Introduction

I.1 Belligerent Reprisals: The Eternal Recurrence of the Same?

In the spring of 330 BC, Alexander the Great set fire to the royal palaces of Persepolis, the ceremonial capital of the Achaemenid Empire. Several centuries later, ancient historians were puzzled and upset by the ominous fate of 'the capital of the entire Orient, from which so many nations previously sought jurisdiction, the birthplace of so many kings'.[1] Their accounts diverge as to what exactly prompted the destruction of the city:[2] whether it was a premeditated act which Alexander pursued against the advice of his senior generals,[3] or the spontaneous initiative of a drunken mob to which the king acceded out of impulse.[4] Despite this uncertainty, all versions agree on the core motivation behind this act – that is, the desire to retaliate against the burning of Athens and its Acropolis, carried out by the Achaemenid king Xerxes I during the Second Persian War (482–479 BC). For its symbolic value, selected target and modes of execution, the fire of Persepolis mirrored the profanation of the sacred hill of Athens;[5] its avowed objective was to 'avenge Greece'[6] and retaliate

[1] Quintus Curtius Rufus, *History of Alexander* (tr. John C. Rolfe), 2 vols. (Cambridge, MA: Harvard University Press, 1946), vol. I, p. 389, at V.vii.8 [footnotes omitted].

[2] Plutarch, *Plutarch's Lives* (tr. Bernadotte Perrin), 11 vols. (Cambridge, MA: Harvard University Press, 1958), vol. VII, *Life of Alexander*, p. 339, at 38.

[3] Arrian, *The Anabasis of Alexander* (tr. Edward J. Chinnock) (London: Hodder and Stoughton, 1884), p. 178, at III.xviii.

[4] Diodorus Siculus, *Library of History* (tr. Charles Bradford Welles), 12 vols. (Cambridge, MA: Harvard University Press, 1963), vol. VIII, p. 325, at XVII.72; Plutarch, *Plutarch's Lives*, vol. VII, pp. 337, 339, at 38; Curtius Rufus, *History of Alexander*, vol. I, pp. 387, 389, at V.vii.2–7.

[5] Plutarch, *Plutarch's Lives*, vol. VII, p. 337, at 38 (who draws a link between the burning of Xerxes's palace and the latter's setting ablaze of Athens); Diodorus Siculus, *Library of History*, vol. VIII, p. 327, at XVII.72 (highlighting the identical treatment incurred by the two monuments).

[6] Curtius Rufus, *History of Alexander*, vol. I, p. 387, at V.vii.4.

for the crimes committed against the Hellenic temples and sanctuaries.[7] In an extremely insightful glimpse into human psychology, the Roman historian Quintus Curtius Rufus sketches the reaction of the Macedonian troops: oscillating between the shame for the obliteration of such a famous city and their desire to justify it, they 'forced themselves to believe that it was right that it should be wiped out in exactly that manner'.[8]

Undoubtedly, international law has undergone enormous developments since the time of Alexander's campaign – including by establishing a very sophisticated framework to govern warfare, conduct hostilities and protect victims of war.[9] However, references to retaliation and vengeance are anything but rare in today's discourse on armed conflict. Three recent examples, drawn from different contexts, are particularly telling. The first one dates from 2020, and nearly drew a stunning parallelism with the events that took place during the invasion of Persia more than two millennia ago. Fearing retaliation for the drone strike that had killed Iranian major general Qassem Suleimani, the then-President of the United States threatened to target fifty-two Iranian sites, including some 'at a very high level & important to Iran & the Iranian culture' [sic], should Americans or US assets be hit.[10] The second instance brings us to Eastern Europe. On several occasions in 2022 and 2023, the Russian

[7] Diodorus Siculus, *Library of History*, vol. VIII, p. 325, at XVII.72; Arrian, *Anabasis of Alexander*, pp. 178–79, at III.xviii (who, however, considered the destruction of Persepolis unwise and, in any case, did not believe in the rationale of punishing the Persians: ibid.).

[8] Curtius Rufus, *History of Alexander*, vol. I, p. 389, at V.vii.10 [footnote omitted].

[9] Throughout this work, we will use the terms "the laws of armed conflict", "international humanitarian law", "*ius in bello*" and "the laws of war" interchangeably, unless otherwise specified.

