

As correctly stated by McCarthy, '[t]he Rome Statute's regime of victim redress does not exist in isolation.'² In fact, it complements other regimes available at the international level for victims of international wrongful acts, namely, those established under international human rights law, international humanitarian law and the law of diplomatic protection. With this in mind, McCarthy skillfully points out the lacunae of each of these regimes and indicates how the reparation scheme of the ICC can offer a supplemental means under which victims may be able to obtain remedy.

After having legitimized the existence of the ICC redress regime, the author dwells at length on its main characteristics, offering a complete description and analysis of the proceedings and provisions relevant to victim reparation and support, and the ICC cooperation and enforcement regimes on the same matters. This part of the monograph, despite providing a comprehensive, if perhaps overly descriptive, framework of the Rome Statute's reparation scheme, lacks flesh and blood, due to the limited case law. In this context, it might have been helpful to refer to the case law of the Court on other victims' issues, in particular those related to the question of reparation, such as the definition of a victim and the right of participation in the proceedings. This jurisprudence may have indicated future developments for the redress regime. Similarly, reference could have been made to the case law on victim redress by other international criminal institutions, particularly the Extraordinary Chambers in the Courts of Cambodia (ECCC).³

On the whole, *Reparations and Victim Support in the International Criminal Court* offers a thorough and accurate guide on the Rome Statute's redress scheme which will be valuable

to both scholars and practitioners alike. The contextual reading of this redress regime, coupled with a deep knowledge of the international legal framework on the right to remedy and reparation, renders this study an original contribution to a developing topic.

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Gianni Angelucci and Luisa Vierucci (eds),
Il Diritto Internazionale Umanitario e la guerra aerea [International Humanitarian Law and Aerial Warfare] (Firenze University Press, 2010), 320 pp. € 23.80 (Hardback) ISBN 978-88-6453-124-3

The absence of international rules specifically designed for the conduct of aerial warfare — despite the growing use of combat aircraft since the time of the First World War — renders consideration of this theme essential. This collection of essays edited by Gianni Angelucci and Luisa Vierucci, with an opening presentation by Antonio Cassese, analyses fundamental principles of international humanitarian law and their applicability to operations conducted by air forces, and in particular, aerial bombardment. The volume fruitfully combines Angelucci's military experience as Brigadier General of the Italian Army with Vierucci's academic background in international humanitarian law. The necessity of such a comprehensive analysis of this subject as the one which this Italian volume achieves has been brought to light by, inter alia, decisions of the Eritrea Ethiopia Claims Commission,¹ and the publication of the Harvard University's *Manual*

2 C. McCarthy, *Reparations and Victim Support in the International Criminal Court* (Cambridge University Press, 2012), at 9.

3 See Judgment, *Kaing Guek Eav alias 'Duch'* (00IIS-07-2007-ECCC/SCC), Trial Chamber, 26 July 2010, §§ 635–675; Appeal Judgment, *Kaing Guek Eav alias 'Duch'* (001/18-07-2007-ECCC/SC), Supreme Court Chamber, 3 February 2012, §§ 630–717.

1 See Eritrea-Ethiopia Claims Commission, *Partial Award, Central Front, Ethiopia's Claim 2*, 28 April 2004; Eritrea-Ethiopia Claims Commission, *Partial Award, Western Front, Aerial Bombardment and Related Claims, Eritrea's Claims 1*, 3, 5, 9–13, 14, 21, 25 & 26, 19 December 2005.

on *International Law Applicable to Air and Missile Warfare* (the Manual).²

This book is divided into five sections with 18 chapters and helpfully includes extracts from primary materials such as international jurisprudence and the Manual. The first part, Chapters 1–5, analyses general aspects of aerial warfare, including its history, and the second part, Chapters 6 and 7, examines the definition of military objectives in the context of aerial warfare. The third part, Chapters 8 and 9, addresses means and methods of warfare; the fourth, with Chapters 10–11, is devoted to direct participation in hostilities; the fifth, Chapters 12–14, to military missions in foreign territories; and the final part, Chapters 15–18, concludes with the relationship between international criminal justice and aerial warfare.

