In a nutshell, according to Emmerson, there are 'sound reasons in favour of recognizing that States should accept a special obligation to victims of terrorism',<sup>76</sup> in light of the fact that 'there is almost always a direct or indirect motivational connection (however misguided) between acts of terrorism and

73 K Hausler, 'Indigenous Communities: from Victims to Actors of Disaster Management', in Zorzi Giustiniani and others (n 70) 291, 295–296.

74 UNGA 'The United Nations Global Counter-Terrorism Strategy' (20 September 2020) UN Doc. A/RES/60/288, para 8.

75 Human Rights Council, 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson' (4 June 2012) UN Doc. A/HRC/20/14.

76 *Ibid* para 53. See also E Lorenzana Del Villar and D Silfen Glasberg, 'Victims of Terrorism and the Right to Redress: Challenges and Contradictions in the 2012 Emmerson Report' (2015) 39(3) *Humanity & Society* 321.

policies of state'.<sup>77</sup> Thus, Emmerson urges States to voluntarily accept a binding international obligation to provide reparations to the victims of all acts of terrorism occurring on their territory in which a natural person has been killed or has suffered serious physical or psychological harm, irrespective of the nationality of the perpetrator or the victim, and thereby to fill an existing protection gap. Examples of such efforts are still scant in practice and only a few States, eg Spain,<sup>78</sup> have enacted a unified scheme setting out the assistance, support and protection to which victims of terrorism are entitled, recognising all victims of terrorism as being victims of human rights violations, irrespective of questions of State responsibility.<sup>79</sup>

Although it does not frame the issue in terms of breaches of IHRL, but rather in terms of provisions of assistance, the EU Directive on combating terrorism marks an important step in the direction of promoting and recognising victims' needs in the aftermath of a terrorist attack.<sup>80</sup> The aim of the Directive is, in fact, that of strengthening a uniform approach to the issue across the EU Member States, by requiring them to provide assistance and support to victims of terrorism in accordance with their specific needs.<sup>81</sup> In particular, the Directive asks States to amend their national frameworks and allow victims to obtain all the support they need.<sup>82</sup> Nonetheless, as revealed by the report on the implementation of the Directive, issued in 2020, whereas it is possible to ascertain a good level of enactment of most of the provisions enshrined in this instrument, 'there are deficiencies as regards the transposition of specific provisions for victims of terrorism, which could have the effect of victims of terrorism not receiving assistance or support tailored to their specific needs'.<sup>83</sup>

77 Human Rights Council (n 75) para 54.

78 Act No. 29/2011 of 22 September 2011 on the Recognition and Comprehensive Protection to Victims of Terrorism.

79 UNODC, 'Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework' (2015), 30 <[https://www.unodc.org/documents/terrorism/Publications/Good%20practices%20on%20victims/good\\_practices\\_victims\\_E.pdf](https://www.unodc.org/documents/terrorism/Publications/Good%20practices%20on%20victims/good_practices_victims_E.pdf)>.

80 2017 EU Directive on combating terrorism (n 27) arts 24–27.

81 CC Murphy, 'EU Counter-terrorism Law: What Kind of Exemplar of Transnational Law?' (2019) 21(1) *Cambridge Yearbook of European Legal Studies* 217, 222.

82 2017 EU Directive on combating terrorism (n 27) art 24.

83 Report from the Commission to the European Parliament and the Council based on Article 29(1) of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism (30 September 2020) COM(2020) 619 final, 18–19.

### 3 Victims' Rights within the IHRL and IHL Frameworks: Residual Application or Way Forward?

Without providing an overview of the well-known and already widely discussed general aspects,<sup>84</sup> the present section will focus on the most recent developments in the fields of IHRL and IHL and their consequences on the access to remedies for victims of CBRN events. In relation to IHRL, notable progress includes the adoption on 3 September 2019 by the UN Human Rights Committee (HRC) of a new General Comment No. 36 on Article 6 (the right to life) of the International Covenant on Civil and Political Rights (ICCPR),<sup>85</sup> which concludes that the threat or use of nuclear weapons is incompatible with the right to life and may amount to a crime under international law. More specifically, paragraph 66 of the General Comment makes explicit reference to States Parties' obligation to take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to prevent their acquisition by non-State actors. Furthermore, the HRC stresses the obligation incumbent on States to afford 'adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction, in accordance with principles of international responsibility'.<sup>86</sup>