[10] M. Chulov, J. Borger, G. Abdul-Ahad, and agencies, 'Trump vows to hit 52 sites "very hard" if Iran retaliates over Suleimani killing', *The Guardian*, 5 January 2020 (available at www.theguardian.com/world/2020/jan/05/donald-trump-vows-to-hit-52-sites-very-hard-if-iran-retaliates-for-suleimani-killing). After re-affirming the threat on a handful of occasions, the President stepped back after receiving considerable criticism not only from Iranian officials, but also from key allies, international organizations and senior officials in the US administration (including the Secretary of State and the Defense Secretary): see A. Woodcock, R. Merrick and A. Cowburn, 'Iran crisis: Boris Johnson warns Trump not to break international law by bombing cultural sites', *The Independent*, 6 January 2020 (available at www.independent.co.uk/news/uk/politics/iran-war-trump-boris-johnson-cultural-sites-soleimani-iraq-a9272076.html); BBC News, 'Trump under fire for threat to Iranian cultural sites', 6 January 2020 (available at www.bbc.com/news/world-middle-east-51014237); D. Smith and agencies, 'Trump defends "war crime" threat to target cultural sites in Iran', *The Guardian*, 7 January 2020 (available at www.theguardian.com/world/2020/jan/06/suleimani-killing-donald-trump-defends-threat-to-hit-cultural-sites-in-iran); D. Superville, 'Trump retreats from threat to attack Iranian

leadership portrayed its strikes on population centres and power infrastructures in Ukraine as 'tit-for-tat measures' made necessary, and allegedly justified, by enemy attacks on, for example, the Kerch Strait bridge, the power lines of the Kursk nuclear power station, and the residential areas of Moscow.[11] This, in turn, has prompted threats of revenge and punishment from the counterpart.[12] The third illustration relates to the latest round of hostilities in the Gaza Strip since October 2023. In that context, reciprocity has characterized several statements accompanying the 'Operation Al-Aqsa Flood' just as much as 'Operation Iron Sword'. On the one hand, Hamas and the Palestinian Islamic Jihad have repeatedly lamented Israeli 'violation of all international norms, laws and human rights conventions' in the context of the belligerent occupation of Palestine;[13] on the other, recourse by Israel to specific methods of warfare (such as completely cutting off the supply of electricity, food, water and fuel to the Gaza Strip) was framed by senior Israeli political officials not only as a punishment for previous enemy

cultural sites', Associated Press, 8 January 2020 (available at https://apnews.com/article/e456bc97066894a04b23b384fec6cded).

[11] See the statements by the President and the Foreign Ministry of Russia quoted in: M. Hunder and J. Landay, 'Russia launches biggest air strikes since start of Ukraine war', Reuters, 11 October 2020 (available at www.reuters.com/world/europe/russias-ria-state-agency-reports-fuel-tank-fire-kerch-bridge-crimea-2022-10-08/); F. Ebel, 'Putin admits attacks on civilian infrastructure, asking: "Who started it?"', *The Washington Post*, 8 December 2022 (available at www.washingtonpost.com/world/2022/12/08/russia-attacks-ukraine-infrastructure-putin/); M. Seddon and C. Miller, 'Vladimir Putin vows retaliation for drone attack on Moscow', *Financial Times*, 30 May 2023 (available at www.ft.com/content/cdde0e44-0e90-41c0-a3be-e5f6849b706b); G. Jones and A. Heavens, 'Russia vows retaliation for Ukraine's "terrorist attack" on Crimean Bridge', Reuters, 12 August 2023 (available at www.reuters.com/world/europe/russia-vows-retaliation-ukraines-terrorist-attack-crimean-bridge-2023-08-12/). For a legal analysis of the October 2022 attack on the Kerch Strait Bridge, see Marko Milanovic and Michael N. Schmitt, 'Ukraine Symposium – The Kerch Strait Bridge Attack, Retaliation, and International Law', *Articles of War*, 12 October 2022 (available at https://lieber.westpoint.edu/kerch-strait-bridge-attack-retaliation-international-law/).

[12] See the statement by Ukraine's Defence Ministry reproduced in P. Beaumont, C. Higgins and A. Mazhulin, 'Putin warns of further retaliation as Ukraine hit by massive wave of strikes', *The Guardian*, 10 October 2022 (available at www.theguardian.com/world/2022/oct/10/explosions-kyiv-ukraine-war-russia-crimea-putin-bridge).

