

Two wrongs don't make a right: Reflections on reciprocity and its impact on the path to peace

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Abstract

This article explores the enduring tension between the human impulse for reciprocity and the legal prohibitions against it within international humanitarian law. It argues that reciprocity's "negative" application in armed conflict – justifying violations because an adversary has committed the same violations – creates destructive cycles of violence that undermine both humanitarian protections and the long-term prospects for peace.

Keywords: reciprocity, international humanitarian law, belligerent reprisals, humanization of the law, path to peace, military necessity, revenge and retaliation.

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No more entreating of me, you dog, by knees or parents! I wish only that my spirit and fury would drive me to hack your flesh away and devour it raw for what you have done. No one shall keep the dogs from your head, not even if they bring ten or twenty times the ransom, and promise more, not even if Priam, son of Dardanus, commands them to weigh your body with gold. Not even so will your mother lay you on the bier and mourn the son she bore, but dogs and birds shall devour you utterly.

*The Iliad*¹

Introduction

In its 2024 report on *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, the International Committee of the Red Cross (ICRC) observed a worrying development:

[S]ome actors have begun to question some of the essential principles and assumptions on which IHL [international humanitarian law] is based. The idea that IHL obligations depend on reciprocity – that compliance by one party is required only if there is compliance by the adverse party – is one such fallacy. IHL could not survive the downward spiral of non-compliant reprisals that such an approach would invite.²

Reciprocity frequently features in justifications for violating IHL and this may reflect a deeply ingrained, almost instinctive impulse (“I harm you because you harmed me”). While historically tolerated as a tool of coercion, reciprocity has become increasingly constrained as a matter of international law in order to prevent spirals of escalation. In my professional engagements as a delegate with the ICRC for over ten years, be they trainings on IHL or discussions on alleged violations of IHL, the subject of reciprocity frequently arose during exchanges with representatives of armed forces and armed groups. More often than not, it was invoked as a rationale for the actions under scrutiny, typically framed along the lines of, “But look at what the adversary is doing.” On other occasions, when I explicitly raised the issue, asking whether the conduct of the enemy influenced their own decisions, some interlocutors were quick to reject the notion of reciprocity. They would assert that yielding to such impulses was beneath the standards of a professional force, insisting instead that their actions should be guided by principle, not provocation. Others would offer examples of their choice not to act on a reciprocal impulse, noting that doing so

- 1 Achilles, in his rage, refuses to show mercy to Hector and even fantasizes about eating his flesh in an ultimate act of revenge. Homer, *The Iliad*, trans. Robert Fagles, Penguin Classics, London, 1998, Book 22, lines 345–354.
- 2 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Building a Culture of Compliance for IHL to Protect Humanity in Today's and Future Conflicts*, Geneva, September 2024, p. 8.

might harm the chances of transitioning to peace. The practical reality and sheer frequency of referring to reciprocity mostly to justify problematic behaviour – a position which could only be countered with reference to the prohibition against reciprocity in IHL – prompted a need for a deeper reflection on reciprocity and the rules and experiences associated with it.

This article aims to contribute to the discussion on understanding reciprocity, in both its positive and negative iterations. While positive reciprocity may at times have an “incidental” beneficial result in that it motivates IHL compliance, it may encourage the “mirroring” consideration of negative reciprocity. In trying to unpack the latter, this article tries to list the interests or purposes that negative reciprocity may be perceived to serve; these include achieving military gains and enforcing respect for – and deterrence against violations of – IHL, but reciprocity is also a way for the actor behaving reciprocally to express emotions of revenge and a desire to punish.

When enveloped in armed conflict, fighting parties may lose sight of what an end to the military operations and a peaceful settlement may look like. This article also explores the emotion that motivates revenge at the level of the individual and the collective as one that, at times, permeates practices of negative reciprocity. More and more voices³ are emphasizing the crucial link between how war is being fought and the eventual transition to peace. By tracing patterns across historical and contemporary conflicts, it becomes clear that reciprocity is a driver of cycles of harm, a mirror of wartime morality and a potential stumbling block on the path to peace.

What is reciprocity?

“Don’t act this way. You are not supposed to do this.” “Yes, mum, but he did it first!” Most readers will have either heard or said these lines, or something like them, at some point in their lives, regarding a sibling or a friend who “did it first”. Studies on human sociology recognize a wide importance of reciprocity for human social behaviour, even suggesting that reciprocity represents a universal normative principle for humans⁴ – a norm that is understood to be acquired by children as early as their preschool period, when they are about 4–5 years of age.⁵ The same studies suggest that the ability to consistently mirror a partner’s behaviour in repeated interactions helps build trust and encourage cooperation. It also reduces the risk of unfair behaviour, such as when someone benefits from others’ efforts without contributing

3 Cordula Droge, “International Humanitarian Law and Peace: A Brief Overview”, *International Review of the Red Cross*, Vol. 106, No. 927, 2025, p. 992; ICRC, “ICRC President: Path to Peace Lost When Parties Fail to Preserve Human Dignity and Humanity”, 24 September 2025, available at: www.icrc.org/en/statement/icrc-president-there-human-dignity-and-humanity-preserve-because-if-you-lose-we-will (all internet references were accessed in March 2026).

4 Alvin W. Gouldner, “The Norm of Reciprocity: A Preliminary Statement”, *American Sociological Review*, Vol. 25, No. 2, April 1960, p. 161.

5 Monika Wörle and Markus Paulus, “Normative Foundations of Reciprocity in Preschoolers”, *Journal of Experimental Child Psychology*, Vol. 188, December 2019.

themselves (“free riding”) or chooses not to cooperate when they should (“defecting”).⁶ Neuroscientist Donald W. Pfaff has characteristically stated that “we are wired for reciprocity”.⁷ Reciprocity is a concept that runs through many disciplines, generally referring to the mutual exchange of goods, services, rights or obligations,⁸ but beyond just exchange, it is often what holds relationships and systems together – socially, legally and ethically.

Philosophers like Kant and Rawls have placed reciprocity at the heart of how we think about justice. For them, it is not just a moral ideal but a practical one; one which assumes that individuals are capable of recognizing each other’s rights and responsibilities⁹ in a shared society.¹⁰ In contract law, this idea comes through in the notion of consideration: both parties have to give and receive something of value.¹¹ That mutuality reflects not only fairness but a respect for consent and autonomy in legal relations.

In sociology and anthropology, scholars like Marcel Mauss have shown how reciprocity shapes social life far beyond the legal or philosophical realm. In *The Gift*,¹² Mauss pointed out that what looks like generosity in so-called “archaic” societies is often structured by obligation – the need to give, receive and reciprocate. In these fields, reciprocity isn’t just about transactions; it’s about how communities are formed, how social positions are reinforced and how identities take shape.

In law, reciprocity tends to anchor ideas of fairness and balance. International law, for example, has long considered the reciprocity present in States’ relationships, stemming from the fact that States are sovereign and can only be bound by law through their consent.¹³ Article 60 of the Vienna Convention on the Law of the Treaties (VCLT) provides that “[a] material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating or suspending the operation of the treaty”, and this has been described as a way for an aggrieved party to “protect its rights and reestablish the disturbed equilibrium”.¹⁴ However, in the case of humanitarian treaties, Article 60(5) of the VCLT excludes the possibility of a party terminating or suspending the operation of a treaty

6 *Ibid.*

7 Donald W. Pfaff, *The Neuroscience of Fair Play: Why We (Usually) Follow the Golden Rule*, Dana Press, New York, 2007, p. 206.

8 See Diego Guevara Beltran, Jessica D Ayers, Andres Munoz, Lee Cronk and Athena Aktipis, “What is Reciprocity? A Review and Expert-Based Classification of Cooperative Transfers”, *Evolution and Human Behavior*, Vol. 44, No. 4, 2023.

9 Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor, Cambridge University Press, Cambridge, 1996, pp. 56–57.

10 John Rawls, *A Theory of Justice*, revised ed., Harvard University Press, Cambridge, MA, 1999, pp. 11–17, 102–104.

11 Stephen A. Smith, *Contract Theory*, Oxford University Press, Oxford, 2004, pp. 65–69.

12 Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies*, trans. Ian Cunnison, Cohen & West, London, 1954.

13 See Permanent Court of International Justice, *The Case of the S.S. “Lotus” (France v. Turkey)*, Judgment, 7 September 1927.

14 Robert Kolb, “International Humanitarian Law and the Law of Treaties”, *Articles of War*, 19 May 2025, available at: <https://lieber.westpoint.edu/international-humanitarian-law-law-treaties/>.

because of a grave violation by another party. As has been said, “[t]he purpose of the clause [Article 60(5)] is to protect the beneficiaries of humanitarian treaties from losing their rights in the course of interstate disputes”.¹⁵ The content provision of Article 60(5) has been found to have customary status and could therefore apply to humanitarian treaties concluded prior to the entry into force of the VCLT.¹⁶

A note around terminology and the corresponding legal provisions needs to be made here. The language surrounding reciprocity in the context of an armed conflict is varied and nuanced, involving terms like “reprisal”, “retaliation” and “revenge attack”. While in everyday speech these terms are often conflated, both scholarship and IHL insist on sharp distinctions: *reprisals* are otherwise illicit acts that may be conditionally permitted under a rigid legal framework,¹⁷ while *belligerent reprisals* refer to reprisals that occur during armed conflict and involve otherwise prohibited¹⁸ acts of warfare.¹⁹ Belligerent reprisals would normally constitute a breach of IHL, but in exceptional circumstances they may be regarded as lawful (if only during international armed conflicts (IACs)²⁰) when used as an enforcement measure in response to a prior violation of IHL by the opposing party, with the aim of ending that violation. It is generally accepted in treaty law that belligerent reprisals may be directed only against military objectives and enemy armed forces or persons directly participating in hostilities, meaning that such reprisals – aimed at targets that are otherwise lawful – typically entail either the unlawful use of lawful weapons or the use of unlawful weapons, unless treaty rules prohibit the use of those weapons even in reprisals.²¹ More on the legal framework regulating belligerent reprisals can be found in the section on “Express Reciprocity” below.

15 *Ibid.*

16 Bruno Simma and Christian J. Tams, “1969 Vienna Convention: Article 60 Termination or Suspension of the Operation of a Treaty as a Consequence of Its Breach”, in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary*, Oxford University Press, Oxford, 2011, p. 1367.

17 Matthias Ruffert, “Reprisals”, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, online ed., 2021, available at: <https://opil.ouplaw.com/display/10.1093/law/epil/9780199231690/law-9780199231690-e1771>.

18 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 146, available at: <https://ihl-databases.icrc.org/en/customary-ihl/rules>.

19 Not to be confused with armed reprisals in *jus ad bellum*, which concern the use of armed force during peacetime to punish illegal acts and are prohibited today under the UN Charter, and which will not be dealt with in this article. Charter of the United Nations, 1 UNTS XVI, 26 June 1945 (entered into force 24 October 1945), Arts 2(4), 33, 39–42, 51.

