
How are Multinational NATO Operations Responsible for International Humanitarian Law Violations?

NACHAMA ROSEN

INTRODUCTION

The NATO bombing campaign conducted in 1999 against the Federal Republic of Yugoslavia (FRY) gave rise to a number of legal cases before national and international tribunals. While citizens of the FRY hoped that European and International courts would find NATO responsible for violations of international humanitarian law (IHL), the results illustrate the extent to which the international legal system has in essence side stepped the question of how and if NATO can be held accountable for violations of IHL.

There were numerous opportunities for courts to address this issue. In April 1999, the FRY instituted proceedings against Belgium and nine other states before the International Court of Justice (ICJ). The ICJ immediately dismissed the cases against Spain and the United States for lack of jurisdiction and later dismissed the rest of the cases for the same reason.¹

Nachama Rosen graduated from *The Fletcher School of Law and Diplomacy* in May 2013 with a *M.A. in Law and Diplomacy*. Her concentrations were in the areas of human security and development economics. During this time Ms. Rosen traveled to Burundi to conduct an evaluation of a security sector reform project, and performed an impact evaluation of a public health program in Sierra Leone. Prior to Fletcher, she was a policy analyst at the United States Department of Homeland Security.

Some nationals of the FRY also lodged an application, with the European Court of Human Rights (ECHR), against Belgium and the other countries that participated in the NATO bombing campaign.² The ECHR held that there was no jurisdictional link between the victims of the act complained of and the states which committed the act, declaring the application inadmissible.³ In addition, no proceedings were instituted before the International Criminal Tribunal for Yugoslavia (ICTY). In 2000, the Committee entrusted by the ICTY prosecutor with the task of reviewing the NATO bombing campaign “Operation Allied Force” advised the prosecutor not to open an investigation into the bombing campaign. Accordingly, the prosecutor decided not to commence an investigation.⁴ In 2002, the Italian Supreme Court rejected a civil complaint filed by FRY citizens requesting compensation for the death or injuries suffered by their relatives following the NATO bombing of Radio Televizije Srbijre. The Supreme Court held that Italian courts had no jurisdiction over the case.⁵ So far, no court, either national or international, has considered the merits of claims arising from the NATO bombing campaign of 1999.⁶

This and other similar situations raise the question: in what way, if any, can multinational forces directly involved in NATO operations be held responsible for IHL violations? In response, this paper explores NATO’s legal and political status with respect to its constituent states and then assesses NATO’s responsibilities under IHL. Analysis unfolds from two perspectives: how responsibility could devolve from the existing obligations of its member states, and how responsibilities might be derived from NATO’s status as an international organization. Then an attempt is made to determine which perspective, in practice, produces effective and realizable IHL conformance and, more importantly, delivers justice. The disheartening conclusion is that, under current protocols and legal frameworks, no effective mechanism appears to exist to assign responsibility for IHL violations committed during NATO operations, either to NATO as a whole or to its constituent member states.

WHO AND WHAT IS NATO?

NATO’s original member states laid down the organization’s foundations on April 4, 1949, with the signing of the North Atlantic Treaty, more popularly known as the Washington Treaty.⁷ At its core, NATO is a military alliance among states to promote collective defense and security. This is encapsulated in Article 5, which states that “The Parties agree that an armed attack against one or more of them in Europe or North

America shall be considered an attack against them all.”⁸ The Treaty derives its authority from Article 51 of the UN Charter, which reaffirms the inherent right of independent states to individual or collective defense. Furthermore, the member states of NATO have committed themselves, in peacetime, to assist each other in order to “maintain and develop their individual and collective capacity to resist armed attack.”⁹ Hence, a NATO member will either partake in an armed conflict to ensure and promote security of other members, or will prepare itself in peacetime to ensure capacity to resist armed conflict. Therefore, any NATO operation engaged in armed conflict¹⁰ will trigger IHL obligations.