[13] Middle East Monitor, 'Statement by Hamas's Al-Qassam Brigades top military commander', 7 October 2023 (available at www.middleeastmonitor.com/20231007-statement-by-hamass-al-qassam-brigades-top-military-commander/); see also Euronews, 'Hamas claims responsibility for deadly Jerusalem shooting', 30 November 2023 (available at www.euronews.com/2023/11/30/hamas-claims-responsibility-for-deadly-jerusalem-shooting).

misconduct,[14] but also as a way of coercing the enemy into ceasing current violations of international humanitarian law (IHL) (i.e., the taking of hostages).[15]

The result of these statements has been the cautious, half-whispered re-appearance in academic and policy discussions of the topic of belligerent reprisals.[16] In its most essential definition, this notion indicates an act that would violate the laws of armed conflict, were it not for its being taken in response to a previous unlawful breach of that body of rules by the counterpart.[17] To be clear, this topic has never ceased to interrogate

[14] See the statements by Israel's Defence Minister quoted in E. Fabian, 'Defense minister announces "complete siege" of Gaza: No power, food or fuel', *The Times of Israel*, 9 October 2023 (available at www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/); by the President of Israel reproduced in R. Omaar, 'Israeli president Isaac Herzog says Gazans could have risen up to fight "evil" Hamas', ITV, 13 October 2023 (available at www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-hamas); and by the Prime Minister of Israel quoted in L. Berman, 'Netanyahu: Goal of war is "to defeat the murderous enemy, ensure our existence in our land"', *The Times of Israel*, 28 October 2023 (available at www.timesofisrael.com/liveblog_entry/netanyahu-goal-of-war-is-to-defeat-the-murderous-enemy-ensure-our-existence-in-our-land/).

[15] See the statement by Israel's Energy Minister reproduced in N. Slawson, 'First Thing: no power, water or fuel for Gaza until hostages are freed, Israel says', *The Guardian*, 12 October 2023 (available at www.theguardian.com/us-news/2023/oct/12/first-thing-no-power-water-fuel-gaza-until-hostages-freed-israel-says).

[16] See, for instance, Adil A. Haque, 'Renouncing Reprisals: An Opportunity for the Biden Administration', *Just Security*, 1 April 2021 (available at www.justsecurity.org/75553/renouncing-reprisals-an-opportunity-for-the-biden-administration/), as well as Michael N. Schmitt, 'Ukraine Symposium – Reprisals in International Humanitarian Law', *Articles of War*, 6 March 2023 (available at https://lieber.westpoint.edu/reprisals-international-humanitarian-law/). See also, in relation to the hostilities between Armenia and Azerbaijan over Nagorno-Karabakh in September 2020, the reference to reprisals in Human Rights Watch, 'Armenia/Azerbaijan: Don't Attack Civilians. Respect Absolute Ban on Targeting Civilians, Civilian Objects', 30 September 2020 (available at www.hrw.org/news/2020/09/30/armenia/azerbaijan-dont-attack-civilians).

[17] Similar (albeit not identical) definitions can be found in different scholarly works on the topic. Kalshoven stated that '[r]eprisals . . . consist of the intentional violation of a rule of international law in reaction to an act equally violative of such a norm' (Frits Kalshoven, *Belligerent Reprisals* (Leiden: Sijthoff, 1971; re-published Leiden/Boston: Martinus Nijhoff, 2005), p. 29). Bierzanek defined the measure as 'retaliation upon the state having committed unlawful acts by means of other unlawful acts' (Remigiusz Bierzanek, 'Reprisals in Armed Conflict' (1987–88) 14 *Syracuse Journal of International and Comparative Law*, p. 829). Watts, on his part, submitted that '[d]efined simply, reprisals are violations of international law undertaken in response to unauthorized violations by another subject of international law' (Sean Watts, 'Reciprocity and the Law of War' (2009) 50 *Harvard International Law Journal*, p. 382). Finally, Greenwood has written that '[a] belligerent reprisal consists of action which would normally be contrary to the

legal scholars: whether on the sly or head-on, the issue peeps out on a recurrent basis, in connection with the adoption of a treaty, the rendering of a judgment, the identification of a custom or the monitoring of a conflict. And yet, notwithstanding the knowledge that has accrued over the past decades, belligerent reprisals continue to prove an elusive concept. This is the result of three, cumulative sets of problems.