20 For non-international armed conflicts (NIACs), the issue remains debated between scholars. See Frits Kalshoven, *Belligerent Reprisals*, 1st ed., A. W. Sijthoff, Leiden, 1971; Shane Darcy, “What Future for the Doctrine of Belligerent Reprisals?”, *Yearbook of International Humanitarian Law*, Vol. 15, 2002; Shane Darcy, “The Evolution of the Law of Belligerent Reprisals”, *Military Law Review*, Vol. 175, 2003. The position of the ICRC is that it is prohibited to direct “reprisals” against persons who do not or have ceased to take direct part in hostilities: see ICRC Customary Law Study, above note 18, Rule 148, p. 526.

21 Francesco Romani, *Belligerent Reprisals from Enforcement to Reciprocity: A New Theory of Retaliation in Conflict*, Cambridge University Press, Cambridge, 2024, p. 19.

Retaliation typically refers to responses to lawful actions.²² *Revenge attacks* are understood to be unlawful acts of violence carried out in response to a perceived wrong, motivated primarily by vengeance rather than legitimate military necessity.²³ *Reciprocity* in ordinary usage denotes mutual exchange or response, but under IHL it is often wrongly invoked when an enemy's conduct is seen as voiding the law's applicability, making previously unlawful actions permissible. Unless otherwise specified, in this article "reciprocity" will be used in its everyday meaning, with special attention given when invoking its IHL-specific connotations. IHL prohibits reciprocity as a basis for non-compliance. Article 1 common to the four Geneva Conventions (common Article 1) provides the core treaty basis for rejecting reciprocity as a justification for violations. As Peeler puts it, the Geneva Conventions promise protection "in all circumstances", not just when an adversary behaves well in return.²⁴

Across all the disciplines mentioned so far, and particularly in the context of the laws of war, conduct that is underpinned by reciprocal expectations has been described as fair.²⁵ War has been described as having a "revealing effect: it allows men to express the worst of which they are capable".²⁶ It has also evolved into having rules that outlaw reciprocity as a requirement for a combatant's adherence to the law. How does it look, then, when a principle understood so early in life, and which may feel unfair when not adhered to, is proclaimed unwanted in the "worst of times"? Is war inherently reciprocal?

Is war inherently reciprocal?

"The most important job of the soldier is to win the war or to accomplish a military mission that is closely connected to winning the war."²⁷ "Winning" implies at least two parties, one to win and one to be defeated. Oppenheim explains that a state of war triggers a special legal status: "War is a contention between States through their armed forces for the purpose of overpowering each other, and in consequence of its outbreak, special rights and duties arise between the belligerents."²⁸ Even though wars can exist when the opponent does not even respond (e.g., if an attack achieves

22 Legal Information Institute, "Retaliatory Measures", *Wex Legal Encyclopedia*, Cornell Law School, available at: www.law.cornell.edu/wex/retaliatory_measures.

23 Michael N. Schmitt, "Retaliation, Retribution, and Punishment and International Law", *Articles of War*, 18 April 2024, available at: <https://lieber.westpoint.edu/retaliation-retribution-punishment-international-law/>.

24 Bryan Peeler, "Why Reciprocity Refuses to Die: The Enduring Logic of Fairness in War", *Articles of War*, 14 November 2025, available at: <https://lieber.westpoint.edu/why-reciprocity-refuses-die-enduring-logic-fairness-war/>.

25 A. W. Gouldner, above note 4, p. 161; Peter M. Blau, *Exchange and Power in Social Life*, Wiley, New York, 1964.

26 Jean-Jacques Frésard, *The Roots of Behaviour in War: A Survey of the Literature*, ICRC, Geneva, 2004, p. 18.

27 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Basic Books, New York, 1977, p. 44.

28 Lassa Oppenheim, *International Law: A Treatise*, ed. Hersch Lauterpacht, 7th ed., Vol. 2, Longmans, Green and Co., London, 1952, p. 202.

the military goal of the attacker and there is no military response), practice affirms that most attacks²⁹ either trigger a military response or are themselves a military response.

A historical (but also current) review³⁰ would highlight that reciprocity extends to the natural feeling of “justice” or even honour for having a certain compliant behaviour reciprocated or, most commonly, a non-compliant behaviour reciprocated, even when the response may be described as asymmetrical. The Lieber Code called retaliation “the sternest feature of war”,³¹ and efforts to regulate war that predate the 1949 Geneva Conventions and can be summarily called “Hague law” endorsed this reciprocity. Article 2 of Hague Convention IV of 1907 provides that “[t]he provisions contained in the Regulations referred to in Article 1 [the Hague Regulations], as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention”. Similarly, in the course of States’ discussions during the 1974–77 Diplomatic Conference that led to the adoption of Additional Protocols I and II to the Geneva Conventions, some delegates, when discussing the concept of reprisals, underlined the “deeply held conviction that the behaviour of parties to an armed conflict is determined by considerations of reciprocity”.³²

Here, one can identify the two aspects of reciprocity that can be seen as inherent in war. First is the tactical aspect: for there to be a war, there need to be two sides, and often, action creates reaction, and this “exchange” is conceptually reciprocal. Tellingly, Carl von Clausewitz called war “the animosity and the reciprocal effects of hostile elements”.³³ Second, there is the “fairness” aspect, which is one that contemporary IHL as of 1864 sought to redefine: in war, as Watts puts it, “[f]ew would consider practicable a legal regime that required one side to ‘fight with one hand tied behind its back’ while its enemy exercised free reign”,³⁴ or, in Lauterpacht’s terms, “it is impossible to visualize the conduct of hostilities in which one side would

29 “Attack” in the sense of Article 49 of Additional Protocol I (AP I), which, as explained in the 1987 ICRC Commentary, is a definition with a “wider scope since it – justifiably – covers defensive acts (particularly ‘counterattacks’) as well as offensive acts, as both can affect the civilian population. It is for this reason that the final choice was a broad definition. In other words, the term ‘attack’ means ‘combat action.’” Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987 (ICRC Commentary on the APs), para. 1880.

30 See Bryan Peeler, *The Persistence of Reciprocity in International Humanitarian Law*, Cambridge University Press, Cambridge, 2019, p. 12.

31 US War Department, *Instructions for the Government of Armies of the United States in the Field*, General Order No. 100, 24 April 1863 (Lieber Code), Art. 27, available at: <https://ihl-databases.icrc.org/en/ihl-treaties/liebercode-1863>.

32 *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974–1977) (Official Records of the Diplomatic Conference)*, Vol. 9, Federal Political Department, Bern, 1978, p. 73, para. 37.

33 Carl von Clausewitz, *On War*, ed. and trans. Michael Howard and Peter Paret, Princeton University Press, Princeton, NJ, 1976, p. 90.

34 Sean Watts, “Reciprocity and the Law of War”, *Harvard International Law Journal*, Vol. 50, No. 2, 2009, p. 366.

be bound by the rules of warfare without benefiting from them and the other side would benefit from them without being bound by them”³⁵

This enduring tension between reciprocity as a natural, almost instinctive feature of conflict and the modern legal framework’s attempt to constrain it sets the stage for a deeper exploration of its “fairness” dimension. Despite the endorsement of the *si omnes* clause (i.e., all parties to a conflict had to be parties to Hague Convention IV in order for the Convention to apply) prior to 1949, this disaccord was reinforced by the dramatic consequences that the clause’s application had during the First World War. As a result, the Geneva Conventions expressly reject endorsing this notion in their approach: under common Article 2(2), the Conventions continue to apply in the mutual relations of States Parties even where one of the parties to the conflict is not a party to the Conventions.

While the Geneva Conventions sought to impose obligations that apply irrespective of the enemy’s behaviour, the lived reality of armed conflict shows that the expectation of reciprocal conduct – whether in compliance or in violation – remains a powerful motivator.³⁶ It shapes not only tactical decisions but also the moral and political narratives that parties construct about the legitimacy of their actions. Selected examples reflecting this trend will be highlighted further below. Reciprocal action has persisted for centuries; how could it not if, as noted above, it is such an integral part of our psychological and societal composition?

In 2005, the *Review’s* then editor-in-chief Toni Pfanner wrote that “[r]eciprocity is of paramount importance in political terms and even the bulk of international humanitarian law thus rests on the expectation of reciprocity” (albeit specifying that reciprocity may not be invoked as an argument not to fulfil the obligations of IHL).³⁷ The same author went on to speak about the “concomitant chivalry in battle which resembles a classic duel or tournament” regarding IACs, but admitted that “[i]n asymmetrical wars, the expectation of reciprocity is basically betrayed, and the chivalrous ethos is frequently replaced by treachery”³⁸ – not unlike the thinking that permeated Hague law, including the *si omnes* clause.

Positive reciprocity

The aforementioned “expectation of reciprocity” is often described as “positive reciprocity”, and it has long been recognized as a motivating factor for adherence to IHL.³⁹ Positive reciprocity describes States’ efforts to foster reciprocal compliance by

35 Hersch Lauterpacht, “The Problem of the Revision of the Law of War”, *British Yearbook of International Law*, Vol. 29, 1952, p. 360.

36 See e.g. B. Peeler, above note 30; S. Watts above note 34.

37 Toni Pfanner, “Asymmetrical Warfare from the Perspective of Humanitarian Law and Humanitarian Action”, *International Review of the Red Cross*, Vol. 87, No. 857, 2005, p. 161.

38 *Ibid.*

39 “The incentives that exist for compliance with IHL persist even if IHL-compliant killings by an aggressor State ipso facto constitute a violation of the right to life. For the State, these may include ... the maintenance of troop discipline and the support of other States, the promotion of reciprocal treatment by the opposing State, and minimisation of bad publicity.” Sean D. Murphy, Won Kidane and Thomas R. Snider,

continuing to observe an international norm or treaty provision even where breach or non-accession by other States would otherwise justify non-compliance.⁴⁰ Armed forces are often influenced by the expectation that humane treatment of the enemy – including civilians, prisoners of war (PoWs) and the wounded – will result in similar treatment for their own captured or vulnerable members.⁴¹ Peeler argues that this positive reciprocity is not merely moral but strategic: it encourages mutual restraint and can help prevent escalation of violence. He concludes that mutual observance of humanitarian norms can encourage constraint, protect reputation and reduce incentives for retaliatory escalation. By distinguishing reciprocity from retaliation, he asserts, reciprocal expectations can stabilize conduct in armed conflict and help sustain humanitarian norms even in the absence of effective enforcement mechanisms.⁴²

Prisoner exchange protocols, negotiated ceasefires and humanitarian corridors are often built on reciprocal trust. The 1960 ICRC Commentary on Geneva Convention III invokes this principle with regard to brokering special agreements, drawing on the notion that tangible concessions from one side can secure cooperation from the other.⁴³ The same effect of the positive reciprocal force of special agreements was also recognized in Colombia's constitutional review of Additional Protocol II (AP II), whereby, following an extensive reiteration of the non-reliance on reciprocity when it comes to IHL, the Constitutional Court explained that “[t]he existence of such reciprocal undertakings appears to be politically desirable ... because this will gradually ensure a more effective application of the humanitarian rules set out in Protocol II”.⁴⁴

Military doctrine and field manuals explicitly cite reciprocity as a force multiplier for compliance. The US Army law of war instructor's guidance asserts plainly that “observing these rules will encourage the enemy to do the same”.⁴⁵ Here, IHL is seen not just as an obligation reflecting moral doctrine but rather the way to a tangible strategy – preserving civilian lives, protecting one's own forces, and sustaining discipline and cohesion within the ranks.

