Part A
The Decline of the Concept of Collective Responsibility Under International Humanitarian Law
Introduction: The Legal Regulation of Wartime Conduct

War has been an unfortunate reality for almost as long as humankind has existed. And as long as there has been conflict, there has been suffering, brutality, and destruction. The past century has regrettably not seen any abatement in the incidence of war, with the twentieth century having become known as the “bloodiest century in human history.” Those 100 years have seen the deaths of millions of both combatants and civilians in two world wars and countless civil wars, the destruction of cities, towns, and villages, the development and use of weapons of mass destruction, and the expansion of a highly profitable arms industry with a vested interest in continued conflict. It is a century, however, which has also witnessed a profound and unprecedented effort, through the establishment of the United Nations, aimed at preventing resort to war and maintaining peaceful relations between States. One of the founding principles of the organization, as stated in its Charter of 1945, is “to save succeeding generations from the scourge of war.”\(^1\) Along with attempts to prevent conflict itself, an extensive system of laws governing the actual conduct of warfare has also been developed. International humanitarian law is the term that is most commonly used to refer to the body of legal rules that seeks to minimize the suffering of victims of armed conflict and to mitigate the excesses of war.

In 1949, in the aftermath of the Second World War, representatives of the majority of States gathered in Geneva for a Diplomatic Conference that saw the adoption of the four Geneva Conventions, the veritable bedrock of international humanitarian law. These historic treaties aim to protect those persons who are most vulnerable during time of conflict: wounded, sick, and shipwrecked soldiers, prisoners of war, and civilians. Each of the 1949 Geneva Conventions defines its scope of application in terms of the categories of persons and type of conflict to which it applies, and sets down detailed rules as to how such persons are to be treated during wartime. The Conventions enshrine the special role of the International Committee of the Red Cross and place various obligations upon States parties to ensure the effective implementation and enforcement of the laws contained in the instruments. Although the vast majority of the articles in the 1949 Conventions apply only in time of international armed conflicts, Article 3, common to all four Conventions, sets down a number of basic rules to be observed by all parties to a conflict that is not of an international character. The following chapters elaborate on the substantive rules