I.2 Conceptual, Normative and Policy Difficulties

The first issue is one of *semantics*. Over time, the term "reprisal" has taken up a variety of meanings, making it more and more difficult to grasp its significance and regulate its role in armed conflict. For instance, in UN parlance, the word is often associated with acts of intimidation and harm against those cooperating with the organization in the field of human rights.[18] At a deeper level, the theory and language of international law are not always aligned with the practice of belligerent reprisals. Sometimes, the position of parties to armed conflicts undermines clear-cut theoretical distinctions. By way of example, belligerent reprisals have been traditionally contrasted to so-called armed reprisals: whereas the former notion represents a *ius in bello* mechanism, the latter falls in the province of *ius ad bellum*, and indicates measures involving recourse to armed force and characterized by a punitive character.[19] This has not prevented belligerents from conflating the two regimes, for instance by invoking belligerent reprisals as a way to justify IHL violations even when the underlying intent was to chastise the initiation of an armed conflict or bring about its end.[20]

laws governing the conduct of armed conflict (the *ius in bello*) but which is justified because it is taken by one party to an armed conflict against another party in response to the latter's violation of the *ius in bello*' (Christopher Greenwood, 'The Twilight of the Law of Belligerent Reprisals' (1989) 20 *Netherlands Yearbook of International Law*, p. 38).

[18] See, for instance, UN Doc. A/HRC/54/61, *Report of the UN Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights*, 21 August 2023, *passim*.

[19] See Evelyn Speyer Colbert, *Retaliation in International Law* (New York: King's Crown Press, 1948), *passim*; Richard A. Falk, 'The Beirut Raid and the International Law of Retaliation' (1969) 63 AJIL, pp. 428–31; Derek Bowett, 'Reprisals Involving Recourse to Armed Force' (1972) 66 AJIL, pp. 1–3. See also UN Doc. A/RES/2625(XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, 24 October 1970, para. 1: 'States have a duty to refrain from acts of reprisal involving the use of force'.

[20] For a paradigmatic example taken from the Iran–Iraq War, see UN Doc. S/18704, 18 February 1987, p. 2, whereby Iraq would consider itself released from its commitment not to bombard Iranian towns for two weeks not only 'if the forces of the Iranian régime

On other occasions, it is legal theory that fails to recognize or formalize the presence of belligerent reprisals, setting up novel notions with little prescriptive standing (such as that of "other countermeasures" in relation to non-international armed conflict).[21]

The second problem concerns the *regulation* of belligerent reprisals. As we shall see in greater detail below, there exists a significant degree of uncertainty regarding both the procedural and the substantive requirements that must accompany the adoption of belligerent reprisals.[22] In addition to that, defining the precise scope for lawful recourse to belligerent reprisals has proved highly controversial – not only under customary IHL, but also to some extent under treaty law.[23] Historically, the phenomenon of belligerent reprisals has been approached by means of incremental prohibitions that excluded recourse to such measures when taken against certain targets or when using certain weapons. This way of proceeding (coherent with the State-driven nature of IHL law-making) seems to presuppose a belief in the residual nature of the entitlement to resort to belligerent reprisals when they have not been outlawed (yet).[24] At the same time, this conclusion could be challenged on two grounds: from the outside, by looking at the interplay of IHL with other legal frameworks, most notably international human rights law (IHRL);[25] but also from the inside, by taking into account current research on the permissive or prohibitive nature of IHL itself.[26]

shell Iraqi towns and residential areas', but also '*if the Iranian régime launches a new assault against Iraqi territory and Iraq's international borders*', and in any case if Iran did not 'espouse a *new position consistent with international law [with regard to peace]*' [emphasis added].

[21] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, 2 vols. (Cambridge: Cambridge University Press, 2005), vol. I, p. 526, Rule 148.

[22] See Section 1.2.1.3.

[23] See Section 1.2.1.2.

[24] On *a contrario* reasoning in case of specific prohibitions, see Stanislaw E. Nahlik, 'Belligerent Reprisals As Seen in the Light of the Diplomatic Conference on Humanitarian Law, Geneva, 1974–1977' (1978) 42 *Law and Contemporary Problems*, pp. 64–66.

[25] For a comprehensive analysis of the topic, see Robert Kolb, Gloria Gaggioli and Pavle Kilibarda (eds.), *Research Handbook on Human Rights and Humanitarian Law. Further Reflections and Perspectives*, 2nd ed. (Cheltenham: Edward Elgar, 2022); in relation to belligerent reprisals, see Shane Darcy, *Collective Responsibility and Accountability under International Law* (Leiden: Transnational Publishers, 2007), pp. 175–82.