IS THE STATE OR THE ORGANIZATION RESPONSIBLE? STATE SOVEREIGNTY VERSUS ACTION BY CONSENSUS

Article 5 binds all parties to the treaty to the principle of collective defense and security. This is an individual obligation; however, each state is responsible for determining what form of assistance is appropriate.¹¹ Additionally, the process by which NATO staffs itself and requests resources from member countries allows states to put conditions or “caveats” on the provision of forces. Caveats can be based on factors such as geography, logistics, time, rules of engagement, and command status.¹² Furthermore, according to NATO’s *Allied Joint Doctrine for the Conduct of Operations*, “No NATO or coalition commander has full command over the forces assigned to him since, in assigning forces to NATO, nations will delegate only operational command or operational control.”¹³ The combination of Article 5, the ability of states to impose conditions on the use of their resources during NATO missions, and the acknowledgment that NATO never has complete command over forces volunteered by member states, highlights the high level of state sovereignty over resources, armed forces, and decision making within NATO.

While state sovereignty is clearly central to how NATO operates, there are several devices within NATO’s structure that suggest a high level of unity in both command of forces and decision-making, hinting at a single collective identity. The first indication of NATO’s organizational identity is what is known as the *Consensus Rule*, which stipulates that all NATO decisions are made by consensus, after discussion and consultation among member countries. According to NATO, a decision reached by consensus means that “it is the expression of the collective will of all the sovereign states that are members of the Alliance.”¹⁴ Each NATO-led operation requires a mandate from the North Atlantic Council, NATO’s highest decision-making body,

which is made up of at least one high level representative from each member state.^{15,16} Following a decision by the North Atlantic Council to initiate an operation, the NATO military authorities must prepare an operational plan, subject to the approval of the North Atlantic Council.¹⁷ Another

.....
While state sovereignty is clearly central to how NATO operates, there are several devices within NATO's structure that suggest a high level of unity in both command of forces and decision-making, hinting at a single collective identity.

possible indication that it might be prudent to think of NATO as a single entity emerges when one looks at how command and control in specific military actions is structured. While NATO does not have full command over forces volunteered by member states, the official Transfer of Authority and assignment of operational command and control for specific missions or tasks does designate such forces—those conducting a specific action at a specific time—a single NATO force. It can be argued that during a specific operation,

enough authority is transferred to the NATO command structure for a mission or task to occur in an efficient, effective and timely manner without each force having to ask for confirmation from their respective government any time they are required to act. During such operations a high level of military command integration and a unified and structured chain of command exists.¹⁸

STATE OBLIGATIONS AND RESPONSIBILITIES UNDER IHL

As highlighted above, if states maintain their sovereign right to make individual decisions on actions and provisions of resources, and at the same time no mission can go forward without the consensus of all member states, where does the accountability lie if possible IHL violations occur?

Individual states have obligations and responsibilities under IHL. The obligations of states under IHL are based on the principle of *pacta sunt servanda*,¹⁹ which means that states are bound by the treaties to which they are signatories. Additionally, states are bound by customary IHL, which is “made up of rules that come from ‘a general practice accepted as law’ and that exist independent of treaty law.”²⁰ This means states are obligated to uphold customary IHL even though no treaty was signed.²¹ The Geneva Conventions of 1949, which have been universally adopted, maintain that, with respect to grave breaches, a state may not absolve itself or another

state of any responsibility incurred as specified in common Articles 50, 51, 130 and 147. Therefore, parties to the North Atlantic Treaty are not released from the specific IHL obligations that bind them, even if those actions occurred while fulfilling obligations governed by another treaty.