Military training has increasingly incorporated moral psychology, urging combatants to imagine being on the receiving end of their own actions. In this vein, Matthew Zommer's research shows the institutionalization by the 1990s of the “Golden Rule” (“Do to others as you want others to do to you”) within US field

Litigating War: Mass Civil Injury and the Eritrea-Ethiopia Claims Commission, Oxford University Press, Oxford, 2013, p. 136.

40 Frits Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, 3rd ed., Cambridge University Press, Cambridge, 2001, p. 143.

41 Robbie Sabel, “Reciprocity”, Institute for National Security Studies Memorandum No. 74, January 2005, available at: www.inss.org.il/wp-content/uploads/systemfiles/02%20Reciprocity.pdf.

42 Bryan Peeler, “Reciprocity without Retaliation: Rethinking Fairness in the Laws of War”, *Articles of War*, 2 January 2026, available at: <https://lieber.westpoint.edu/reciprocity-retaliation-rethinking-fairness-laws-war/>; B. Peeler, above note 24.

43 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 4: *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1960, Art. 132, para. 2.

44 Constitutional Court of Colombia, Decision C-225/95, 18 May 1995, para. 9.

45 US Department of the Army, *Law of Armed Conflict Deskbook*, JAGCNet, 2016, p. 1.

manuals⁴⁶ after the Vietnam War. Zommer highlights the US Army's 1992 *Intelligence Interrogation* field manual (FM 34-52) as a key example, where interrogators are essentially prompted to ask: "Would you consider this unlawful if done to a US PoW?"⁴⁷ By reframing decision-making through the imagined perspective of one's own captured soldiers, this guidance operationalizes positive reciprocity: it links humane treatment of the enemy not only to legal compliance but also to the expectation of equivalent treatment in return, thereby encouraging restraint and subtly humanizing adversaries as individuals entitled to the same standards that soldiers would demand for themselves.

Finally, reciprocity has also been linked to notions of belligerent equality as conveying "a certain promise – however symbolic – of reciprocal compliance".⁴⁸ Belligerent equality mandates that the rules of IHL apply equally to each party to an armed conflict, regardless of the legality of their use of force under *jus ad bellum*.⁴⁹ Yuval Shany explains that this equality may be a "myth", but it has real practical force because it embodies ideals of chivalry, professionalism and fairness and allows States to claim a legitimacy advantage by complying with IHL even when their opponents do not. Shany continues:

To inform governments and their soldiers that their enemies are not bound by the same rules also reduces the risk of violations committed under the title of reciprocity for the enemy's perceived violations. While violating IHL on the basis of reciprocity is widely outlawed, it continues to provide an argument and an excuse for many violations.⁵⁰

Negative reciprocity

According to Pfanner,

[h]umanitarian and military interests do not necessarily clash. It is undoubtedly in the interests of an army to treat prisoners of war well and to expect the enemy to do the same. Similarly, it may be advisable to refrain from bombing towns so as not to expose one's own population to a similar fate.⁵¹

46 Already from 1965, the United States granted not only the treatment, but also the status, of PoW to combatants for whom there was any evidence to show that they belonged to a military unit. The reason for such treatment was largely based on the reciprocal benefits for American captives in the power of the enemy. See B. Peeler, above note 30, pp. 95–127.

47 Matthew T. Zommer, *The Role of Reciprocity in Laws of War Training: Examples from Historical and Contemporary U.S. Practice*, paper presented for the Inter-University Seminar on Armed Forces and Society, International Biennial Conference, Chicago, 30 October 2015, p. 29, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2698298.

48 Marco Sassòli and Yuval Shany, "Debate: Should the Obligations of States and Armed Groups under International Humanitarian Law Really Be Equal?", *International Review of the Red Cross*, Vol. 93, No. 882, 2011, p. 434.

49 Philippe Jacques, "Equality of Belligerents between States and Armed Groups: Proposal for a New Definition of the Principle of Equality in Non-International Armed Conflicts", *International Review of the Red Cross*, Vol. 107, No. 928, 2025, p. 377.

50 M. Sassòli and Y. Shany, above note 48, p. 431.

51 T. Pfanner, above note 37, p. 161.

While the last sentence reinforces the spirit of positive reciprocity, it inevitably leads to the question: “And what if the enemy does not refrain from bombing towns?”

Negative reciprocity reflects the idea that violations by one party may provoke mirrored violations by the other⁵², and does so by “dispos[ing] of an agreement which has turned out to contain only burden without corresponding benefits”.⁵³ Despite being explicitly prohibited,⁵⁴ it remains a persistent unfortunate reality and “may lead to a competition in barbarism in many armed conflicts”.⁵⁵ Oftentimes, this exchange is less about justifying one’s own actions and more about levelling the moral playing field. It is almost a form of rhetorical “clean hands” reasoning – undermining the moral authority of the critic by showing that they are equally tainted.

Historically, negative reciprocity in armed conflict operated primarily through reprisals; when an enemy violated IHL, the injured party might respond with otherwise unlawful acts in order to induce a return to compliance. Over time, IHL progressively restricted and then largely prohibited this logic. Today, customary IHL confirms these prohibitions,⁵⁶ even though some States, including the United States, maintain a more cautious position regarding the customary status of the absolute ban on reprisals against civilians.⁵⁷

Kelsen had notably been “uncomfortable with forcible reprisals in terms of both their abusive potential, and the fact that they constituted a form of collective assignment of responsibility. He solved these problems through his methodological progressivism, positioning them as contingent weaknesses of international law that will pass with time”⁵⁸ (which, as we will see below, can be considered to be a manifestation of negative reciprocity). Alas, the outcomes anticipated by Kelsen failed to materialize with time.

To better understand negative reciprocity, it is necessary to more closely examine the purposes that it is understood to serve, or the interests that are protected by applying it. These include furthering military gains, enforcing the law, deterring further violations, expressing reciprocity and punishing or avenging an act – although it should be acknowledged that the lines between these motivations are often blurry.

52 S. Watts, above note 34, p. 376.

53 Bruno Simma, “Reflections on Article 60 of the Vienna Convention on the Law of Treaties and Its Background in General International Law”, *Österreichische Zeitschrift für Öffentliches Recht*, Vol. 20, 1970, p. 21.

54 See common Article 1 (“The High Contracting Parties undertake to respect and ensure respect for the Convention[s] *in all circumstances*” (emphasis added)); ICRC Customary Law Study, above note 18, Rule 140, p. 509 (“Respect for international humanitarian law cannot be made dependent on reciprocity. Even if one party to the conflict does not respect the rules, the other party is not released from its obligations”).

55 M. Sassòli and Y. Shany, above note 48, p. 431.

56 ICRC Customary Law Study, above note 18, Rules 145–146.

57 US Department of Defense, *Law of War Manual*, revised ed., December 2016 (updated July 2023) (US Manual), §§ 18.18–18.18.3.

58 Eliav Lieblch, “The Death and Life of the Prohibition on Forcible Reprisals”, *Yale Journal of International Law*, Vol. 51, 2026, p. 20, available at: <https://ssrn.com/abstract=5171846>.

Military gains

The idea that asymmetry in respect of IHL creates military disadvantages for the abiding side is not new. During the 1974–77 Diplomatic Conference, the French and Belgian delegations voiced concerns that violations of the laws of war have often been committed on the field of battle in order to gain an additional military advantage.⁵⁹ That statement is aligned with a broader military rationale: parties who believe that adherence to IHL norms would place them at a tactical or strategic disadvantage may be more inclined to disregard those obligations.⁶⁰

This inevitably begs the question as to what this “military advantage” is and whether committing violations of IHL can actually offer it. For the purposes of IHL, the term as such is used in the law of targeting where it helps define the notions of a military objective⁶¹ and proportionality.⁶² Scholars have debated its scope, considering whether it should be assessed narrowly, focusing on immediate tactical gains, or more broadly, encompassing operational or strategic objectives.⁶³ Some sources support a broader interpretation, noting that commanders may consider advantages derived from larger campaigns or long-term operational effects (rather than only immediate gains),⁶⁴ such as crippling enemy command networks or degrading morale. However, this expansive approach undermines civilian protection by privileging distant or speculative justifications over concrete and direct military advantage.⁶⁵ Importantly, it has been argued that from a “strategic perspective the military advantage gained from an attack must be linked to objectives that are consistent with the limits of these legal frameworks and nature of the conflict being waged”.⁶⁶ This suggests that military advantage is constrained by legal

59 Statement of Belgium, 28 April 1976, in *Official Records of the Diplomatic Conference*, Vol. 9, CDDH/I/SR.46, Federal Political Department, Bern, 1978, p. 65, para. 53.

60 M. Sassòli and Y. Shany, above note 48, p. 432.

61 Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 52(2).

62 *Ibid.*, Arts 51(5)(b), 57(2)(a)(iii).

63 Jeffrey Lovitky, “Application of the Principle of Military Advantage in Determining Proportionality”, *Articles of War*, 23 January 2024, available at: <https://lieber.westpoint.edu/application-principle-military-advantage-determining-proportionality/>.

64 ICRC Customary Law Study, above note 18, Rule 14; US Manual, above note 57, § 2.2.3.1 (noting that “one may consider the entire war strategy rather than only the potential tactical gains from a single target”); International Criminal Court, *Elements of Crimes*, ICC-ASP/1/3 (Part II-B), 2011, Art. 8(2)(b)(iv) fn. 36. (stating that the military advantage anticipated from an attack “may or may not be temporally or geographically related to the object of the attack”); Michael N. Schmitt, “Application of the Principle of Military Advantage in Determining Proportionality”, *Articles of War*, 7 January 2021, available at: <https://lieber.westpoint.edu/application-principle-military-advantage-determining-proportionality/>.

65 ICRC, *Expert Meeting Report on Proportionality*, ICRC, Geneva, 2014, p. 10 (“long-term military consequences are not sufficiently concrete and direct to be considered”); Médecins Sans Frontières, “Proportionality”, *The Practical Guide to International Humanitarian Law*, December 2013, available at: <https://tinyurl.com/4h69d3pu> (military advantage must be substantial, immediate and close in time and space, and advantages “that would only appear in the long term should therefore be disregarded”).

66 Kenneth Watkin, “Military Advantage: A Matter of ‘Value’, Strategy, and Tactics”, *Yearbook of International Humanitarian Law*, Vol. 17, 2014, p. 349.

norms, implying that IHL violations cannot qualify as a lawfully acquired military advantage.