[26] For the reference book on the topic, see Anne Quintin, *The Nature of International Humanitarian Law: A Permissive or Restrictive Regime?* (Cheltenham: Edward Elgar, 2020).

The third question is one of *policy*. Recent contributions from the social sciences testify to the widespread recourse to conducts defended as belligerent reprisals. Morrow has demonstrated that in international armed conflicts, retaliation for violations of the laws of war is near ubiquitous, swift, and leading to better compliance.[27] Building on this evidence, Osiel has remarked a paradoxical situation – that is, recourse to belligerent reprisals appears to be more frequent precisely in those situations where it is prohibited by the 1949 Geneva Conventions and their 1977 Additional Protocols.[28] When it comes to civil wars, Jo has shown that, due to the rebel groups' quest for legitimacy, reciprocal behaviours are less ubiquitous for certain types of violations (especially in the field of child soldiering and detention access), but still at work for others (e.g., the killing of civilians).[29] Thus, current practice seems to resist the long-standing attempt by international law to progressively curb (or, in the case of non-international armed conflicts, completely rule out) the ability to adopt belligerent reprisals. As a result, not only does the prospective of adding *new* prohibitions on belligerent reprisals look more and more remote – the risk is actually that even *existing* prohibitions are called into question by means of contrary practice, and that an increased role for reciprocity is 'reinject[ed] … back into humanitarian law by way of custom, even as treaties have increasingly sought to reject it'.[30]

In sum, international law is losing its grip over belligerent reprisals: it fails to define it conceptually, govern it normatively, and constrain it factually. The notion has always sat, as Bílková has written, at the

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

[28] Mark Osiel, *The End of Reciprocity: Terror, Torture and the Law of War* (Cambridge: Cambridge University Press, 2009), p. 278. Geneva Conventions Relative to the Protection of the Victims of International Armed Conflicts, Geneva, 12 August 1949, in force 21 October 1950, 75 UNTS 31; UKTS 39 (1958), Cmd 550; 157 BFSP 229; 6 UST 3114; TIAS 3362; ATS 21 (1958). Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977, in force 7 December 1978, 1125 UNTS 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 8 June 1977, in force 7 December 1978, 1125 UNTS 609.

[29] Hyeran Jo, *Compliant Rebels: Rebel Groups and International Law in World Politics* (New York: Cambridge University Press, 2015), pp. 74, 132–33, 165, 199.

[30] Osiel, *End of Reciprocity*, p. 279.

vanishing point of IHL,[31] stretching to its very limits the normative reach of international regulation. How can we prevent it from slipping behind that edge, and escaping all attempts at legal governance?

I.3 The *causa* of Belligerent Reprisals: Purpose and Function of the Mechanism

At first sight, these three sets of problems touch on very different aspects – with law being only one of them. Yet, they can also be seen as different declinations of a unitary, deeper legal issue – that of the *causa* of belligerent reprisals. Having its roots in Roman law, this notion identifies, as Salmon put it, 'the legal basis and rationale of a juridical institution'.[32] As such, it could be seen as encompassing two complementary aspects. A first, static trait would relate to the *purpose* of a given legal tool, and would investigate the abstract objectives attributed to it by the legal order. A second, more dynamic facet would focus on the *function* of the mechanism, considering its inner dynamics and its relationship with other notions under international law. The identification of the *causa* is therefore vested with a paramount role in the process of legal qualification. When considered together, these elements provide an exact depiction of a legal mechanism, both in itself and *vis-à-vis* other institutions; when they are lacking, what stands jeopardized is not only the autonomous standing and specific conceptualization of any legal notion, but also the very possibility of deriving its specific regulation and subjecting it to effective governance.

In my view, the conceptual, normative and policy difficulties looming over belligerent reprisals are but symptoms of a wider conundrum – that is, the failure on the part of international law to correctly analyse and formalize their *causa*. If the notion of belligerent reprisals is blurred, prone to abuse and difficult to distinguish from other legal concepts; if the margin of application and regulation of the mechanism is unclear; if recourse to it persists (and actually expands) notwithstanding all the attempts at reducing and ultimately removing it – then it is reasonable to infer that international legal doctrine has a problem in construing the

[31] Veronika Bílková, 'Belligerent Reprisals in Non-International Armed Conflicts' (2014) 63 ICLQ, p. 31.