The HRC, consistently with its role and mandate, has placed the accent on States' responsibility, framing the discourse around violations of the ICCPR and the status of victims entitled to claim reparations and thus to exercise a legal right. Moreover, the HRC has in the past stressed States' responsibility to compensate victims of CBRN events. For example, in relation to the nuclear tests carried out by France, the HRC expressed its concern about the fact that the French Nuclear Test Victims Compensation Committee (CIVEN)<sup>87</sup> had dismissed a very high rate of cases (98.3 per cent) and stressed how France should take all necessary steps to ensure the effective recognition and compensation

84 With regard to IHRL, see for instance Shelton (n 6); in relation to IHL see Evans (n 8); EC Gillard 'Reparation for Violations of International Humanitarian Law' (2003) 85(851) *International Review of the Red Cross* 529; L Zegveld, 'Remedies for Victims of Violations of International Humanitarian Law' (2003) 85(851) *International Review of the Red Cross* 497.

85 HRC 'General comment No. 36 Article 6: right to life' (3 September 2019) UN Doc. CCRP/C/GC/36.

86 *Ibid* para 66.

87 Loi n° 2010-2 du 5 janvier 2010 relative à la reconnaissance et à l'indemnisation des victimes des essais nucléaires français.

of all the victims of French nuclear tests, especially the local population in Algeria and French Polynesia.<sup>88</sup>

In addition to the right to life, CBRN events can violate (or ultimately lead to the violation of) a plethora of other human rights, ranging from the right to freedom from torture or other forms of cruel, inhuman or degrading treatment, to the right to food, to an adequate standard of living, the right to freedom of movement or residence, the right to education and the right to family life.<sup>89</sup> In order for victims of human rights violations stemming from CBRN events to be able to access regional and international bodies, it is necessary to prove the connection between the CBRN event and the violation of IHRL.<sup>90</sup> This causal link appears to be particularly evident in some cases, for example, according to Doswald-Beck, 'any use of nuclear weapons will result in human rights violations';<sup>91</sup> whereas, it is more difficult to ascertain and to assess the responsibility of the actors involved in other situations, for instance, when the harm caused may originate from diverse sources, eg in the course of a global pandemic, and/or when the number of victims is potentially endless, eg in the aftermath of the accidental release of toxic agents from a chemical plant or a pipeline.<sup>92</sup>

Nonetheless, despite all the challenges to seeking remedies before regional and international human rights mechanisms, which apply also to victims of CBRN events,<sup>93</sup> it is often far easier to obtain individual redress for human

88 HRC, 'Concluding observations on the fifth periodic report of France' (17 August 2015) UN Doc. CCPR/C/FRA/CO/5 para 21. See also JM Collin and P Bouveret, 'The Waste From French Nuclear Tests in Algeria Radioactivity Under the Sand Analysis with regard to the Treaty on the Prohibition of Nuclear Weapons', Heinrich Böll Foundation, July 2020, 47.

89 L Doswald-Beck, 'Human Rights and Nuclear Weapons' in G Nystuen, S Casey-Maslen, A Golden Bersagel (eds) *Nuclear Weapons under International Law* (CUP 2014) 435, 453–456.

90 See ch 28 by Sommario in this volume.

91 Dowwald-Beck (n 89) 459.

92 The most serious chemical accident ever recorded is the 1984 Bhopal disaster, which occurred in 1984 in India, where more than 3,000 people died after a highly toxic gas (methyl isocyanate) was released from a Union Carbide Pesticides Factory. See M Frulli, 'The challenge of outlining the CBRN(E) definitional framework: agents, events and actors' (May 2020) <<http://www.cbrn-italy.it/sites/default/files/The%20challenges%20of%20outlining%20CBRN%20definitional%20framework.pdf>>.

93 I Bantekas and L Oette, 'Victims' Rights and Reparation' in I Bantekas and L Bette (eds), *International Human Rights Law and Practice* (CUP 2018) 598; Shelton (n 3); Capone (n 29); L Cornejo Chavez, 'New remedial responses in the practice of regional human rights courts: Purposes beyond compensation' (2017) 15(2) *International Journal of Constitutional Law* 372; C Sandoval, P Leach and R Murray, 'Monitoring, Cajoling and Promoting Dialogue: What Role for Supranational Human Rights Bodies in the Implementation of Individual Decisions?' (2020) 12(1) *Journal of Human Rights Practice* 71.



