

The Grey Zones of Reparations for War Victims Under International Law

Las Zonas Grises de las Reparaciones para las Víctimas de la Guerra según el Derecho Internacional

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Cómo citar este artículo: López Martínez, M. (2023). The Grey Zones of Reparations for War Victims Under International Law. *Verba Iuris*, (49), pp. 41-63.

Abstract

There is growing consensus and practice around making reparations for war victims. On this matter, it arises an international standard of reparations (ISoR) as a list of measures to follow, either as part of legal obligations or best practices. Although the standard embodies a redundant message delivered in international law instruments and customs, it is both a call for warring parties to fulfill their obligations towards victims as well as an invitation to undertake some actions that still do not reach the level of general binding rules. As the ISoR may raise expectations that cannot be met in all contexts, it is important to know what can and cannot be expected. The answer to this question comes, in part, from knowing what is mandatory out of what is portrayed as an aspiration. By studying legal developments on the international law applicable to armed conflicts and the Inter-American Court of Human Rights' case law, this paper identifies a core of mandatory measures: restitution, compensation, rehabilitation, and satisfaction, as well as investigation of violations. Then, it considers two grey zones. Firstly, those actions expressed in aspirational terms: investigation and prosecution of violations against women from an intersectional approach, control over firearms trade to prevent gender-oriented crimes, and the prohibition of amnesties and statutory limitations to criminal justice; secondly, mechanisms enlisted as reparations but serving purposes other than redress, namely assistance to internally displaced people, truth-telling, non-repetition, and criminal prosecution.

Keywords:

Reparations for War Victims, International Standard of Reparation.

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Fecha de recepción: 05 de octubre de 2022 ° Fecha de aceptación: 02 de noviembre de 2022

<https://doi.org/10.18041/0121-3474/verbaiuris.49.10483>

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Resumen

Cada vez hay más consenso y acción en torno a la reparación de las víctimas de conflictos armados. En esta materia, surge un Estándar Internacional de Reparaciones (EIR) como una lista de medidas a seguir, ya sea como parte de las obligaciones legales o de mejores prácticas. Aunque la norma encarna un mensaje redundante emitido en tratados internacionales y el derecho consuetudinario internacional, es tanto un llamado a las partes en conflicto para que cumplan con sus obligaciones hacia las víctimas como una invitación a emprender algunas acciones que aún no alcanzan el nivel de normas generales vinculantes. Dado que el EIR puede suscitar expectativas que no pueden cumplirse en todos los contextos, es importante saber qué se puede esperar y qué no. La respuesta a esta pregunta proviene, en parte, de saber qué es obligatorio de lo que se presenta como estándar. Mediante el estudio de instrumentos de derecho internacional aplicable a los conflictos armados y de la jurisprudencia de la Corte Interamericana de Derechos Humanos, este trabajo identifica un núcleo de medidas obligatorias: la restitución, la indemnización, la rehabilitación y la satisfacción, así como la investigación de las violaciones. A continuación, considera dos zonas grises, en primer lugar, aquellas acciones expresadas en términos aspiracionales: la investigación y el enjuiciamiento de las violaciones contra las mujeres desde un enfoque interseccional, el control del comercio de armas de fuego para prevenir los crímenes de género, y la prohibición de amnistías y limitaciones estatutarias a la justicia penal; en segundo lugar, algunos mecanismos considerados como formas de reparación pero que sirven para fines distintos a reparar el daño, a saber, la asistencia a los desplazados internos, el esclarecimiento de la verdad, la no repetición y el enjuiciamiento penal.

Palabras Clave

Reparación a las víctimas de conflictos armados, Estándar Internacional de Reparación.

Introduction

Considering war victims, there is growing consensus and practice around making reparations for them. A redundant message can be traced in international law instruments and customs, thus grouping developments in an international standard of reparations (ISoR). On humanitarian law grounds, the Protocol I Additional to the Four Geneva Conventions (AP-I) as well as the rules on customary law establishes the obligation to make reparation for violations to humanitarian rules and prohibitions, committed during both international and non-international armed conflicts (Diplomatic Conference on the Reaffirmation and Development of International