[32] Jean Salmon, *Dictionnaire de droit international public* (Bruxelles: Bruylant, 2001), p. 154 (translation by the author; in the original: '[l]e fondement, la raison d'une institution juridique').

purpose and function of belligerent reprisals. This is so in at least two senses.

The first issue has to do with the approach that international law has taken to formalize the purpose and function of belligerent reprisals (the question of "how"). Writing on the provisions of the 1977 Additional Protocols, Almond has remarked that '[belligerent] reprisals ... are completely ignored except in the sense of providing prohibitions'.[33] Whereas the drafters of those treaties failed to ask the question on the *causa* of belligerent reprisals altogether, following scholars and practitioners have approached the issue – but in flawed terms. True, virtually all recent contributions on belligerent reprisals contain notations on the purpose of the mechanism; however, they have downgraded the *causa*, from being *the* criterion to *legally qualify* a given behaviour as a belligerent reprisal, into being *one out of* many conditions to verify *whether the measure is lawful*.[34] In other words, the element that is necessary to legally recognize a conduct as belligerent reprisal has been transformed into one of the parameters to evaluate it. If one looks carefully, this turns the order of the analysis upside down. A stakeholder (be it the addressee of the measure, a third State, or any legal observer) cannot assess the lawfulness of a conduct, without first being able to subsume it under a legal construct that determines the applicable norms. As the tragedy of Oedipus teaches us, the ability to recognize and identify something not only precedes any evaluation that we can make of it – it is what makes that very judgment possible.[35]

Despite the fallacy of this methodological approach, we could always argue that at least international law has embarked on a reflection on this fundamental issue. We might be looking at the topic from the wrong angle – so the argument would go – but we do have a rather solid consensus that belligerent reprisals are characterized by a specific purpose, which consists in the enforcement of the laws of armed conflict.[36]

[33] Harry H. Almond, 'Reprisals: The Global Community Is Not Yet Ready to Abandon Them' (1980) 74 *Proceedings of the American Society of International Law*, p. 197.

[34] Henckaerts and Doswald-Beck, *Customary IHL Study*, vol. I, p. 515; Greenwood, 'Twilight of Reprisals', p. 40; Shane Darcy, 'The Evolution of the Law of Belligerent Reprisals' (2003) 175 *Military Law Review*, p. 187.

[35] Sophocles, *King Oedipus* (tr. William B. Yeats) (London: Macmillan, 1928), pp. 14 ('though you have your sight, you cannot see'), 42 ('All truth! Now O Light, may I look my last upon you').

[36] On the enforcement purpose of belligerent reprisals, see for example Henckaerts and Doswald-Beck, *Customary IHL Study*, vol. I, pp. 515–16; Greenwood, 'Twilight of

But that is precisely where the second, more important issue enters the picture – and it has to do with the solution that international law has given to the question of the *causa* of belligerent reprisals (the question of "what"). By attributing to this mechanism the objective of coercing a return to compliance with IHL, international law has operated a skilful operation of embellishment (some would say whitewash) of belligerent reprisals. This strategy has played out along two, mutually reinforcing axes – which will be duly analysed in the book. On the one hand, concerned with the functioning of the measure, belligerent reprisals have been construed on the basis of the blueprint provided by the law of countermeasures. On the other hand, related to the purpose of the notion, belligerent reprisals have been interpreted as a forward-looking tool, interested in the positive value of enforcing breached norms and strengthening the legal order.

With all likelihood, the main aspiration behind this move was to rein in by way of interpretation a mechanism that was notably impervious to legal constraints. However laudable the attempt, there are serious weaknesses in the legal underpinnings of this construction. From a purely conceptual viewpoint, the analogy between countermeasures and belligerent reprisals could well stand; however, it is a rather long shot to assume that the motivations, stakes and incentives for retaliatory breaches are the same as we deal with IHL during wartime, on the one hand, and for other international obligations mostly during peacetime, on the other. The same artificiality characterizes the acknowledgement (often expressed in the legal scholarship) that other motives can legitimately characterize recourse to belligerent reprisals, provided that the enforcement purpose be present.[37] If it is admitted that enforcement of the law might not always be the primary objective, singling it out as *the* decisive criterion to identify and assess belligerent reprisals is just a form of cherry-picking – the move could well be coherent with the overall objective of shoring up and sustaining the legal order, but it remains an arbitrary choice of attributing legal relevance to one element at the exclusion of all the others.