rights violations than for IHL violations. With regard to IHL, the dearth of mechanisms and the scant implementation of the right to reparation for victims of violations of the law of war have been discussed at length by several authors.<sup>94</sup> However, some additional thoughts can usefully be shared with regard to remedies for those affected by the use of CBRN materials in armed conflict.<sup>95</sup> In particular, it is worth highlighting two developments that might contribute to promoting victims' rights in the aftermath of violations of *jus in bello* and also *jus ad bellum*. The first development is the increased attention placed on environmental damages by Claims Commissions, *ie ad hoc* bodies established to deal with compensatory justice for violations of international law.<sup>96</sup> In particular, both the United Nations Claims Commission (UNCC) – set up to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait<sup>97</sup> – and the Eritrea–Ethiopia Claims Commission (EECC)<sup>98</sup> – established in 2000 by a treaty between the belligerents to settle claims for loss, damage, or injury of either government and its nationals – accepted environmental claims.<sup>99</sup> The successful, at least in part, experience of both Claims Commissions and the attention they shone on the often ignored devastation to the natural environment caused by armed conflict represent a model that can be pursued also when dealing with the widespread consequences of CBRN events.

The second development that is worth mentioning is the creation of new mechanisms to assist in the investigation and prosecution of the most serious crimes under international law, in particular, the crime of genocide, crimes against humanity and war crimes.<sup>100</sup> An example of said mechanisms is offered

94 See Hausler (n 73). See also S Casey-Maslen, 'The right to a remedy and reparation for the use of nuclear weapons' in G Nystuen, S Casey-Maslen, A Golden Bersagel (eds) (n 89) 461.

95 See ch 21 by Mauri in this volume.

96 L Brilmayer, C Giorgetti and L Charlton, *International Claims Commissions: Righting Wrongs after Conflict* (Edward Elgar 2017) 27; The International Bureau of the Permanent Court of Arbitration (ed) *Redressing Injustice through Mass Claims Processes. Innovative Responses to Unique Challenges* (OUP 2006); TJ Feighery and others (eds), *War Reparations and the UN Compensation Commission: Designing Compensation After Conflict* (OUP 2015).

97 CR Payne, 'Developments in the Law of Environmental Reparations. A Case Study of the UN Compensation Commission' in C Stahn, J Iverson and JS Easterday (eds), *Environmental Protecting and Transition from Conflict to Peace: Clarifying Norms, Principles and Practices* (OUP 2017) 329.

98 F Capone, 'The 17 August 2009 Final Awards of the Eritrea-Ethiopia Claims Commission' in A de Guttery, G Venturini and HG Post (eds), *The 1998–2000 War Between Eritrea and Ethiopia* (2nd edn Asser Press forthcoming).

99 See ch 22 by Saluzzo in this volume.

100 See ch 32 by Vierucci in this volume.

by the International, Impartial and Independent Mechanism (IIIM) set up by the UN General Assembly in 2016 and meant to bring to justice those responsible for international crimes perpetrated in the Syrian Arab Republic since March 2011.<sup>101</sup> In a nutshell, the Mechanism is mandated to collect evidence or relevant information pertaining to violations of international humanitarian law and human rights violations and abuse.

Until 2017, a Joint Investigative Mechanism (JIM) established by the OPCW and the UN was also deployed to determine responsibility for the use of chemical weapons in Syria.<sup>102</sup> The JIM,<sup>103</sup> however, unlike the IIIM, was not tasked with collecting and storing evidence to be used before judicial bodies and, therefore, its role, although equally relevant, was less prone to provide factual support to claims brought by victims before national or international fora.

#### 4 International Criminal Law's (Potential) Contribution to Strengthening Victims' Rights

An aspect that is rarely considered in relation to CBRN events is the potential role that ICL might play with respect to enhancing victims' rights. The topic is probably deserving of a longer and more detailed analysis; however, it is worthwhile to include at least a reference to the increasingly important function that the ICC has been called upon to fulfil in the field of remedies.<sup>104</sup> The ICC is, in fact, the first international criminal body specifically tasked with providing reparations to victims of international crimes that fall under the Court's jurisdiction.<sup>105</sup> In light of this unique feature, the ICC has used its power to award reparations on a number of occasions, showing a significant inclination towards implementing a victim-friendly approach.<sup>106</sup>

101 UNGA 'International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011' (21 December 2016) UN Doc. A/RES/71/248.