Humanitarian Law applicable in Armed Conflicts, 1977, p. Article 90; Henckaerts & Doswald-Beck, 2005, p. Rule 150) although certain provisions have been embodied obligations for fighters and protection for persons who do not or no longer take part in hostilities, this legal framework does not offer the same detailed protection envisaged for parties in IACs. (See numbers 2.1. and 2.2. of this argument in the text page xxxv. From human rights law, the right to remedy for violations is deemed to include not only procedural mechanism to claim protection, but also substantive and effective remedies. Global and regional treaties envisage similar rules on the States' obligation to make reparation, with the Inter-American Court of Human Rights

holding States responsible when they failed the general duty to respect and protect human rights in cases of conflict-related violations (Human Rights Committee, 2004b; I/A Court H.R., 2000, 2005, 2006, 2009, 2013b, 2016, 2017; I/A Court H.R., 2012; Organization of American States, n.d.; United Nations, n.d.-b, 1966, 1987, 2006). Drawing upon these legal developments and case law, the United Nations and legal scholars clustered reparation into a set of measures ranging from restitution, compensation, rehabilitation, satisfaction, and non-repetition, to judicial and administrative mechanisms to claim remedies, as well as to investigate, prosecute, and punish atrocities (Commission on Human Rights, 2005a, p. Principle 31; International Law Association, 2010; United Nations, 2005, 2010, paras A2, B3) but only to enlist those that have been deemed from the recent developments in international law, such as the draft articles on international responsibility of state. (See ILA Declaration on Substantive Issues of Reparations. comment 3 to article 1.

Despite growing consensus and redundancy, the message still have unclear points and limitations (Tomuschat, 1999, pp. 7–11). Firstly, it is not clear whether reparation is a general right vested to all individuals for any injure caused during armed conflict. Under International Humanitarian Law (IHL), for instance, reparation is envisaged as an obligation binding any party to an armed conflict who breaches principles and rules on the protection of persons out of hostilities, but it is neither framed as a victims' right², nor applies to cases of harm caused in the course of lawful military operations, the so called collateral

damage (Capone, 2003, p. 36; International Law Association, 2010, para. Article 4 (Commentary 3)) but only to enlist those that have been deemed from the recent developments in international law, such as the draft articles on international responsibility of state. (See ILA Declaration on Substantive Issues of Reparations. comment 3 to article 1. Therefore, not all injured persons are enabled by international law to directly request reparation from wrongdoers. Following human rights instruments, reparation is deemed to be a right that individuals can claim to their States (Bassiouni, 2006; Commission on Human Rights, 2005a, p. Principle 31; Evans, 2012; Falk, 2006; Frank Haldemann, 2018, pp. 335, 337). However, as it stems from the abridgement of other rights and is set forth by specific treaties, it does not necessarily follow from any act because not all the violations involve the corresponding obligation to redress the harm (Frank Haldemann, 2018, p. 338; Tomuschat, 2014, pp. 403, 406). For instance, while murder or disappearance of persons not taking part in hostilities would give rise to the victim's right to a remedy according to the International Covenant on Civil and Political Rights (ICCPR- Article 2) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED- Article 24), the same cannot be said when an act such as forced displacement breaches social rights (access to housing, jobs, healthcare, and education, among others). In such a case, there is no binding legal instrument setting out the obligation or the right to reparation.

Although the obligation to make reparation for breaches of humanitarian law is of customary character (Henckaerts & Doswald-Beck, 2005, p. Rule 150) although certain provisions have been embodied obligations for fighters and protection for persons who do not or no longer take part in hostilities, this legal framework does not offer the same detailed protection envisaged for parties in IACs. (See numbers 2.1. and 2.2.

² The term right is only used to refer to the victims' entitlement to know about the fate of missing persons (Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, n.d., p. Article 32; International Committee of the Red Cross (ICRC), 1987b, paras 1211–1216).

of this argument in the text page xxxv, a general duty concerning violations of human rights is still disputed. In the field of international human rights law, some scholars adhere to the idea that individuals are entitled to reparation for any violation. They hold that human rights have customary character, so these entitlements ought to be universally recognized even in the absence of adherence or ratification of treaty law. After the Second World War, international law rules not only interstate relations, but also individual matters. So, human beings are considered subject to state's sovereignty but bear rights regardless their nationality and can claim protection even against States (Bassiouni, 2006, p. 209; Falk, 2006; Pisillo-Mazzeschi, 2003). Reparation should also be deemed customary and a general binding rule irrespective of treaty adherence, as it is part of the right to remedy, which is in turn the consequence of human rights violations (Evans, 2012, pp. 42, 43). Thus, it would make little sense that only some violations, but not all, have legal consequences; the problem then would not be to identify which acts lead to reparations, but what sort of remedy might better contribute to wiping out every offense (Higgins, 1995, p. 96). Moreover, the States' *opinio iuris* (the conclusion of treaties and voting records) reveals the intention to acknowledge remedies for victims in cases of human rights violations, irrespective of whether or not it is explicitly mentioned (Bassiouni, 2006; Evans, 2012, pp. 40, 41).