The first part, with chapters authored by Angelucci, Vierucci, Tullio Scovazzi and Amedeo Mecozzi³ examines, among other general issues, the history of aerial warfare — ranging from the first use of military aircraft during the war between Italy and Turkey in 1911, to the launch of nuclear bombs in the Second World War and modern aerial hostilities — establishing that aerial warfare has become a fundamental component of the conduct of hostilities.⁴ Angelucci and Scovazzi, in their respective chapters, take a critical approach to

the first air power theorist, Italian General Giulio Douhet, a key proponent of strategic bombing.⁵ Douhet argued that the civilian population should be targeted with large-scale aerial bombardment, thereby weakening the enemy. For Douhet, the ideal war should not involve military forces on the ground, but instead, using aerial warfare only, force the enemy to request a ceasefire. As Scovazzi correctly points out, the so-called principle of ‘total war’ and the lack of distinction between combatants and civilian population clash with the basic principles of international humanitarian law.⁶ The fifth chapter authored by Mecozzi, overviews the guidelines for the Italian Military Aviation and identifies five key principles running throughout.⁷

The second part analyses the application of the definition of a military objective to aerial warfare, as set out by international instruments, jurisprudence and customary international law. Starting with the definition contained in Article 52(2) of Additional Protocol I, Vierucci examines the principles of proportionality and precaution in the context of aerial warfare.⁸ In doing so, Vierucci summarizes key international jurisprudence, which are also extracted in the original. The final report of the committee established to review the North Atlantic Treaty Organization (NATO) bombing campaign against the Federal Republic of Yugoslavia did not

- 2 Program on Humanitarian Policy and Conflict Research at Harvard University, *Manual on International Law Applicable to Air and Missile Warfare*, 15 May 2009, available online at <http://www.ihlresearch.org/amw/manual/> (visited 24 April 2014).
- 3 See G. Angelucci, ‘Introduzione’, in G. Angelucci and L. Vierucci (eds), *Il Diritto Internazionale Umanitario e la guerra aerea* (Firenze University Press, 2010) 15; G. Angelucci and L. Vierucci, ‘La regolamentazione della guerra aerea nel diritto internazionale contemporaneo: note introduttive’, in Angelucci and Vierucci (eds), *ibid.*, 19; G. Angelucci, ‘Douhet e la teoria del dominio dell’aria’, in Angelucci and Vierucci (eds), *ibid.*, 25; T. Scovazzi, ‘Il terrorismo di Stato nell’opera di Giulio Douhet’, in Angelucci and Vierucci (eds), *ibid.*, 33; A. Mecozzi, ‘Direttiva per l’aviazione militare’, in Angelucci and Vierucci (eds), *ibid.*, 49.
- 4 Italy was the first country to use an aircraft to launch bombs on 1 November 1911. See, generally, B. Catalanotto and H. Pratt, *In un cielo lontano: 70 anni di Aeronautica Militare* (Lizard, 1994).

- 5 See Angelucci, *supra* note 3, at 25 *et seq.*; Scovazzi, *supra* note 3, at 33 *et seq.* General Douhet became famous during the 1920s and in the following years for his masterpiece, which was subsequently translated into English. See G. Douhet, *The Command of the Air* (University Alabama Press, 2009).
- 6 Scovazzi, *supra* note 3, at 45–48.
- 7 The following principles are identified: first, the non-proliferation of nuclear weapons; second, the exclusion of any military involvement outside an alliance; third, the Italian army should not merge with allied armies; fourth, the army should operate under a supreme command; any allies of the Italian army should not interfere in Italian aerial operations. See, in general, Mecozzi, *supra* note 3.
- 8 L. Vierucci, ‘Sulla nozione di obiettivo militare nella guerra aerea: recenti sviluppi della giurisprudenza internazionale’, in Angelucci and Vierucci (eds), *supra* note 3, 65, at 65.

recommend further investigation. This was despite the report's recognition of the existence of specific aerial bombing incidents that caused heavy loss of civilian life. The two decisions of the Eritrea Ethiopia Claims Commission, concerning the aerial bombardments of Hirgigo and Harsile in Eritrea and Mekele in Ethiopia, represent the first judgments since the 1930s in which an international commission,⁹ established under the auspices of the Permanent Court of Arbitration, declared the unlawfulness of an aerial attack against civilian targets. The judgments in *Isayeva v. Russia*,¹⁰ and *Isayeva, Yusupova and Bazaieva v. Russia* are summarized, with an extract of the former included.¹¹ The European Court of Human Rights, on the basis of human rights standards,¹² concluded that, although the use of force may have been justified, the aim pursued and the means to achieve it was disproportionate, thus resulting in an indiscriminate loss of civilian life.