102 UNSC Res 2235/2015 (7 August 2015) UN Doc. S/RES/2235. See ch 26 by Buscemi in this volume.

103 Three consecutive vetoes by Russia led to its termination at the end of 2017.

104 Article 75 of the ICC Statute encapsulates the core provisions on reparation before the Court, stating, *inter alia*, that the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

105 McCarthy (n 13) see also Capone (n 13) 645. See ch 32 by Vierucci in this volume.

106 For an overview of the ICC's approach to reparations, see L Moffett and C Sandoval 'Tilting at Windmills: Reparations and the International Criminal Court' (2021) *Leiden Journal of International Law* 1.

When it comes to the ICC's role in relation to CBRN events, a preliminary and crucial clarification is needed about the Court's jurisdiction *ratione materiae* (or subject-matter jurisdiction). As is well known, the Rome Statute does not contain the words 'nuclear weapon', 'chemical weapon' or 'biological weapon.' During the drafting of what was to become Article 8 of the Rome Statute, the list of prohibited weapons proved to be among the most contentious questions. It was agreed to include express prohibitions of the use, in international armed conflicts, of 'poison or poisoned weapons' and 'asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices'. Some States argued that listing chemical weapons, but not nuclear weapons, would be inherently 'unfair', given that chemical weapons were, in effect, considered the 'poor man's' weapon of mass destruction.<sup>107</sup> By contrast, nuclear weapons States, as well as those that were members of military alliances relying on nuclear weapons, rejected any inclusion of nuclear weapons in the list of prohibited weapons. In the final compromise, neither nuclear nor chemical weapons were expressly listed as weapons whose use was prohibited under the Rome Statute.<sup>108</sup>

Two provisions found in Article 8 of the Statute may refer to chemical and biological weapons (CBW) implicitly, but, according to some authors, it is unclear whether all chemical weapons are included, and whether biological weapons are included at all.<sup>109</sup> Other commentators found that, in practice, many and perhaps all uses of lethal chemical weapons in international armed conflicts will fall within the Article 8 prohibitions on the use of 'poison or poisoned weapons' and 'asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices'.<sup>110</sup>

The Kampala Review Conference in 2010 led to the extension of the list of weapons whose use is prohibited in NIACS. The Kampala amendment to Article 8 inserts Article 8(2)(e)(xiii) and (xiv) into the Rome Statute, with the consequence that employing 'poison or poisoned weapons' and 'asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices' constitutes a war crime in NIACS as well, at least for the States Parties that

107 A Zimmermann and M Şener 'Chemical Weapons and the International Criminal Court' (2014) 108 (3) *The American Journal of International Law*, 436, 439.

108 *Ibid.*

109 A Alamuddin and P Webb 'Expanding Jurisdiction over War Crimes under Article 8 of the ICC Statute' (2010) 8(5) *Journal of International Criminal Justice* 1219.

110 D Akande 'Can the ICC Prosecute for Use of Chemical Weapons in Syria?' (23 August 2013) <<https://www.ejiltalk.org/can-the-icc-prosecute-for-use-of-chemical-weapons-in-syria/>>. For more on the academic debate, see K J Heller 'The Rome Statute Does Not Criminalise Chemical and Biological Weapons' (5 November 2015) <<http://opiniojuris.org/2015/11/05/why-the-rome-statute-does-not-criminalise-chemical-and-biological-weapons/>>.

have ratified the Article 8 amendment. As a result, under the Rome Statute, as subsequently amended in Kampala, the ICC potentially has subject-matter jurisdiction over most uses of chemical weapons in both IACS and NIACS. In relation to the characterisation of conduct involving the use of certain WMD as a crime against humanity, if the requirement of a widespread or systematic attack against a civilian population is satisfied, then it will be possible to prosecute said conduct as a crime against humanity under Article 7(1)(a) or (k).

Notably, any punishment under these provisions, apart from being more difficult to prove, would not cover the specific wrongfulness inherent in the use of chemical or biological weapons. Assuming that the ICC has subject-matter jurisdiction over uses of CBW,<sup>111</sup> an issue that is still regarded as controversial by many, other relevant problems relate to, for instance, the possibility to convict the perpetrators and assess individual responsibility for the use of weapons, especially biological ones, that are more difficult to detect. In order for the ICC to realise its full potential, also in the field of victims' remedies, it would be helpful to recognise and act upon the need for a CBW-use amendment in the future.<sup>112</sup> Such an amendment would make the Court's jurisdiction over uses of chemical and biological weapons more effective and would provide the victims with an international forum for claiming reparations.