Beyond strictly defined military advantage within the prescripts of targeting considerations in the context of conduct of hostilities, we can look at the wider meaning of military necessity, since the latter is prevalent throughout all IHL rules. As defined by the ICRC, military necessity

permits measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by IHL. In the case of an armed conflict the only legitimate military purpose is to weaken the military capacity of the other parties to the conflict.⁶⁷

Therefore, any advantage obtained through unlawful means – such as targeting civilians, killing PoWs or disregarding proportionality – must be excluded from legal and strategic assessments.⁶⁸

In various past and contemporary conflicts, however, decisions at the strategic level have often been shaped by both short-term tactical aims and longer-term strategic considerations. Research on the 2003–11 Iraq War shows that domestic political cycles and electoral concerns directly influenced military planning, with leaders timing or shaping operations to align with political calendars.⁶⁹ Yet, as Dinstein notes, “tactical successes without strategic weight, or actions for moral or retaliatory purposes, do not meet the legal threshold for military advantage.”⁷⁰ Military necessity, as codified in IHL, permits only those measures that are “indispensable for securing the complete submission of the enemy as soon as possible” and that comply with the laws of war.⁷¹ True military advantage must be both effective and lawful; advantage gained through IHL violations is not legally cognizable and cannot be justified under the doctrine of military necessity.⁷²

Accepting military gains beyond the legal limits described above as legitimate would erode the legal protections afforded to civilians and combatants and undermine the normative force of IHL.⁷³ As Pictet observed, no government

67 ICRC “Military Necessity”, *How Does Law Protect in War?*, available at: https://casebook.icrc.org/a_to_z/glossary/military-necessity.

68 Michael N. Schmitt, “Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance”, *Virginia Journal of International Law*, Vol. 50, No. 4, 2010, p. 803.

69 Andrew Payne, “How Domestic Politics Affects Military Strategy – and Why Military Leaders Need to Understand It”, *Modern War Institute*, 31 March 2022, available at: <https://mwi.westpoint.edu/how-domestic-politics-affects-military-strategy-and-why-military-leaders-need-to-understand-it/>.

70 Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 3rd ed., Cambridge University Press, Cambridge, 2016, pp. 123–124.

71 Regulations Respecting the Laws and Customs of War on Land, annexed to Hague Convention (IV) Respecting the Laws and Customs of War on Land, 18 October 1907, Art. 23(g); US Manual, above note 57, § 2.2.3.

72 Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, 2009, pp. 46–48.

73 Sigrid Redse Johansen, *The Military Commander's Necessity: The Law of Armed Conflict and Its Limits*, Cambridge University Press, Cambridge, 2019, p. 66.

can claim entitlement to torture or other inhumane acts as a means of combating its enemies, and the possibility of derogation on grounds of necessity is excluded.⁷⁴

In practice, acts causing superfluous injury and unnecessary suffering do not always serve military goals.⁷⁵ However, since the end of the Cold War, increasingly asymmetric conflicts have magnified the tension between resort to such actions. Such choices create dynamics that strain non-reciprocity and the equality of belligerents and become one of the factors that may tempt adversaries to justify breaches in the name of expediency.⁷⁶ As Pfanner reminds us, however, one of the nineteenth century's civilizing achievements was to enshrine minimum humanitarian standards as binding on all parties, irrespective of reciprocity, rejecting the notion that expedience can override humanity.⁷⁷

Ultimately, negative reciprocity – violating IHL because the enemy does – cannot legitimately advance military objectives, as any advantage gained through unlawful means is both legally void and strategically corrosive.

Enforcement and deterrence

Enforcement in international law has been the subject of extensive discussion due to its inherent weaknesses, especially when compared to municipal law. Some branches of public international law other than IHL include countermeasures as an enforcement option.⁷⁸ These are defined as non-forcible measures taken by an injured State that would normally be considered illegal but are rendered lawful because they are adopted in response to a prior internationally wrongful act by another State.⁷⁹ Notwithstanding the role of countermeasures, obligations of a humanitarian nature are excluded from their scope.⁸⁰

Looking now to permissible belligerent reprisals (seen as another form of self-help measures), these can be described as an expression of negative reciprocity whose aim is to enforce compliance with IHL, and have been characterized a “traditional but arguably anachronistic method of enforcing IHL”.⁸¹ Overall, there is

74 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 2: *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, ICRC, Geneva, 1960, Art. 3, p. 34.

75 Robin Geiß and Michael Siegrist, “Has the Armed Conflict in Afghanistan Affected the Rules on the Conduct of Hostilities?”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011, p. 20.

76 Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, ICRC, Geneva, 2016, p. 39.

77 T. Pfanner, above note 37, p. 161.

78 See Yuji Iwasawa, “Various Means of Enforcement in International Law”, *Harvard International Law Journal*, Vol. 65, No. 1, 2023, p. 1.

79 ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, in *Yearbook of the International Law Commission*, Vol. 2, Part 2, 2001, Art. 49(1).

80 *Ibid.*, Art. 50(1)(c).

81 ICRC, “The ICRC’s Legal and Policy Position on Nuclear Weapons”, *International Review of the Red Cross*, Vol. 104, No. 919, 2022, § 5.2.

a trend towards outlawing belligerent reprisals in IHL;⁸² various treaty provisions of the Geneva Conventions and Additional Protocol I (AP I), as well as various weapons conventions, explicitly do so.⁸³ During the negotiations for AP I, many States rejected or strictly limited the use of belligerent reprisals, with some wishing to prohibit them entirely and others seeking to confine them to combatants and military objectives, and there is consistent practice and case law requiring that reprisals not be inhumane. Overall, the ICRC observes, this reflects a growing international consensus against using IHL violations as enforcement tools and a preference for diplomatic and institutional mechanisms, meaning that reprisals are increasingly viewed as a last resort to be used only when no other options remain.⁸⁴ In addition, it should be recalled that reprisals against civilians are prohibited during non-international armed conflicts (NIACs) by common Article 3,⁸⁵ a provision which is applicable as customary law to all armed conflicts.

However, the refusal of many military powers to ratify AP I, the reservations made by other States,⁸⁶ and State practice suggest that reprisals during hostilities may still be considered lawful against many of the civilians and civilian objects listed in Articles 51 to 56 of AP I.⁸⁷ While hesitating to “assert that a right to resort to such reprisals continues to exist”, the ICRC concedes in its Customary Law Study that “it is difficult to conclude that there has yet crystallized a customary rule specifically prohibiting reprisals against civilians during the conduct of hostilities”.⁸⁸

Belligerent reprisals are prohibited “against any person who is not a combatant in the sense of Article 43 [of AP I] and against any object which is not a military objective”.⁸⁹ Whenever they are allowed, the ICRC Customary Law Study

82 ICRC “Reprisals”, *How Does Law Protect in War?*, available at: https://casebook.icrc.org/a_to_z/glossary/reprisals; ICRC Customary Law Study, above note 18, pp. 513–514, 523; Andrew Clapham, *War*, Oxford University Press, Oxford, 2021, pp. 508–509.

83 Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Art. 13(3); Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Art. 46; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Art. 47; AP I, Arts 51(6), 52(1), 53, 54(4), 55(2), 56(4); Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended 3 May 1996, annexed to the Convention on Certain Conventional Weapons, 2048 UNTS 93, 3 May 1996 (entered into force 3 December 1998), Art. 3(7); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1015 UNTS 163, 10 April 1972 (entered into force 26 March 1975), Art. I.28 See also Jozef Goldblat, “The Biological Weapons Convention: An Overview”, *International Review of the Red Cross*, Vol. 37, No. 318, 1997.

84 ICRC Customary Law Study, above note 18, pp. 514–515.

85 ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., Cambridge University Press, Cambridge, 2016 (2016 Commentary on GC I), paras 705, 708–709.

86 ICRC Customary Law Study, above note 18, p. 521.

87 F. Romani, above note 21, p. 21.

88 ICRC, “Reprisals”, above note 82; ICRC Customary Law Study, above note 18, p. 523. See also A. Clapham, above note 82, pp. 508–509.

89 ICRC Commentary on the APs, above note 29, p. 987.

has explained that this is only under very strict conditions regarding their purpose of inducing the adversary to comply with the law, their use as a measure of last resort, their proportionality towards the violation they aim to stop, their need to be decided at the highest level of government, and their termination as soon as the adversary complies with the law.⁹⁰

During the 1974–77 Diplomatic Conference, the United States argued that the purpose of reprisals was to bring about a return to respect for the law, and that to renounce that means altogether would be to remove an important deterrent.⁹¹ Building on Kalshoven's foundational work,⁹² Greenwood sought to embed the concept of belligerent reprisals within the enforcement paradigm. For Greenwood, reprisals were not instruments of vengeance but targeted responses aimed at halting the enemy's unlawful conduct and preventing future violations, thereby reinforcing compliance through the calculated possibility of reciprocal consequences.⁹³

Nevertheless, the ICRC Customary Law Study observed a general reluctance by States to resort to reprisals, largely because they are ineffective as enforcement tools and risk escalating violations.⁹⁴ The Study cites Kenya's *Law of Armed Conflict Manual*, which explicitly warns that reprisals often serve as a pretext for unlawful methods of warfare and can trigger cycles of repeated countermeasures, as a key example.⁹⁵ It also refers to other military manuals which echo these concerns,⁹⁶ including the US *Commander's Handbook on the Law of Naval Operations*, which states that "there is always the risk that [reprisal] will trigger retaliatory escalation

90 ICRC Customary Law Study, above note 18, Rule 145.

91 *Official Records of the Diplomatic Conference*, Vol. 4, Federal Political Department, Bern, 1978, p. 271.

92 See F. Kalshoven, above note 20.

93 Christopher Greenwood, "The Twilight of the Law of Belligerent Reprisals", *Netherlands Yearbook of International Law*, Vol. 20, 1989, pp. 41–42.

94 ICRC Customary Law Study, above note 18, p. 514.

95 Republic of Kenya, *Law of Armed Conflict Manual*, 2nd ed., 2015, para. 8.5.

96 See e.g. Australian Defence Headquarters, *The Manual of the Law of Armed Conflict*, ADDP 06.4, 11 May 2006, paras 67–68; Swedish Ministry of Defence, *International Humanitarian Law in Armed Conflict, with Reference to the Swedish Total Defence System*, January 1991, para. 91; UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, 1 July 2004, paras 94–95; US Department of the Army, *The Law of Land Warfare*, FM 27-10, 18 July 1956, as modified by Change No. 1, 15 July 1976, paras 97–99; Statement of Argentina, 28 April 1976, in *Official Records of the Diplomatic Conference*, Vol. 9, CDDH/I/SR.46, Federal Political Department, Bern, 1978, p. 61, paras 32, 35; Canadian Ministry of Foreign Affairs, *Memorandum of the Legal Operations Division on the Ratification of the 1977 Protocol I to the Geneva Conventions: Canada's Attitude to Possible Reservations*, Doc. FLO-830, 16 June 1981, paras 6, 8; Statement of Hungary, 29 April 1976, in *Official Records of the Diplomatic Conference*, Vol. 9, CDDH/I/SR.47, Federal Political Department, Bern, 1978, p. 79, para. 56; Mexican Ministry of National Defence, *Manual de Derecho Internacional Humanitario para el Ejército y la Fuerza Aérea Mexicanos*, June 2009, para. 384; Netherlands Ministry of Defence, *Toepassing Humanitair Oorlogsrecht*, Voorschrift No. 27-412/1, 1993, p. IV-5, see also p. IX-2; Norway, Eidsivating Court of Appeal, *Norway v. Bruns*, Judgment, 20 March 1946; Statement of Poland, 28 April 1976, in *Official Records of the Diplomatic Conference*, Vol. 9, CDDH/I/SR.46, Federal Political Department, Bern, 1978, p. 63, paras 42–43; Statement of Venezuela, 29 April 1976, in *Official Records of the Diplomatic Conference*, Vol. 9, CDDH/I/SR.47, Federal Political Department, Bern, 1978, p. 72, paras 30, 32; ICRC Customary Law Study, above note 18, p. 514.