In doctrine and practice, individual states are held responsible in international courts, tribunals and under the specific terms of relevant treaties as a consequence of their breach or non-performance of an international obligation.²² There are several overarching IHL obligations that highlight how a state might become responsible for an IHL violation committed during a NATO operation. One of the most general and overarching IHL obligations binding states is found in Common Article 1 of the Geneva Conventions,²³ which requires all states not only to respect, but also to ensure respect for, IHL. Common Article 1 reads as follows: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.” The obligation to respect and ensure respect applies to international conflicts and non-international conflicts to the degree that the latter are covered by common Article 3 which lays out specific provisions for parties in a non-international armed conflict.²⁴ Even though Article 5 of the North Atlantic Treaty provides for situations where member states might not provide armed forces or military resources to specific NATO operations, due to the combination of states’ responsibilities to respect and ensure respect for IHL and that NATO operations can only go forward with the consensuses of all members, all member states are obligated to ensure that NATO operations respect the Geneva Conventions.

States that contribute resources to a specific NATO mission are bound by additional IHL obligations. Customary IHL, found in Article 3 of the 1907 Hague Convention (IV) and in Article 91 of Additional Protocol I, provide that a state is responsible for “all acts committed by persons forming part of its armed forces” and that “[a] belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation.”²⁵ If a state’s armed forces violate their IHL obligations, the state could, in theory, be held responsible and could be liable to pay compensation or reparations.

DOES IT MAKE SENSE TO TRY TO PUSH THE RESPONSIBILITY ONTO NATO?

As demonstrated above, individual member states have clear IHL obligations during NATO operations. One might ask why it is necessary to complicate matters by expanding responsibility for IHL violations beyond those already legally associated with state actors. That is, why would an

attempt be made to hold NATO responsible given that responsibility in relation to an IHL violation committed during a NATO operation flows back to NATO's constituent states?

One obvious reason is that, from a victim's point of view, it is difficult to identify which state is responsible for each IHL violation during a NATO

In theory, making NATO as an organization responsible for IHL violations during NATO operations could make it easier to collect evidence and to obtain compensation and reparations for victims because complainants would only have to deal with a single central entity.

operation. Victims may have no means or lack organizational or mission-related knowledge to identify the responsible state or states. Furthermore, while states have obligations to facilitate and cooperate in criminal investigations, they may be unwilling to turn on fellow alliance members and assign blame for overarching political reasons as this would undermine the fabric of trust and cooperation that holds NATO together. In theory, making NATO as an organization responsible for IHL violations during NATO operations could make it easier to collect

evidence and to obtain compensation and reparations for victims because complainants would only have to deal with a single central entity. However, there are several legal and pragmatic obstacles that might make this approach ineffective.

A POSSIBLE PRAGMATIC OBSTACLE:

Customary IHL requires states to provide international cooperation in criminal proceedings.²⁶ This obligates states, for example, to respect the dictates and verdicts of extra-national legal bodies, to extradite war criminals and not to conceal or aid them. However, in practice, because most NATO documentation is classified, it is unclear whether NATO or the member states own the documentation, and who would be responsible for turning it over as potential evidence in a court case against states and/or specific individuals accused of violating IHL.

POSSIBLE LEGAL OBSTACLES:

Tuning from pragmatic to legal considerations, another possible obstacle to holding states accountable for NATO missions is the theory

of “indispensable third parties.” According to this theory, a court cannot exercise jurisdiction in a case where the legal interest of a state that is not a party to the proceedings would be affected. This could make it difficult to bring claims against individual states participating in NATO operations.²⁷

While at first it seems intuitively sensible to explore the extension of responsibility for IHL violations to NATO, the law on the legal responsibility of international organizations is still underdeveloped. This is the case with regard to the element of attribution of conduct, and maybe even more so with regard to the legal consequences of an internationally wrongful act.

As a result, although it seems like a rational approach to hold NATO accountable for IHL violations, at least three legal roadblocks must be successively overcome. First, it is necessary to establish whether NATO has international legal personality and obligations under international law in general. A second question is whether NATO has IHL obligations, specifically, and is party to IHL treaties. Finally, even if the first two roadblocks are circumvented, there is the question of whether any currently existing policies and legal mechanisms can enforce NATO’s obligations. It is necessary to explore each roadblock in more detail.