The third part, containing chapters authored by Vierucci and Natalino Ronzitti, details international treaties and conventions related to means and methods of warfare for aerial bombardment.¹³ The *Legality of the Threat or Use of Nuclear Weapons* is examined,¹⁴ with the authors concluding that in the absence of a specific treaty banning a certain weapon, such as treaties prohibiting the use of

biological or chemical weapons, the use of such a weapon in aerial warfare must be in compliance with the fundamental principles of international humanitarian law. Attention is also given by Vierucci and Ronzitti to the definition of conventional weapons and the prohibition of certain methods of aerial warfare and weapons, such as incendiary bombs and cluster munitions, which cause superfluous injury or unnecessary suffering.

The fourth part presents a collection of essays by Vierucci and Andrea Gioia on the definition of direct participation in hostilities, the distinction between prisoners of war, terrorists and combatants, the suicide attacks conducted in Iraq and Afghanistan, the policy of targeted killings by the Israeli army and the status of private contractors.¹⁵ The authors examine aerial activities which may result in direct participation in hostilities, including targeting killings using airplanes or drones. For example, in 2006, in a case before the Israeli Supreme Court concerning the targeted killing campaign conducted by Israeli forces, which is usefully reproduced in this part, the Court arguably provided legitimacy to these acts by not holding them per se illegal but identifying four criteria for certain acts to qualify as direct participation in hostilities.¹⁶

The fifth part, containing chapters authored by Angelucci and Ronzitti, analyses the laws applicable to armed forces and the rules of engagement in an armed conflict.¹⁷ The final part, with chapters by Angelucci, Paola Gaeta, Harry Post and Cassese, overviews international crimes that might be committed in the

- 9 The Eritrea-Ethiopia Claims Commission was established pursuant to Art. 5 of the Agreement signed on 12 December 2000 between Eritrea and Ethiopia. Pursuant to this agreement, the Commission was established as an independent body with its seat in The Hague and whose international members were appointed by Eritrea and Ethiopia.
- 10 See ECtHR, Judgment, *Isayeva v. Russia*, Appl. No. 57950/00, 24 February 2005.
- 11 See ECtHR, Judgments, *Isayeva, Yusupova and Bazayeva v. Russia*, Appl. Nos 57947/00, 57948/00 and 57949/00, 24 February 2005.
- 12 The ECtHR based its judgment in particular on the right to life, which is protected under Art. 2 ECHR.
- 13 L. Vierucci, 'Introduzione', in Angelucci and Vierucci (eds), *supra* note 3, 161; N. Ronzitti, 'Armi convenzionali', in Angelucci and Vierucci (eds), *ibid.*, 165.
- 14 See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports (1996), at 226.

- 15 L. Vierucci, 'Introduzione', in Angelucci and Vierucci (eds), *supra* note 3, 209; A. Gioia, 'Terroristi o combattenti: un'alternativa credibile alla luce del diritto internazionale', in Angelucci and Vierucci (eds), *ibid.*, 211.
- 16 See Judgment, *The Public Committee against Torture in Israel, Palestinian Society for the Protection of Human Rights and the Environment v. The Government of Israel*, HCJ 769/02, 3 December 2006.
- 17 G. Angelucci, 'Introduzione', in Angelucci and Vierucci (eds), *supra* note 3, 243; N. Ronzitti, 'Il diritto applicabile alle forze armate italiane all'estero: problemi e prospettive', in Angelucci and Vierucci (eds), *supra* note 3, 245; G. Angelucci, 'ROE: natura e aspetti giuridici connessi', in Angelucci and Vierucci (eds), *ibid.*, 253.

conduct of aerial hostilities, such as war crimes or crimes against humanity.¹⁸

This book provides a comprehensive discussion of various issues related to international humanitarian law and aerial warfare. In particular, the editors, through analysis of wide-ranging decisions have mapped the evolution in the regulation of the conduct of aerial hostilities. In conclusion, this book represents a vital instrument for (Italian-speaking) scholars, experts and military personnel in

understanding developments related to the use of airplanes, drones and missiles in the context of armed conflicts and the rules governing the conduct of the hostilities.

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18 Angelucci, 'Introduzione', *supra* note 17, at 279; P. Gaeta, 'Crimini internazionali', in Angelucci and Vierucci (eds), *supra* note 3, 283; H. Post, 'War Crimes in Air Warfare', in Angelucci and Vierucci (eds), *ibid.*, 297; A. Cassese, 'Is the Bell Tolling for Universality? A Plea for a Sensible Notion of Universal Jurisdiction', in Angelucci and Vierucci (eds), *ibid.*, 305. This piece was originally published in the *Journal*. See A. Cassese, 'Is the Bell Tolling for Universality? A Plea for a Sensible Notion of Universal Jurisdiction', 1 *Journal of International Criminal Justice* (2003) 589. For example, Art. 57(2)(b) Additional Protocol I, states that 'an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'.