Responsibility of States in Cases of Human-rights or Humanitarian-law Violations

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The topic of this paper has been dwelled upon again and again.¹ However, I deem it interesting to review this literature briefly in a book honouring Djamchid Momtaz. Professor Momtaz is known as one of the world’s very best specialists in international humanitarian law and nothing concerning

* With my thanks to Benjamin Samson and Jean-Rémi de Maistre, PhD candidates, Université Paris Nanterre for their assistance in preparing this paper.

international responsibility is unknown to him. In doing so, I have been struck by the frequent ‘human rightist’ approach taken by the authors in question; they seem to consider that special treatment has been, or should be, reserved for human-rights violations. This is not so and this approach evinces ignorance of the developments in the law of State responsibility in cases of breach of obligations arising from peremptory norms of international law. It therefore seems of interest to focus on these developments and to show that, although perfectible, the new rules of State responsibility are indeed applicable to responsibility of States in cases of serious violations of human rights or humanitarian law.

The global background to the question of the responsibility of States in cases of serious breaches of obligations arising from peremptory norms—including human-rights or humanitarian-law violations and of obligations to prevent and to punish, consists of two layers:

– the law of international responsibility of States with the development of a special regime for aggravated violations;

– the development of international criminal law (and international criminal justice), which raises the issue of the combination of State responsibility with that of individual perpetrators.