The issue of legal personality is important because an entity’s international legal personality is what gives it rights and obligations under international law and allows it to be held responsible for breaching those obligations.^{28,29} States by definition have international legal personality. International organizations, on the other hand, do not necessarily have legal personality.^{30,31} Legal doctrine has developed two main theories on giving legal personality to international organizations. The first is the theory of objective international personality. This theory argues that an international organization gains legal personality when it meets certain criteria, regardless of the will of the member states.³² The second theory is subjective international personality, which maintains that organizations have international legal personality because this status is given to them by their member states.³³

If NATO is determined to have international legal personality, it can have obligations under international law, and, in turn, NATO can be held responsible if it breaches those obligations. Opinions on this question are wide-ranging and often contradictory. Some argue that NATO has no international legal personality.³⁴ Others admit that it has limited legal personality but assert that it lacks full legal authority and competence for the conduct of operations, for which it depends on sovereign decisions taken by its member states, and therefore does not have legal personality in regards to IHL obligations.³⁵ Lastly, some argue that NATO has complete legal personality and can have full obligations under all international law.³⁶

Even if it can be agreed that NATO has international legal personality, and technically can have obligations under IHL, there is debate as to whether IHL treaties provide for the possibility of accession by an international organization.³⁷ Accession clauses of some of the earliest IHL treaties provide only for accession by “states”³⁸ or “countries,”³⁹ clearly excluding international organizations. The 1907 Hague Conventions, the 1949 Geneva Conventions

.....
If NATO is determined to have international legal personality, it can have obligations under international law, and, in turn, NATO can be held responsible if it breaches those obligations.

and the Additional Protocols of 1977 by reference to the Geneva Conventions provide for accession by “powers.” More recent treaties, however, have reverted to only mentioning the possibility of accession by “states.”⁴⁰ If not read restrictively, the term “powers” could allow for the possibility of accession by international organizations. However, there are two problems with this line of reasoning. First, as discussed above, NATO would have to decide to accede by consensus. This seems unlikely since

not all NATO members are party to the three treaties mentioned above. Second, in practice, the UN has interpreted the term “power” as excluding international organizations, and this interpretation has extensive support in the relevant literature.⁴¹ There is an argument that even though NATO might not be able to accede to any IHL treaty, if it does have legal personality, then it is at least bound by the customary rules of IHL since, as discussed above, customary IHL is binding regardless of whether or not a treaty was signed.⁴²

Beyond the critical and highly technical issues that surround accession, one must additionally confront the fact that few mechanisms exist to bring claims against international organizations. Traditionally, the invocation of international responsibility is a prerogative of states. IHL, at present, does not provide for the possibility for an individual to invoke international responsibility on her or his own account.⁴³ Article 3 of the 1907 Hague Convention (IV) and Article 91 of Additional Protocol I do not provide for a private right of action.⁴⁴ This is supported by state practice.⁴⁵ Hence, even if NATO does have legal personality and obligations under IHL, the current structure of the international legal system does not seem to allow for enforcement of NATO obligations and organizational accountability to individuals. There are many political and policy reasons why a state may not pursue accountability on behalf of its citizens. In the case of failed states, there might not even be a functioning government to protect the interests of its people.

Additionally, the three⁴⁶ main international courts—the International Court of Justice (ICJ), the International Criminal Tribunals (ICTs) set up by the UN Security Council (which include ICT for Yugoslavia (ICTY) and ICT for Rwanda (ICTR)) and the International Criminal Court (ICC)—seem to have no statutory mechanism for bringing a case against an international organization. With regard to the ICJ, as highlighted in Article 34 of its statute, only states may be parties to cases at the court.⁴⁷

Thus, individual victims cannot bring a case against a state, nor can a case be brought against an international organization. The only option is for individual victims to lobby their state to bring a case to court against specific states. Furthermore, the ICJ only has jurisdiction over a case if a state has accepted jurisdiction through a clause in a treaty it has signed to bring issues before the ICJ or if both states agree for the specific case to be brought before the ICJ. For example, in the Legality of Use of Force (Yugoslavia *v.* United States), the ICJ noted that the United States put a reservation of “consent” in the treaty that the Former Republic of Yugoslavia was invoking for jurisdiction.