## 5 Concluding Remarks

Without pretending to offer a comprehensive analysis, this chapter focused on a number of key aspects and highlighted the main challenges, as well as the most relevant developments, concerning the rights of victims of CBRN events. The study, first of all, pointed out the lack of a definition of what constitutes a 'victim of a CBRN event' and the consequent need to rely either on the general definition provided in the UNBPG or to look for a more accurate terminology under the surveyed legal frameworks. The inquiry revealed how all those fields, which from the outset can be regarded as not particularly victim-friendly, fail to address the issue of who can, specifically, be identified as victims. Moreover, the research also underscored that supporting victims with measures of

111 This view, which is endorsed by the present author, is arguably buttressed by Article 22(2) of the Statute, which provides both that the 'definition of a crime shall be strictly construed' and that any such 'definition shall be interpreted in favour of the person being investigated, prosecuted or convicted'. See also Zimmermann and Sener (n 107) 439.

112 Ibid 448.

assistance is, in most instances, the approach pursued in the aftermath of a CBRN event, especially under the arms control and disarmament regimes and within the existing counter-terrorism framework.<sup>113</sup> However, victims of violations of IEL that stem from the use or transportation of CBRN materials, have access to remedies under the relevant conventions, which are mostly provided under the framework of civil liability of the owner or operator, *ie* a private actor *or* the State itself. As discussed in Section 2, currently, there is a set of international conventions which are designed to provide compensation for damage arising from nuclear incidents. However, these conventions, including the CSC, have not been widely ratified yet<sup>114</sup> and the lack of widespread support makes it very difficult to envisage the creation of a global nuclear liability regime aimed at ensuring that potential victims will be compensated promptly and efficiently after a nuclear accident, regardless of where it occurs.

Ultimately, the chapter investigated the extent to which IHRL and IHL can contribute to overcoming some of the shortcomings highlighted in the previous sections, since CBRN events in peace time and in situations of armed conflict can amount to breaches of international human rights or humanitarian law. The conclusion reached is that, despite significant and diversified efforts, the road to fulfilling victims' rights in the aftermath of CBRN events is still long and, evidently, uphill. On the one hand, the adoption of ad hoc instruments can be ruled out as unrealistic, at least for the foreseeable future; however, on the other, it is absolutely appropriate to advocate for strengthening and improving the existing instruments, in order to incorporate, to the maximum degree possible, a victim-centric perspective.

## Bibliography

Alamuddin A and Webb P, 'Expanding Jurisdiction over War Crimes under Article 8 of the ICC Statute' (2010) 8(5) *Journal of International Criminal Justice* 1219.

113 An exception to this mainstream approach is represented by the view expressed by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, who urged States to accept a special obligation to provide reparations to victims of terrorism. See HRC (n 75).

114 According to the International Expert Group on Nuclear Liability (INLEX), only about one half of all nuclear power plants are located in States which are contracting parties to one of the nuclear liability conventions. See INLEX, 'Civil Liability for Nuclear Damage: Advantages and Disadvantages of Joining the International Nuclear Liability Regime', <<https://www.iaea.org/sites/default/files/17/11/liability-regime.pdf>>.