(counter-reprisals) by the enemy. The United States has historically been reluctant to resort to reprisal for just this reason.”⁹⁷

Express reciprocity

It has been posited that, strategically, a serious breach of the laws of war by one party creates both a practical and moral pressure on the other to respond in kind, ostensibly to restore balance. Morally, however, serious breaches often trigger feelings of revenge that can blur the line between lawful reprisals and unlawful acts of negative reciprocity.⁹⁸

Francesco Romani has expressed this position in greater detail, arguing that beyond enforcement and deterrence, belligerent reprisals have an “overarching” purpose of restoring reciprocity, rebalancing the battlefield when one side unlawfully exploits the protections of IHL. For the purpose of this section’s analysis, this would mean that negative reciprocity aims to express just that: reciprocity, or, put differently, a rebalancing of the rights and obligations that characterize the legal relationship between the two sides.

Romani’s analysis, including of the Iran–Iraq “war of the cities”, shows that reprisals have been threatened or carried out for a variety of purposes: to stigmatize and punish breaches, or to shape the law by reinforcing existing standards or establishing new ones. These objectives reveal a consistent interest in preserving equality between belligerents, both formally (equality of rights and obligations) and materially (parity of arms).⁹⁹

Punishment or revenge

Within the idea of attributing justice, there is a desire to punish wrongdoing. Habitually, this call would be made by a court of law, but perceived weaknesses of the existing mechanisms are understood to lead actors into prohibited methods of self-help.¹⁰⁰ Dinstein notes more explicitly:

If Contracting State A commits atrocities against the civilian population of Contracting State B, the latter is not allowed to retaliate in kind against the civilian population of State A. But what do the framers of [AP I] expect State B to do? Turn the other cheek?¹⁰¹

In practice, reciprocal conduct in war frequently becomes a vehicle for vengeance.

97 US Department of the Navy, *The Commander’s Handbook on the Law of Naval Operations*, NWP 1-14M/MCWP 5-2.1/COMDTPUB P5800.7, October 1995, § 6.2.3.3.

98 Matthias Vanhullebusch, “Reciprocity under International Humanitarian Law and the Islamic Law of War”, *Journal of Islamic State Practices in International Law*, Vol. 11, No. 1, 2015, p. 58.

99 F. Romani, above note 21, p.189.

100 E. Liebllich, above note 58 p.20.

101 Yoram Dinstein, “Comments on Protocol I”, *International Review of the Red Cross*, Vol. 37, No. 320, 1997, p. 516.

In legal discourse, “revenge” is morally disfavoured, and “retaliation” carries few moral overtones, but “reprisals” have acquired a “character of active virtue”.¹⁰² While reprisals occupy a narrow space in lawful enforcement, the desire to punish is more primal, and vengeful reactions are more dangerous still. The ICRC’s 2004 *Roots of Behaviour in War* study revealed that combatants often operate by the *lex talionis*, framing revenge as reciprocity in order to justify unlawful acts.¹⁰³ One such example is that of the Suleiman Fighting Company,¹⁰⁴ in which the killing of captured soldiers, accompanied by declarations of “blood revenge”, served only to deepen cycles of violence.

Measures of reprisal often affect persons not involved in the original violation and could be regarded as contrary to the principle that no one may be punished for an act that he or she has not personally committed; in other words, belligerent reprisals often amount to collective punishment.¹⁰⁵

Romani has also posited that the practice of the United Nations (UN) Commission of Inquiry on Syria illustrates the punitive objective that reprisals can have.¹⁰⁶ In its early reports, the Commission explicitly framed revenge killings, public executions and retaliatory violence against detainees as prohibited reprisals, emphasizing their function as punishment for perceived enemy wrongdoing rather than as lawful military responses.¹⁰⁷

Humanization of the law

Over time, the escalating brutality of armed conflict convinced States that purely utilitarian rules of warfare were inadequate, and a consensus emerged that the law must carve out space for, and explicitly safeguard, the principle of humanity. Victory could no longer justify any means, and belligerents could not be allowed to engage in unrestricted acts of negative reciprocity. This sentiment was already reflected in the 1929 Geneva Convention, where, despite the belief that reprisals might ensure respect for the treatment of PoWs, States agreed that it was inhuman to hold a defenceless person responsible for acts they had not committed.¹⁰⁸ The 1949 Geneva Conventions did away with the *si omnes* clause and essentially, as Pictet wrote in the 1952 ICRC Commentary on Geneva Convention I, “the Convention[s

102 Geoffrey Best, *Humanity in Warfare*, Weidenfeld and Nicolson, London, 1980, pp. 166–167.

103 Daniel Muñoz-Rojas and Jean-Jacques Frésard, *The Roots of Behaviour in War: Understanding and Preventing IHL Violations*, ICRC, Geneva, 2004, p. 13, available at: www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0853.pdf.

104 ICRC, “Sweden/Syria: Can Armed Groups Issue Judgments?”, *How Does Law Protect in War?*, available at: <https://casebook.icrc.org/case-study/swedensyria-can-armed-groups-issue-judgments>.

105 2016 Commentary on GC I, above note 85, Art. 46, para. 2738.

106 Despite the fact that reprisals “may not be carried out for the purpose of revenge or punishment, but only with the aim of putting an end to such violations and inducing the adversary to comply with the law”. *Ibid.*, para. 2731.

107 F. Romani, above note 21, pp. 241–243.

108 Jean Pictet (ed.), *Commentary on the Geneva Convention of 12 August 1949*, Vol. 3: *Geneva Convention relative to the Treatment of Prisoners of War*, ICRC, Geneva, 1960 (1960 Commentary on GC III), p. 140.

are] no longer a legal instrument dependent on the will of the States and subject to considerations of reciprocity but [are] essentially concerned with human rights”.¹⁰⁹

The judgment of the International Criminal Tribunal for former Yugoslavia (ICTY) in the *Kupreškić* case articulated that shift quite explicitly. The ICTY Trial Chamber decided that

[u]nlike other international norms, such as those of commercial treaties which can legitimately be based on the protection of reciprocal interests of States, compliance with humanitarian rules could not be made dependent on a reciprocal or corresponding performance of these obligations by other States. This trend marks the translation into legal norms of the “categorical imperative” formulated by Kant in the field of morals: one ought to fulfil an obligation regardless of whether others comply with it or disregard it.¹¹⁰

The move toward humanization was also pragmatic: many States recognized reprisals’ limited effectiveness¹¹¹ and, despite their reluctance to restrict their own ability to carry out war,¹¹² accepted progressive limits on reprisals as they rarely restored lawful conduct.

The humanization of IHL is not an attempt to suppress the instinct for reciprocity (which, as we saw in the section “What Is Reciprocity?” above, is an inherent human reaction); rather, it reframes the law so that it is not even *about* reciprocity. Colombia’s Constitutional Court affirmed this idea, holding that humanitarian rules are “inalienable guarantees” owed to non-combatants, not to the opposing party, and therefore cannot depend on reciprocal compliance.¹¹³ Ultimately, the humanization of the law was also a conscious effort, *de lege ferenda*, to achieve humanization of the enemy, a humanization of the individual. Where it used to be acceptable to excuse the carrying out of belligerent reprisals against individuals or property and to make the individual a ground on which military, political or even legal gains could be obtained, the motivation is now “respect of the human person”.¹¹⁴

109 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 1: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952 (1952 Commentary on GC I), Art. 46, p. 345.

110 ICTY, *The Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, Judgment (Trial Chamber), 14 January 2000, para. 517.

111 ICRC, *Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, Document 6 (CEG 1971 Documents ENG 6), ICRC, Geneva, 1971, p. 43.

112 Statement of France, 31 May 1977, in *Official Records of the Diplomatic Conference*, Vol. 4, CDDH/SR.46, Federal Political Department, Bern, 1978, p. 371.

113 Constitutional Court of Colombia, Decision C-225/95, Re: File No. L.A.T.-040, 1995, para. 9, unofficial translation in ICRC, “Colombia: Constitutional Conformity of Protocol II”, *How Does Law Protect in War?*, available at: <https://casebook.icrc.org/case-study/colombia-constitutional-conformity-protocol-ii>.

114 1960 Commentary on GC III, above note 108, p. 20.

Does negative reciprocity work?

Some claim that retaliation for violations of the laws of war is near-ubiquitous, swift, and leads to better compliance.¹¹⁵ As Osiel observes, there is a growing risk that practice could undermine existing prohibitions against reprisals and “reinject” reciprocity into IHL via custom.¹¹⁶ Pictet, however, warned that reprisals

rarely solve the initial problem. They do not lead to a re-establishment of lawful practices but involve those who apply them in a vicious circle of reprisals and counter-reprisals which brings a gradual deterioration of the law and standard of values which one wishes to protect. And even if they bring a solution for a short time, the danger is that they may engender fresh hatred which would be a factor conducive to fresh conflicts.¹¹⁷

In this section, the present article examines whether negative reciprocity – including the use of belligerent reprisals – can function as an effective means of advancing the interests outlined in the section on “Negative Reciprocity” above. To be clear, evaluating the efficacy of such measures must not be mistaken for a tacit endorsement of their legitimacy. Just as the theoretical military “efficiency” of nuclear weapons cannot justify their use given their fundamental incompatibility with IHL, so too must the practical consequences of negative reciprocity be assessed within the legality of any success they may claim to deliver. The evidence and examples presented here are illustrative rather than exhaustive, and are intended as a foundation for deeper, complementary future research and analysis across these interlinked areas.