Additionally, we must wonder if the attribution of an enforcement purpose to belligerent reprisals and their assimilation with countermeasures has fulfilled its aspirations, or if instead it has done more harm than

Reprisals', pp. 45–46; Darcy, 'Evolution of Reprisals', p. 191; Bílková, 'Reprisals in NIACs', p. 33. For a general overview of the scholarship on the issue, see Section 2.4.3.2.

[37] Kalshoven, *Belligerent Reprisals*, p. 24; Greenwood, 'Twilight of Reprisals', p. 46.

good. It is probably excessive to argue that this interpretation of the *causa* of belligerent reprisals is the sole responsible for the legimitization and perpetuation of the mechanism. But it is undeniable that it has prejudiced our analytical tools, by altering our understanding of the purpose and function of belligerent reprisals and ultimately by preventing an unbiased appreciation of their place in the regulation of contemporary warfare.

I.4 Main Claim, Structure and Objectives of the Book

It is both timely and appropriate to re-consider the purpose and function that international law attributes to belligerent reprisals. This book challenges the mainstream understanding of belligerent reprisals as a tool interested in enforcing compliance with the laws of armed conflict; by re-instating reciprocity at the core of the mechanism, it argues that belligerent reprisals aim at re-calibrating the legal relationship between parties to an armed conflict and at ensuring parity of arms both in a formal and in a substantive sense.

In line with this claim, the book will be divided in six chapters. Chapter 1 will introduce the notion of belligerent reprisals, and present the two competing paradigms that have served as reference models for its formalization – that is, enforcement (embodied by non-forcible countermeasures) and reciprocity (represented by the unilateral suspension and termination of international obligations). Chapter 2 will follow the trajectory by which belligerent reprisals have been subsumed progressively under the enforcement paradigm, at the expense of their features inspired by reciprocity. Chapter 3 will analyse several instances of State practice (both verbal and physical ones) that testify to the resilience and persisting influence of reciprocity in structuring the purpose and function of belligerent reprisals. Building on this analysis, Chapter 4 will focus on two aspects of the Iran–Iraq War of 1980–88 as case-studies to test how belligerents have articulated the *causa* of belligerent reprisals in international armed conflict; retaliatory instances of chemical warfare and the "war of the cities" during that conflict will demonstrate that enforcement and reciprocity converge (instead of mutually exclude each other) in defining the functioning of belligerent reprisals, and that these measures can take on a variety of purposes far exceeding that of bringing about compliance with the laws of war. Chapter 5 will draw the conceptual framework to analyse belligerent reprisals in non-international armed conflicts (NIACs), placing the mechanism between the competing pulls

of inequality of status and equality of rights and obligations and witnessing the role that reciprocity plays also in this context. Chapter 6 will then distinguish between lawful and unlawful belligerent reprisals in non-international armed conflict, before analysing how their purpose and function have been construed by several bodies monitoring IHL compliance. Finally, the Conclusion will discuss some key implications of these findings: it will disentangle belligerent reprisals from theories of law-making, discuss their specificity *vis-à-vis* compliance mechanisms, and highlight the importance of a new formalization of the mechanism for future regulation and reform.

By placing the question of the *causa* at the centre of the legal reflection on belligerent reprisals, I aim at two objectives. On the short term, by re-considering their purpose and function, I wish to draw a new legal perimeter, within which still pending questions over the regulation of the mechanism could be finally solved. Answering the primary question as to how and for what purposes belligerent reprisals work will make it possible for future contributions to approach the secondary questions concerning, for instance, the degree of proportionality, the authority and the quality of the authorizing entity, the beginning and the cessation, and the residual scope for lawful recourse to such measures. On the longer run, the book provides legal scholars, military officials and political decision-makers with a novel viewpoint on the practice and the law of belligerent reprisals. In so doing, it offers a firmer ground to discuss what place (if any) belligerent reprisals should occupy in any future IHL regime. This should ensure that, whatever the decision on belligerent reprisals (whether they are maintained as an indispensable feature in the legal governance of armed conflict, or whether they are dismissed once and for all from the books and the practice of warfare), at least we would have looked into the abyss with unobstructed gaze.