Thus, individual victims cannot bring a case against a state, nor can a case be brought against an international organization. The only option is for individual victims to lobby their state to bring a case to court against specific states.

Thus, because the United States would not accept the ICJ’s jurisdiction in this instance, the ICJ did not have jurisdiction to try this case. This was also the case in the Legality of Use of Force (Yugoslavia *v.* Spain).⁴⁸

The mandates and statutes of both the ICTY and the ICTR are specific to trying cases against “persons.”⁴⁹ The ICTY website clarifies the definition of “persons,” stating that their “jurisdiction is over individual persons and not organizations, political parties, army units, administrative entities or other legal subjects.” In other words, the ICTY and ICTR mandates do not allow for cases to be brought against organizations. Similarly, the ICC can only try cases against “persons,” with the ICC website stating that its mandate is to hold individuals accountable, not states or organizations.⁵⁰

Further complicating matters, a core tenant of international responsibility is that a state can only be responsible for a breach of humanitarian law norms that bind it.⁵¹ But not all NATO member states are bound by the same IHL treaties or accept jurisdiction of the same international-level courts like the ICJ and the ICC. Such inconsistencies further cloud the assignment of responsibility to NATO.

CONCLUSION AND POSSIBLE WAYS FORWARD:

There are strong laws in place delineating obligations and accountability in IHL, but there is a vital need to improve the mechanisms for ensuring and implementing that accountability, whether it is through individual NATO member states or NATO as an international organization. Civilian populations in zones of armed conflict should not have to live in fear of reprisals or abuse at the hands of engaged forces. This is especially true of organizations such as the UN or NATO, who justify their projection of force as achieving ethical or humanitarian objectives. In particular, the fact that NATO is a defensive alliance need not preclude it from ensuring in practice that, when acting under NATO auspices, its forces are bound by the highest standards of IHL. As indicated above, the fundamental criterion by which to judge any strategy for applying IHL to NATO actions is whether injured parties have the ability to clearly identify and hold accountable those actors that have harmed them.

However, as shown by the introductory example of NATO's bombing campaign in the Former Yugoslavia, it seems unlikely, in the near term, that either domestic or international courts will be able to determine if IHL violations have truly occurred, and identify whether NATO or individual states should be held accountable. If there does not seem to be viable

Civilian populations in zones of armed conflict should not have to live in fear of reprisals or abuse at the hands of engaged forces.

..... mechanisms to ensure accountability, it may be useful to address the situation prior to any potential violation. In today's world, actions by states and international organizations play out as much in the court of public opinion as in legal courts of justice.

..... Accountability contributes to the creditability and accomplishments of any mission and it would therefore benefit NATO to come up with clear and transparent mechanisms and directives laying out the specific IHL obligations they will abide by during operations, what will happen if violations do occur, and what the process should be for victims to seek compensation and reparations. Legal mechanisms to redress actual violations of IHL are weak at best and are unlikely to change quickly. Thus, the most effective remedy for this situation would be to apply public pressure on NATO and its member states to better clarify the IHL obligations of NATO missions and the processes for individuals to pursue possible compensation for wrongdoing. At the end of the day, NATO's budget is

determined by its member states, and those states are in the final instance accountable to their constituents.^f