- Bantekas I and Oette L, 'Victims' Rights and Reparation' in I Bantekas and L Bette (eds), *International Human Rights Law and Practice* (CUP 2018).
- Bartolini G, *Riparazione per violazione dei diritti umani e ordinamento internazionale* (Jovene 2009).
- Bartolini G, 'A Universal Treaty for Disasters? Remarks on the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters' (2017) 99(3) *International Review of the Red Cross* 1103.
- Bartolini G, 'Il progetto di articoli della Commissione del diritto internazionale sulla "Protection of Persons in the Event of Disasters"' (2017) 100 *Rivista di diritto internazionale* 67.
- Bellamy J, 'Civil liability for nuclear damage in countries developing nuclear new build programmes' (2019) 12(1) *The Journal of World Energy Law & Business* 108.
- Boyle A, 'Reparation for Environmental Damage in International Law: Some Preliminary Problems' in M Bowman and A Boyle (eds), *Environmental Damage in International and Comparative Law: Problems of Definition and Valuation* (OUP 2002).
- Brilmayer L, Giorgetti C and Charlton L, *International Claims Commissions: Righting Wrongs after Conflict* (Edward Elgar 2017).
- Capone F, 'Remedies', in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2013).
- Capone F, *Reparations for Child Victims of Armed Conflict: State of the Field and Current Challenges* (Intersentia 2017).
- Capone F, 'An Appraisal of the Al Mahdi Order on Reparations and Its Innovative Elements: Redress for Victims of Crimes against Cultural Heritage' (2018) 16 *Journal of International Criminal Justice* 645.
- Damrosch L F, 'Gross and Systematic Human Rights Violations', in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2013).
- de Casadevante Romani C F, 'International Law of Victims' (2010) 14 *Max Planck UNYB* 219.
- Dixon P J, 'Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo' (2015) 10(1) *the International Journal of Transitional Justice* 88.
- Docherty B, 'A Light for All Humanity: The Treaty on the Prohibition of Nuclear Weapons and the Progress of Humanitarian Disarmament' (2018) 30(2) *Global Change, Peace & Security* 163.
- Doswald-Beck L, 'Human Rights and Nuclear Weapons' in G Nystuen, S Casey-Maslen, A Golden Bersagel (eds), *Nuclear Weapons under International Law* (CUP 2014).
- Evans C, *The Right to Reparation in International Law for Victims of Armed Conflict* (CUP 2012).

- Feighery T J and others (eds), *War Reparations and the UN Compensation Commission: Designing Compensation After Conflict* (OUP 2015).
- Gillard E C, 'Reparation for Violations of International Humanitarian Law' (2003) 85(851) *International Review of the Red Cross* 529.
- Hausler K, 'Indigenous Communities: from Victims to Actors of Disaster Management', in Zorzi Giustiniani and others (eds), *Routledge Handbook of Human Rights and Disasters* (Routledge 2018).
- Iovane M, *La riparazione nella teoria e nella prassi dell'illecito internazionale* (Giuffrè 1990).
- Kleffner J K, *Complementarity in the Rome Statute and National Criminal Jurisdictions* (OUP 2008).
- McCarthy C, *Reparations and Victim Support in the International Criminal Court* (CUP 2012).
- Moeckli D, 'The Emergence of Terrorism as a Distinct Category of International Law' (2008) 44 *Texas International Law Journal* 157.
- Moffett L, 'Beyond Attribution: Responsibility of Armed Non-State Actors for Reparations in Northern Ireland, Colombia and Uganda' in N Gal-Or, C Ryngaert and M Noortmann (eds), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings* (Brill 2015).
- Moffett L and Sandoval C, 'Tilting at Windmills: Reparations and the International Criminal Court' (2021) *Leiden Journal of International Law* 1.
- Murphy C C, 'EU Counter-terrorism Law: What Kind of Exemplar of Transnational Law?' (2019) 21(1) *Cambridge Yearbook of European Legal Studies* 217.
- O'Donnell D, 'International Treaties against Terrorism and the Use of Terrorism during Armed Conflict and by Armed Forces' (2006) 88(864) *International Review of the Red Cross* 853.
- Rose C, 'An Emerging Norm: The Duty of States to Provide Reparations for Human Rights Violations by Non-State Actors' (2010) 33 *Hastings Int'l & Comp. L. Rev.* 307.
- Ruff T A, 'The Humanitarian Impact and Implications of Nuclear Test Explosions in the Pacific Region' (2015) 97(889) *International Review of the Red Cross* 775.
- Scovazzi T, 'State Responsibility for Environmental Harm' (2002) 12(1) *Yearbook of International Environmental Law* 43.
- Shelton D, 'Righting Wrongs: Reparations in the Articles on State Responsibility' (2002) 96 *AJIL* 833.
- Shelton D, 'Human Rights, Remedies', in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2013).
- Shelton D, *Remedies in International Human Rights Law* (OUP 2015 3rd edn).
- Singh N, 'Victim Assistance under the Treaty on the Prohibition of Nuclear Weapons: An Analysis' (2020) 3(2) *Journal for Peace and Nuclear Disarmament* 265.

- Tladi D, 'The International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters: Codification, Progressive Development or Creation of Law from Thin Air?' (2017) 16(3) *Chinese Journal of International Law* 425.
- Zegveld L, 'Remedies for Victims of Violations of International Humanitarian Law' (2003) 85(851) *International Review of the Red Cross* 497.
- Zimmermann A and Şener M, 'Chemical Weapons and the International Criminal Court' (2014) 108 (3) *The American Journal of International Law*, 436.