The US *Law of War Manual*, despite considering reprisals to be “a significant deterrent that protects civilians and war victims on all sides of a conflict”,¹¹⁸ contains analysis that may counsel strongly against taking such measures. Specifically, it notes that such measures can have longer-term military or political consequences which are counterproductive because they pull scarce military resources away from the main fight, are often less effective than simply following the law, alienate neutral governments, strengthen enemy morale and will to resist, trigger escalation or cycles of counter-reprisals, and damage the adversary’s capacity to rehabilitate an area after the cessation of hostilities.¹¹⁹ Such considerations could explain the reticence of States to resort to reprisals.¹²⁰

A telling study from 2010 on Afghanistan found strong evidence of a localized “revenge effect”: when the International Security Assistance Force (ISAF) caused civilian casualties, insurgent violence in that same district increased over the

115 James D. Morrow, *Order within Anarchy: The Laws of War as an International Institution*, Cambridge University Press, Cambridge, 2014, p. 144.

116 Mark Osiel, *The End of Reciprocity: Terror, Torture and the Law of War*, Cambridge University Press, Cambridge, 2009, p. 279.

117 1960 Commentary on GC III, above note 108, Art. 13, p. 141.

118 US Department of Defense, *Law of War Manual*, June 2015 (updated July 2023), § 18.18.3.4.

119 US Manual, above note 57, § 18.18.4.

120 See ICRC Customary Law Study, above note 18, Rule 145, p. 514; ICRC Commentary on the APs, above note 29, para. 3433.

long run (particularly in Pashtun areas), likely due to personal loss driving recruitment into insurgent groups. On average, an ISAF-caused incident resulting in two civilian deaths led to about one additional insurgent attack in the next six weeks, with elevated violence persisting for months.¹²¹ Historical evidence has shown that increased harm often prolongs conflict by stiffening the resolve of the adversary.¹²² In cases where a conflict is characterized by asymmetry, if actions undertaken by a party cause what may be perceived to be unlawful civilian harm, this may provide the enemy – especially a far stronger adversary – with a pretext to escalate its operations and inflict even greater harm on civilians, justifying such actions as defending itself against an enemy.¹²³ The stronger party could then frame its response as a lawful reprisal.

The strategic futility of reprisals has also been recognized by military leaders. In the Philippines, the Moro Islamic Liberation Front categorically rejected carrying out revenge attacks on civilians, noting that “it makes absolutely no sense to do so” and stressing that retaliatory violence serves no purpose and would only damage the movement’s wider political cause.¹²⁴ Even in asymmetric conflicts, where engaging in unlawful reciprocal action may give the illusion of restoring parity, as seen in the section on “Express Reciprocity” above, this expectation is often illusory, as weaker parties are frequently unable or unwilling to comply with IHL, while stronger parties perceive themselves as disadvantaged if they adhere to rules that their opponents systematically violate.

Numerous sources speak of an inevitable cycle of reprisal and counter-reprisal or an escalation of violence.¹²⁵ For instance, an actor whose purportedly unlawful act prompts a belligerent reprisal by its adversary is unlikely to acknowledge its own misconduct; instead, it may seek to justify subsequent measures as lawful reprisals in return by suggesting that the enemy’s reprisal was the initial unlawful act. Finally, the argument that civilians and persons *hors de combat* will

121 Luke N. Condra, Joseph H. Felter, Radha K. Iyengar and Jacob N. Shapiro, *The Effect of Civilian Casualties in Afghanistan and Iraq*, NBER Working Paper No. 16152, National Bureau of Economic Research, Cambridge, MA, 2010, pp. 1–85. Interestingly, the same study found (p. 31) that revenge was not a significant factor in Iraq in the 2003–11 conflict, because the fight there was urban, with many coalition troops and close surveillance. Insurgents didn’t need more recruits after each incident – their bigger problem was avoiding detection. Civilian casualties mainly changed how much locals shared information, causing short-term effects, as opposed to the long-term “revenge” recruitment seen in rural Afghanistan.

122 Nobuo Hayashi, “The Pseudo Kindness of Wartime Lawbreakers”, *International Review of the Red Cross*, Vol. 107, No. 928, 2025, p. 141.

123 This risk was tragically illustrated during the air war of the Second World War, which included target area bombing of civilian population centres: see discussion in Frits Kalshoven, *Belligerent Reprisals*, 2nd ed., International Humanitarian Law Series, Vol. 11, Martinus Nijhoff, Leiden, 2005, Chap. V.

124 Chris Rush, *From Words to Deeds: A Study of Armed Non-State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms – The Philippines: Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces*, Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy) et al., August 2022, available at: https://words2deeds.org/wp-content/uploads/2022/09/MILF_Case-Study.pdf.

125 F. Kalshoven, above note 123, p. 41; Lindsay Moir, “Reprisals against Enemy Civilians, the Object and Purpose of Additional Protocol I, and the United Kingdom’s Reservation”, *Articles of War*, 22 March 2024, available at: <https://lieber.westpoint.edu/reprisals-enemy-civilians-object-purpose-additional-protocol-uk-reservation/>.

be better protected by attacking civilians and persons *hors de combat* is difficult to reconcile with the object and purpose of the Geneva Conventions.¹²⁶

When judicial or other disciplinary procedures are set in place to punish a perpetrator, a core principle that permeates the process is *nemo punitur pro alieno delicto*, or “no one is punished for the crime of another”. When negative reciprocity is used as a way to punish the enemy (even when responding to acts which are attributable to a State), it runs completely counter to acceptable notions of individual criminal responsibility and is transformed into collective punishment.¹²⁷ Reprisals encourage an escalation of violence, and the victims tend not to be those responsible for the initial violation.¹²⁸

Admittedly, reprisals and negative reciprocity may reinstate a feeling of equation of power between parties to a conflict. With regard to being a platform from which revenge can be expressed, one can indeed admit that reciprocity is “effective” in that way – but at what cost? The next section will offer a closer look at the expression of revenge at the individual level.

Reciprocity and the role of emotions

In the *Iliad*, after Hector kills Patroclus, Achilles is overwhelmed by grief and swears vengeance: “Here in front of your flaming pyre I’ll cut the throats of a dozen sons of Troy in all their shining glory, venting my rage on them for your destruction!”¹²⁹ Some three millennia later in 1952, Pictet, with the dry caution of a lawyer rather than the fury of a demigod, warned:

[E]xperience has shown that the freedom left to belligerents to make use of [reprisals] as a means of coercion may easily lead, in the tension of war psychology and by an inevitable train of events, to serious abuses, while at the same time completely failing to attain its object – namely, the reassertion of rights.¹³⁰

This article aims, *inter alia*, to further understand the practical aspects of reciprocity (in order, among other reasons, to prevent unlawful expressions of it), and to do so one must acknowledge that

IHL – not unlike the phenomenon of war which it seeks to regulate – is deeply emotional both in its normative content and in action. Perceptions, feelings,

126 Lindsay Moir, “Reappraising Reprisals against Enemy Civilians in Customary International Humanitarian Law”, *Journal of International Humanitarian Legal Studies*, Vol. 15, No. 2, 2024, p. 413.

127 Collective punishment means sanctions, harassment or administrative action taken against a group in retaliation for an act committed by an individual or individuals who are considered to form part of the group. Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 33; ICRC Customary Law Study, above note 18, Rule 103.

128 L. Moir, above note 126.

129 Homer, *The Iliad*, above note 1, Book 18, lines 392–394.

130 1952 Commentary on GC I, above note 109, Art. 46, p. 343.

culture, in-group belonging, and a myriad of other extra-legal considerations shape the ways in which individuals and groups engage with IHL rules.¹³¹

Importantly, in order to meaningfully advance towards peace, the examination of such emotions (which tend to fuel conflict rather than the opposite) is warranted.

The influence of emotions on the commission of acts of war is indeed profound, despite IHL containing rules which “aim at deactivating negative emotions in favour of the protection of victims of armed conflict”.¹³² What is more, the more individuals participate in war, the more “opportunities” are created for expressions of negative emotion (such as rage, revenge or frustration) to lead to the commission of war crimes. This concern, among others, is reflected in the modern requirement¹³³ that decisions regarding belligerent reprisals be made at the highest levels of government, effectively excluding individual soldiers and mid-ranking officers from having to decide to commit such reprisals. In times of armed conflict, some actions (like use of certain weapons) may require high-level command to initiate, while others (like mistreatment of prisoners or attacks against civilians) can be committed directly by individual soldiers.¹³⁴

More specifically on feelings of revenge, Carl von Clausewitz warned that

a hostile feeling is kindled by the combat itself; for an act of violence which anyone commits upon us by order of his superior, will excite in us a desire to retaliate and be revenged on him, sooner than on the superior power at whose command the act was done. This is human, or animal if we will; still, it is so. We are very apt to regard the combat in theory as an abstract trial of strength, without any participation on the part of the feelings, and that is one of the thousand errors which theorists deliberately commit, because they do not see its consequences.¹³⁵

Empirical studies of soldier behaviour demonstrate that troops often retaliate instinctively in response to atrocities committed against their comrades. Such acts are rarely sanctioned at the State level but nonetheless contribute to reciprocal patterns of violence. In some instances, they take the form of targeted retaliation against specific enemy units believed responsible for prior offences.¹³⁶ One study of a select few non-State armed groups revealed that violations of IHL are often explained in terms of indiscipline or emotionally charged conduct, including revenge killings

131 Rebecca Sutton and Emiliano J. Buis, “Humanitarianism and Affect-Based Education: Emotional Experiences at the Jean-Pictet Competition”, *International Review of the Red Cross*, Vol. 105, No. 923, 2023, p. 1093.

132 Nele Verlinden, “To Feel or Not to Feel? Emotions and International Humanitarian Law”, in Mats Deland, Mark Klamberg and Pål Wrange (eds), *International Humanitarian Law and Justice: Historical and Sociological Perspectives*, Routledge, London, 2018, p. 145.

133 ICRC Customary Law Study, above note 18, Rule 145.

134 James D. Morrow, *How Does Reciprocity Work? Evidence from the Laws of War*, Oxford University Press, Oxford, 2014, p. 10.

135 C. von Clausewitz, above note 33, p. 75.

136 J. D. Morrow, above note 134, p. 9.

and spontaneous acts of retribution.¹³⁷ The ICRC's *Roots of Behaviour in War* study found that

[c]ombatants who have used violence and have been directly affected by acts of violence are inclined, in the short term, to perpetrate violations of IHL. These situations of violence concern two processes which interact to create a spiral of violence: (1) the cycle of vengeance which leads a “victimized” combatant (i.e. one who has suffered violence against his property, his loved ones or his own person) to commit violations of IHL, and (2) the spiral of violations following an initial breach of humanitarian principles. These dynamics should not be overlooked, particularly in view of the high rate of “victimization” among combatants involved in armed actions.¹³⁸

At the same time, not all forms of “vengeful” reciprocity are impulsive. For some armed groups, revenge is codified into the rules of participation. In Mali, for example, pledging allegiance to the Al-Qaeda in the Islamic Maghreb group was found to bind fighters to strict obedience in exchange for collective protection – most notably the group's promise to “defend, fight [for] and take revenge for” them. In this way, revenge becomes a core currency of loyalty and cohesion.¹³⁹ Similarly, in some armed groups in South Sudan, violence is motivated not simply by strategic aims but by communal logics of revenge, protection and identity. Fighters may be driven by the expectation of avenging wrongs done to their kin and of fulfilling social obligations tied to honour and communal justice.¹⁴⁰ These motivations are not easily separated from international legal norms, and nor can they be reduced to mere breaches of discipline.