ENDNOTES

- 1 “Cases Concerning Legality of Use of Force (Serbia and Montenegro *v.* Belgium) (Serbia and Montenegro *v.* Canada) (Serbia and Montenegro *v.* France) (Serbia and Montenegro *v.* Germany) (Serbia and Montenegro *v.* Italy) (Serbia and Montenegro *v.* Netherlands) (Serbia and Montenegro *v.* Portugal), Judgments of 15 December 2004” *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice*.
- 2 ”Decision in *Bankovic and others v. Belgium and others*” December 12, 2001.. The other 16 States are Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey, and the UK.
- 3 Ibid.
- 4 “Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia,” International Criminal Tribunal for the Former Yugoslavia, June 13, 2000, <http://www.icty.org/sid/10052>.
- 5 Micaela Frulli, “When are States Liable Towards Individuals for Serious Violations of Humanitarian Law? The Marković Case,” *Journal of International Criminal Justice* 1 (2) (August 2003), 406.
- 6 Ibid.
- 7 “Washington Treaty,” North Atlantic Treaty Organization, http://www.nato.int/cps/en/natolive/topics_67656.htm?.
- 8 North Atlantic Treaty Organization, “Article 5 of the North Atlantic Treaty,” April 4, 1949, 34 UNTS 243, *United Nations Treaty Series*.
- 9 North Atlantic Treaty Organization, “Article 3 of the North Atlantic Treaty,” April 4, 1949, 34 UNTS 243, *United Nations Treaty Series*; and Gunther Moritz, “The Common Application of the Laws of War within the NATO-Forces,” *Military Law Review* 13 (July 1961): 1-33.
- 10 IHL differentiates between international armed conflicts and non-international armed conflicts, with different obligations required for both. This paper will not discuss the specifics of the different obligations, nor will it discuss how to determine if NATO might be involved in a non-international armed conflict or assisting a state in law enforcement operations. However, it is important to note that if and when a NATO operation is involved in an armed conflict, certain IHL obligations are triggered.
- 11 “Collective Defense,” North Atlantic Treaty Organization, http://www.nato.int/cps/en/SID-A34F3CF9-6E173BF2/natolive/topics_59378.htm?.
- 12 “Troop Contributions,” North Atlantic Treaty Organization, http://www.nato.int/cps/en/SID-2648FED5-C9AB57A9/natolive/topics_50316.htm?.
- 13 North Atlantic Treaty Organization, *Allied Joint Doctrine for the Conduct of Operations*, Allied joint publication AJP-3(B), March 16, 2011.
- 14 “Consensus Decision-Making at NATO,” North Atlantic Treaty Organization, http://www.nato.int/cps/en/SID-AC4E4684-93AE20F2/natolive/topics_49178.htm.
- 15 “North Atlantic Council,” North Atlantic Treaty Organization, http://www.nato.int/cps/en/natolive/topics_49763.htm.
- 16 Baldwin De Vidts, “A NATO Perspective” (paper presented at the International Peace Operations and International Humanitarian Law seminar organized by the International Institute of Humanitarian Law, Sanremo, Rome, Italy, March 27, 2008).