Sutter has observed that “[n]o combatant will accept constant grave violations of the law of war without a reaction; whether that reaction is lawful depends upon the options available. It is simply unrealistic to expect a combatant to abstain from responding.”¹⁴¹ That said, the cumulative effect of repeated, small-scale acts of reprisal can be corrosive. When carried out across engagements, they contribute to the erosion of the broader legal standard.

Emotions that contribute to reciprocal behaviour also play out in the domain of public discourse during armed conflicts, with each side often accusing the other of violating IHL. Within such discourse there is often an undercurrent of

137 Annyssa Bellal, Pascal Bongard and Ezequiel Heffes, *From Words to Deeds: A Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms – Research and Policy Conclusions*, Geneva Academy et al., September 2022, available at: https://words2deeds.org/wp-content/uploads/2022/09/Words2Deeds_comparative-study.pdf.

138 D. Muñoz-Rojas and J.-J. Frésard, above note 103, p. 8.

139 International Criminal Court, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Judgment (Trial Chamber X), 26 June 2024, para. 170 fn. 1067.

140 ICRC, “South Sudan: The Nuer ‘White Armies’”, *How Does Law Protect in War?*, para. 17, available at: <https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>.

141 Philip Sutter, “The Continuing Role for Belligerent Reprisals”, *Journal of Conflict and Security Law*, Vol. 13, No. 1, 2008, p. 119.

emotion that “they got what they deserved”, which has been claimed to “bring a comforting assurance that the baseline of our civilized structures cannot be reshaped at the whim of terrorist actors”.¹⁴²

Understanding these emotions and corresponding dynamics in wartime is essential, because reciprocity does not end with the cessation of hostilities; it can shape the willingness of former adversaries to disarm, reconcile and rebuild, making its role in the transition to peace a critical next focus for our analysis.

Reciprocity and the transition to peace

The legacy of reciprocity during conflict can profoundly affect post-war transitions. Acts perceived as unjust or excessive can leave lasting scars on collective memory, influencing national narratives and identity. Military victory alone does not guarantee sustainable peace; the manner in which hostilities are conducted is equally decisive.¹⁴³ Such perceptions may impede diplomatic efforts, as parties struggle to move past grievances rooted in wartime conduct.

What do we mean by peace? Beyond the factors that allow for an armed conflict to come to an end (i.e., “a lasting cessation of armed confrontations without real risk of resumption” for NIACs,¹⁴⁴ or a “general close of military operations”¹⁴⁵ for IACs), the International Red Cross and Red Crescent Movement has stated that peace is

not simply the absence of war, but is a dynamic process of cooperation among all States and peoples, cooperation founded on respect for freedom, independence, national sovereignty, equality, human rights, as well as on a fair and equitable distribution of resources to meet the needs of peoples.¹⁴⁶

A comprehensive analysis of the road to peace after armed conflict is an intricate undertaking that is well beyond the scope of this article, but it is clear that certain wartime practices can either obstruct or facilitate that journey. One such practice is, undoubtedly, compliance with IHL. Even though it is not a peacemaking instrument in itself, IHL can nevertheless foster peace indirectly by protecting human dignity, safeguarding essential civilian infrastructure, facilitating trust-building

142 Michael A. Newton, “Reconsidering Reprisals”, *Duke Journal of Comparative and International Law*, Vol. 20, No. 3, 2010, p. 367.

143 Charles P. Trumbull IV, “Collateral Damage and Individual Rights in Armed Conflict”, *Fordham International Law Journal*, Vol. 48, No. 2, 2025, p. 572.

144 ICRC, *How Is the Term “Armed Conflict” Defined in International Humanitarian Law?*, April 2024, p. 57, available at: www.icrc.org/sites/default/files/document_new/file_list/armed_conflict_defined_in_ihl.pdf.

145 ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War*, 2nd ed., Geneva, 2020, Art. 3, para. 311.

146 Statutes of the International Red Cross and Red Crescent Movement, 1986 (amended 1995 and 2006), Preamble, available at: www.icrc.org/sites/default/files/external/doc/en/assets/files/other/statutes-en-a5.pdf.

humanitarian agreements and providing a legal framework for transitional justice that balances amnesty for non-criminal participants with accountability for war crimes.¹⁴⁷

Some examples will be provided in this section and the next that will help us to evaluate the relationship between reciprocity and peace. However, they do not establish a definitive causal link to the transition to peace, nor do they claim to offer a comprehensive analysis of the armed conflicts and peace processes referenced, as this would be a significantly wider endeavour that is, again, outside the scope of this article. Rather, they represent an initial reading of cases in which, at minimum, a correlation or co-occurrence – and at most, a potential causal relationship – between reciprocity and the path towards peace can be observed.

In light of the prohibition of reciprocity under IHL and the ban on reprisals in IACs (and their strict limitation in NIACs), it is instructive to consider how the selection of such practices has shaped historical instances in which conflicts have transitioned to peace – either successfully or less so. Given the widespread agreement that reciprocal acts during armed conflict invariably lead to escalation of belligerent acts, as opposed to de-escalation, it would appear untenable to consider peace a result of reciprocal acts.

To the extent that ceasefire agreements are considered precursors to peace, this prompts the examination of what happens when such agreements are broken by one of the parties. The response (often seen as another expression of reciprocity) has a significant impact on the eventual re-establishment of the ceasefire or the more decided resumption of hostilities. In an analysis of some of the (thirty-five) ceasefires concluded between the government of the Philippines and the Moro Islamic Liberation Front between 1989 and 2017, it was shown that even IHL-compliant behaviour (attacks against military targets), when considered disproportionate (not in the IHL sense but rather in the sense of disproportionately retaliating against the initial disruption of the ceasefire), would eventually lead to the collapse of the ceasefire and the reignition of full-scale hostilities.¹⁴⁸ It would follow that reactions which violate IHL could be considered to be of such gravity as to make the resumption of hostilities more likely and the eventual path to peace longer. In these moments, reciprocity becomes a double-edged sword, capable of reinforcing discipline or, if misjudged, tipping the balance back into war.

The 1995 Operation Flash by Croatian forces and the subsequent shelling of Zagreb by the Republic of Serbian Krajina was not accepted by the ICTY¹⁴⁹ as constituting a lawful belligerent reprisal, among other reasons because it occurred during peace negotiations. This sequence of attacks constituted expressions of retaliatory military escalation which severely undermined the climate for dialogue and eventually led to the collapse of the Z-4 Plan initiative. Peace talks lost momentum, and the

¹⁴⁷ C. Droege, above note 3, p. 992.

¹⁴⁸ Claudia Wiehler, “Deciding on the Tit for the Tat: Decision-Making in the Wake of Ceasefire Violations”, *Security Dialogue*, Vol. 52, No. 5, 2021.

¹⁴⁹ ICTY, *The Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Judgment (Appeals Chamber), 8 October 2008, para. 263.

viability of a negotiated resolution significantly diminished.¹⁵⁰ This case illustrates that decisions to engage in reprisals are rarely insulated from the political climate in which they are made; public sentiment, national narratives and leadership perceptions of domestic support all influence whether such actions are taken and whether they spiral further.

In that vein, in his 1952 Commentary on Geneva Convention I, Pictet strongly underlined¹⁵¹ the role of public opinion when it comes to military decisions to take reprisals. In fact, it is often that very public opinion which can galvanize peacemaking efforts or retract any support that would lead to their success. Pictet cautioned against the hypothetical eagerness with which the public would endorse *lex talionis* and accept reprisals against protected persons or property “where such reprisals are in reply to an offence of the same nature”.¹⁵² He added that a government should

realize, and make its population realize, that recourse to reprisals exposes protected persons on each side of the conflict to the risk of rapid and disastrous increases in the severity of the measures taken against them, and that it is essential to resort instead to the various means afforded by the Convention for the settlement of differences (good offices of the Protecting Powers, enquiry procedure, etc.).¹⁵³

It follows that managing public sentiment is not a peripheral task; it is a structural element in preventing escalation and keeping the path to peace unobstructed. Public sentiment would be one of the defining elements of the “hatred between peoples” which violations of IHL invariably create and most certainly exacerbate. A return to peace would prove much easier if, despite pending territorial, political and economic issues to be solved, such hatred is not there to overcome.¹⁵⁴

When individuals perceive the past as irredeemable, they are less likely to forgive, even when perpetrators express remorse or offer reparations. This effect persists across contexts, including interpersonal harms and large-scale historical injustices, suggesting that a certain hopelessness emerges and functions as a psychological barrier to reconciliation.¹⁵⁵ If reciprocity in war hardens such perceptions, it risks propagating the very conditions that make peace most elusive.

150 ICTY, *The Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Transcript of Hearing (Trial Chamber I), 25 April 2006, pp. 3745–3780.

151 1952 Commentary on GC I, above note 109, Art. 46, p. 344.

152 *Ibid.*

153 *Ibid.*, Art. 46, p. 345.

154 Marco Sassòli and Antoine A. Bouvier, *How Does Law Protect in War?*, Vol. 1, ICRC, Geneva, 2003, p. 340.

155 Kristen Kao, Kristin Fabbe and Michael Bang Petersen, *The Irredeemability of the Past: Determinants of Reconciliation and Revenge in Post-Conflict Settings*, Working Paper No. 24-011, Harvard Business School, August 2023.

Some historical examples of negative reciprocity and how they adversely impacted the return to peace

This chapter turns to historical and contemporary examples where reciprocity, often in its most destructive form, not only shaped the course of fighting but also cast a long shadow over peacebuilding efforts.

During the First World War, reciprocity often operated in a destructive rather than a peace-promoting way. Mistreatment of PoWs was frequently justified as a reprisal. Instead of curbing violence, this approach escalated harm: each side's actions became the other's justification for harsher treatment.¹⁵⁶ Propaganda reinforced this dynamic by dehumanizing the enemy, making the public more accepting of such reprisals and less inclined toward humane treatment. Reprisals discouraged surrender, hardened attitudes on both sides and damaged international reputations, particularly in neutral countries. Even when reprisals achieved limited tactical goals – such as pressuring the enemy to improve treatment – they came at the cost of deepening enmity and mistrust.¹⁵⁷

Retaliatory actions tend to normalize higher levels of violence and lower the threshold for brutality. The US–Viet Cong conflict in Vietnam exemplifies this dynamic: attacks on civilians by the Viet Cong triggered large-scale US bombing campaigns and harsh counter-insurgency tactics. Peace process scholarship underscores that the peace process following persistent retaliation in this conflict (which resulted in a heavy human cost) led to an unstable peace accord.¹⁵⁸ Private diplomatic discussions between Lê Đức Thọ and Henry Kissinger¹⁵⁹ during the Paris peace talks aimed at ending the Vietnam War revealed minimal trust and maximal positional bargaining, further illustrating the dynamics at play in this process.

In the Iran–Iraq War, both sides explicitly acknowledged civilian attacks as “reciprocal measures”,¹⁶⁰ progressively widening the scope of what they considered to be legitimate targets and making de-escalation politically and militarily costly. The peculiarity of this conflict is that in most cases, each belligerent threatened (and even acknowledged) attacks on civilian targets in enemy territory as a “means of

156 Heather Jones and Uta Hinz, “Prisoners of War (Germany)”, in *1914–1918 Online: International Encyclopedia of the First World War*, Freie Universität Berlin, 8 October 2014, available at: <https://encyclopedia.1914-1918-online.net/article/prisoners-of-war-germany/>.

157 Cédric Cotter, “The 1918 Bern Agreements: Repatriating Prisoners in a Total War”, *Humanitarian Law and Policy Blog*, 29 March 2018, available at: <https://blogs.icrc.org/law-and-policy/2018/03/29/1918-bern-agreements-repatriating-prisoners-of-war/>.

158 Fredrik Logevall, “50 Years Later, the Legacy of the Paris Peace Accords Isn't One of Peace”, *Rajawali Institute for Asia*, Harvard Kennedy School, 26 January 2023, available at: <https://rajawali.hks.harvard.edu/articles/50-years-later-the-legacy-of-the-paris-peace-accords-isnt-one-of-peace/>.

159 Henry A. Kissinger and Lê Đức Thọ, “Memorandum of Conversation, Paris, 19 July 1972, 9:52 a.m.–4:25 p.m.”, in *Foreign Relations of the United States, 1969–1976*, Vol. 42: *Vietnam: The Kissinger–Lê Đức Thọ Negotiations*, Doc. 15, Office of the Historian, US Department of State.

160 See F. Romani, above note 21, Chap. 4; US Department of State, *Iran Country Report on Human Rights Practices for 1997*, Bureau of Democracy, Human Rights, and Labor, 30 January 1998, available at: https://1997-2001.state.gov/global/human_rights/1997_hrp_report/iran.html.

retaliation”, a “reciprocal measure” or a form of “strike back”.¹⁶¹ Iran’s main retaliatory measure was the “war of the cities”, a campaign of reciprocal missile strikes and aerial bombardments against Iraqi urban centres. Initially reluctant to target civilians directly, Iran shifted its stance after repeated Iraqi attacks on Tehran and other cities. By mid-war, both sides were regularly exchanging ballistic missile fire, with a big impact on civilians.¹⁶² This example shows how reprisals in modern warfare can slide into patterns of escalation, eroding the distinction between combatants and civilians. Once each side justified its actions by pointing to the other’s violations, restraint rapidly collapsed. Instead of deterring future breaches, the reciprocity dynamic normalized them and locked both sides into cycles of retaliation,¹⁶³ creating deep animosities between the two nations and fuelling continued fighting.¹⁶⁴ The path to peace was prolonged and strained, a result of a political environment in which restraint looked like weakness and concessions looked like surrender while each side demanded the other “pay” first in order to agree to a ceasefire.¹⁶⁵

Reciprocity was a persistent feature of Sri Lanka’s war, where both sides were often allegedly undertaking belligerent acts which targeted civilians or infringed upon the rights of protected persons. Each side referenced the other’s violations to legitimize escalation or exceptional measures, creating a spiral in which reciprocity eroded restraint. This dynamic is well documented in UN investigations that found credible evidence of grave violations by both parties and emphasized how practices normalized in the name of defeating the enemy corroded legal and moral constraints.¹⁶⁶ That reciprocal logic carried forward into the post-war period and directly complicated the transition to peace; specifically, it became embedded within the institutions, narratives and policy decisions of the post-war State. Sri Lanka’s transition from the end of hostilities to a reconciled peace has faced challenges, including limited progress on reconciliation, accountability¹⁶⁷ and demilitarization,¹⁶⁸ which have impacted efforts to foster social cohesion after the conflict.¹⁶⁹

161 F. Romani, above note 21, p. 169.

162 Ali Khaji, Shoaodin Fallahdoost and Mohammad Reza Soroush, “Civilian Casualties of Iranian Cities by Ballistic Missile Attacks during the Iraq–Iran War (1980–1988)”, *Chinese Journal of Traumatology*, Vol. 13, No. 2, 2010, p. 87.

163 Central Intelligence Agency, *Special Analysis: Iraq–Iran: Strategy and Effects of War of the Cities*, Doc. 0000651416, September 2001, available at: www.cia.gov/readingroom/docs/DOC_0000651416.pdf.

164 Eric Hooglund, “The Islamic Republic at War and Peace”, *Middle East Report*, No. 156, January–February 1989, available at: <https://merip.org/1989/01/the-islamic-republic-at-war-and-peace/>.

165 For more on this, see Dilip Hiro, *The Longest War: The Iran–Iraq Military Conflict*, Routledge, London, 1991, pp. 230–245; Saskia M. Gieling, “Iraq VII. Iran–Iraq War”, *Encyclopaedia Iranica*, 15 December 2006, available at: www.iranicaonline.org/articles/iraq-vii-iran-iraq-war/.

166 *Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011; Office of the UN High Commissioner for Human Rights, Sri Lanka: *Report of the Office of the High Commissioner for Human Rights*, 27 January 2021.

167 *Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka*, above note 166.

168 Human Rights Watch, “Why Can’t We Go Home?” *Military Occupation of Land in Sri Lanka*, 9 October 2018, available at: www.hrw.org/report/2018/10/09/why-cant-we-go-home/military-occupation-land-sri-lanka.

169 International Crisis Group, *Reconciliation in Sri Lanka: Harder than Ever*, Asia Report No. 209, 18 July 2011, available at: www.crisisgroup.org/asia/south-asia/sri-lanka/reconciliation-sri-lanka-harder-ever.

In South Sudan's inter-communal conflict, cycles of revenge and reciprocity deeply undermined prospects for peace. A cattle raid attack will be described here as an illustrative example. One armed group carried out the attack, in which two children were killed, prompting retaliatory attacks that claimed the lives of several women and children. Given local tribal beliefs that future generations secure immortality, the killing of children and women as child-bearers was perceived as delivering lasting, total death, intensifying the desire for retribution. While some national politicians and local chiefs urged restraint (recognizing that continued child killings would destroy any hope of reconciliation), others, particularly those with stakes in disputed grazing lands, encouraged retaliation. This moral divide persisted, as a customary court failed to resolve the ambiguity surrounding such acts, and violence continued.¹⁷⁰ This entrenchment of reciprocal violence not only escalated hostilities but also eroded trust and has made the transition to peace far more difficult.

Engaging in negative reciprocity may also create narratives of "competitive victimhood", where opposing groups vie for greater victim status.¹⁷¹

Across these cases, a consistent pattern emerges in which negative reciprocity fuels escalation rather than restraint. Civilian harm stands out as the most potent trigger for such cycles, provoking moral outrage and collective anger that quickly override strategic calculation. Framing violations as "reciprocal" may legitimize further breaches, lowering the threshold for violence and normalizing acts that would otherwise be exceptional.

These cycles rarely end when the fighting stops. Wartime narratives of reciprocal harm often carry over into post-conflict politics, embedding mistrust, justifying militarization and obstructing accountability. Leadership decisions can either interrupt or perpetuate this dynamic: some resist retaliatory pressure to preserve the possibility of peace, while others exploit it for strategic or political gain. Competitive victimhood further entrenches divisions, making forgiveness harder without reframing toward shared victimhood or shared responsibility.

Conclusion

This article has examined reciprocity as a wartime dynamic that can either reinforce humanitarian restraint or, more often, drive cycles of escalation. The case studies and empirical evidence presented herein reveal a consistent pattern: when reciprocity in conflict is negative – rooted in vengeance, competitive victimhood or the erosion of civilian–combatant distinctions – it fuels escalation, corrodes legal and moral boundaries, and embeds hostility into the very fabric of post-war society.

Negative reciprocity, when stripped of its humanitarian limits, risks collapsing into vengeance – a force that deepens enmity, erodes respect for the law and

170 Fiona Terry and Brian McQuinn, *The Roots of Restraint in War*, ICRC Geneva, 2018, p. 59.

171 See e.g. Nurit Shnabel, Samer Halabi and Masi Noor, "Overcoming Competitive Victimhood and Facilitating Forgiveness through Re-Categorization into a Common Victim or Perpetrator Identity", *Political Psychology*, Vol. 34, No. 5, 2013.

prolongs conflict. IHL has progressively narrowed the lawful scope for reprisals precisely because cycles of retaliatory harm have been shown to escalate violence and entrench hostility.

Ultimately, the challenge lies not in erasing the human impulse toward reciprocity, but in redirecting it. This requires deliberate leadership choices, legal constraints, and public narratives that reward restraint rather than retribution. As IHL continues to grapple with the reality that war is as much an emotional and social phenomenon as it is a legal and strategic one, recognizing the dual faces of reciprocity – and steering it toward constructive ends – may prove essential.

A constructive path forward lies in strengthening a principled and disciplined commitment to respecting human dignity regardless of the enemy's conduct. By cultivating codes that prize upholding rights and protections despite provocation, armed forces can strengthen discipline, preserve legitimacy and contribute to long-term peacebuilding, demonstrating that true strength lies not in mirroring the enemy's inhumanity but in refusing to be defined by it.¹⁷²

Similarly, a form of “positive reciprocity” can be fostered that affirms the humanity of all persons under the law and asks, at every decision point, “What if that were me?” By contrast, when the lens is reversed and negative reciprocity is considered, the perceived gains need to be given a hard reality check, particularly in terms of prolonged and heavy human and material costs.

Ultimately, military and political doctrine should instead elevate the protection of human beings as an end in itself, irrespective of the adversary's conduct. Inflicting harm to avert further harm, in practice, only perpetuates harm: its deterrent effect is highly doubtful, while its immediate destructive impact is certain. In replacing retaliation with restraint, and suspicion with the mutual recognition of humanity, belligerents can help to create the conditions in which peace is not merely the absence of war but a sustainable and just settlement.

One of the most overlooked dimensions of reciprocity is its power to either humanize or dehumanize, both the enemy and oneself. When a belligerent attacks civilians because the enemy did so, and frames it as “equal treatment”, they are, in effect, lowering themselves to the moral plane of those who first committed the atrocity, binding their own humanity to the inhumanity of the act. As Erich Maria Remarque once wrote, “[t]he reason why there are always wars is because you can never completely share the suffering of others”.¹⁷³ Acting in a reciprocal manner only makes that gap even larger.

¹⁷² These observations are discussed in more detail in Noel Maurer Trew, “This Is Who We Are: The Role of Culture, Military Ethics and Religion in Disseminating International Humanitarian Law to the Armed Forces”, *International Review of the Red Cross*, Vol. 107, No. 928, 2025.

¹⁷³ Erich Maria Remarque, *The Way Back*, trans. Brian Murdoch, Vintage Books, London, 2019, p. 29.