- 17 Ibid.
- 18 NATO states on its website that “national contributions to NATO operations are expected to operate under the Alliance’s chain of command.” See “Troop Contributions.” Furthermore, see *Allied Joint Doctrine for the Conduct of Operations* for definitions on operational command and control and how extensive that is.
- 19 “Article 26 of the Vienna Convention on the Law of Treaties,” May 23, 1969, 1155 UNTS 331, 8 ILM 679, *United Nations Treaty Series*.
- 20 “Customary International Humanitarian Law,” International Committee of the Red Cross, <http://www.icrc.org/eng/war-and-law/treaties-customary-law/customary-law/overview-customary-law.htm> (accessed August 15, 2013).
- 21 There is a process by which states can consistently and persistently object to specific customary laws. If this occurs then the state is no longer bound to uphold that law. See: Charney, Jonathan I. “The persistent objector rule and the development of customary international law.” *British Yearbook of International Law* 56, no. 1 (1986): 1-24.
- 22 Marten Zwanenburg, *Accountability of Peace Support Operations* (Leiden ; Boston: Martinus Nijhoff Publishers, 2005), 51.
- 23 Referred to as Common Article 1 throughout the rest of the paper.
- 24 “Common Article 1 of the Geneva Conventions revisited: Protecting collective interests,” International Committee of the Red Cross, <http://www.icrc.org/eng/resources/documents/misc/57jqcp.htm> (accessed August 15, 2013). While conflicts of a non-international character as defined by Additional Protocol II are not explicitly covered by the obligation to respect and to ensure respect, since Article 1, paragraph 1 states that Protocol II is simply an expansion of Common Article 3 of the four Geneva Conventions, the obligations can be considered as indirectly falling within scope of the provision.
- 25 “Article 3 of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land,” The Hague, October 18, 1907; and “Article 91 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I),” June 8, 1977.
- 26 “ICRC Database on Customary International Humanitarian Law,” International Committee of the Red Cross, <http://www.icrc.org/customary-ihl/eng/docs/home> (accessed April 22, 2012).
- 27 Zwanenburg, *Accountability of Peace Support Operations*, 280.
- 28 Ibid, 65.
- 29 Ian Brownlie, *Principles of Public International Law, 6th Edition*, (Oxford; New York: Oxford University Press, 2003).
- 30 Ibid.
- 31 Zwanenburg, *Accountability of Peace Support Operations*, 65.
- 32 Ibid, 57.
- 33 Ibid, 66.
- 34 Jean d’Aspremont, “Abuse of the Legal Personality of International Organizations and the Responsibility of Member States,” *International Organizations Law Review* 91 (4) (2007); Moritz, “Common Application of the Laws of War;” and Paolo Benvenuti, “The ICTY Prosecutor and the Review of the NATO Bombing Campaign Against the Federal Republic of Yugoslavia,” *European Journal of International Law* 12 (3) (June 2001), 503.
- 35 Dieter Fleck, “International Accountability for Violations of the Ius in Bello: The Impact of the ICRC Study on Customary International Humanitarian Law,” *Journal of Conflict and Security Law* 11 (2) (Summer 2006), 179.

- 36 Zwanenburg, *Accountability of Peace Support Operations*, 66
- 37 Ibid, 136.
- 38 “Article 65 of the Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare,” Geneva, June 17, 1925.
- 39 “Article 93 of the Convention relative to the Treatment of Prisoners of War,” Geneva, July 27, 1929.
- 40 “Article 48 of the Convention on the Rights of the Child,” UN General Assembly, New York, November 20, 1989.
- 41 Zwanenburg, *Accountability of Peace Support Operations*, 137.
- 42 ICJ case law has identified the core of these rules. The case law of the ICTY and ICTR has identified a broader category of customary rules and the ICRC’s publication of the study on customary international humanitarian law brings additional guidance.
- 43 Rudolf Dolzer, “The Settlement of War-Related Claims: Does International Law Recognize a Victim’s Private Right of Action? Lessons after 1954,” *Berkley Journal of International Law* 20 (1) (2002).
- 44 Natalino Ronzitti, “Compensation for Violations of the Law of War and Individual Claims,” *Italian Yearbook of International Law* 39 (2002).
- 45 Frulli, “When are States Liable.”
- 46 There are several prominent regional human rights courts, such as the ECHR. However, since NATO is comprised of members not within those designated regions it would be hard to argue that NATO could be held accountable in the regional courts. Additionally, when individuals tried to bring a case against NATO member states for the bombing operation in 1999, the court held that human rights violations could only occur against individuals within a state’s territory, and since the bombing occurred outside member states’ territory the court had no jurisdiction. See Frulli.
- 47 “Statute of the International Court of Justice, Chapter II: Competence of the Court, Article 34, *International Court of Justice Basic Documents*, April 18, 1946.
- 48 “Case Concerning Legality of Use of Force (Yugoslavia v. United States of America) (Provisional Measures), Order of 2 June 1999,” *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice, 1997-2002*, United Nations, 122-125.
- 49 “Article 1 of the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991,” May 25, 1993; and “Article 1 of the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994,” November 8, 1994.
- 50 “Rome Statute of the International Criminal Court,” July 17, 1998.
- 51 Zwanenburg, *Accountability of Peace Support Operations*, 131.