However, while the logic link of acts breaching human rights with reparation does not necessarily entail a juridical connection between the two, not all human rights fall into the category of international customary law because some entitlements do not follow the "general practice accepted as law" (United Nations, n.d.-d, p. Article 38). For one side, in some regional human rights systems, particularly within the European, decisions recognizing breaches do not always involve the provision of compensation (Tomuschat, 2002). For the other side, what

can be seen in the development of international human rights law is that the emergence of such norms was due to the post-World War II spontaneous concern for human being protection rather than to consolidated practice of States (Frank Haldemann, 2018, p. 339; Simma, Bruno; Alston, n.d., pp. 82, 107).³ In addition, reparation qualifies as international custom but as the consequence of state responsibility for internationally wrongful acts, instead of resulting from a general, individual entitlement to claim remedies for human rights violations. Thus the International Law Commission considered that reparation is a general obligation flowing from an abridgement of an international obligations, which is not dependent upon the injured party's request or demand (International Law Commission, 2001, p. Article 31(4)).⁴ Indeed, the existing international mechanisms to reinforce the duty of reparation stem from the States' action and commitment to adopt treaty law or implement judgments from international tribunals (Pisillo-Mazzeschi, 2003).

Secondly, the idea of full reparation is not feasible in the settings of mass atrocities because not all the remedies can be provided to all the victims due to, among others, lacking resources and political disagreements (Tomuschat, 1999, pp. 60, 61, 2014, p. 416).⁵ The international standard

³ Bassiouni (2006, pp. 218–223) provides important data about the generalized practice of embodying remedies within domestic law and claims for the customary nature of the right to remedy. However, the information he presents also shows how this is mainly a post-war phenomenon.

⁴ Even within this traditional statist scheme, reparations has not been the most frequent consequence of internationally wrongful acts. In fact, states have preferred to apply other different more punitive measures (International Law Commission, 2001, p. Commentary (3)(4) to Article 33, Commentary (4) to Article 34; Pisillo-Mazzeschi, 1999; Tomuschat, 2002, pp. 173, 174).

⁵ However, the idea of imposing restrictions to reparations on account of their impossible application to massive atrocities would be tantamount to say that 'the more

points out that adequate, effective, and prompt reparation must be made as the response to violations to human rights and humanitarian law (United Nations, 2005, para. 11). However, that duty cannot be fulfilled in the abstract, following general formulae, but it demands to consider each context conditions and the particular needs of the victims (Grosman, 2018, p. 369; Office of the United Nations. High Commissioner of Human Rights, 2008, pp. 27–32; Robouts & Vandeginste, 2003; United Nations, 2005, para. 18). In seeking to provide appropriate

widespread and massive the violation, the less right to reparation for the victims' (Droege, 2007, p. 354) one dealing with the protection of persons from abusive power, the other with the conduct of parties to an armed conflict. Yet, developments in international and national jurisprudence and practice have led to the recognition that these two bodies of law not only share a common humanist ideal of dignity and integrity but overlap substantially in practice. The most frequent examples are situations of occupation or non-international armed conflicts where human rights law complements the protection provided by humanitarian law. This article provides an overview of the historical developments that led to the increasing overlap between human rights law and humanitarian law. It then seeks to analyse the ways in which the interplay between human rights law and humanitarian law can work in practice. It argues that two main concepts inform their interaction: The first is complementarity between their norms in the sense that in most cases, especially for the protection of persons in the power of a party to the conflict, they mutually reinforce each other. The second is the principle of *lex specialis* in the cases of conflict between the norms.", "author": [{"dropping-particle": "", "family": "Droege", "given": "Cordula", "non-dropping-particle": "", "parse-names": false, "suffix": ""}], "container-title": "Israel Law Review", "id": "ITEM-1", "issue": "2", "issued": {"date-parts": [{"2007"}]}, "page": "310-55", "title": "The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict", "type": "article-journal", "volume": "40"}, "locator": "354", "uris": [{"http://www.mendeley.com/documents/?uuid=3e904add-9c28-442d-bd74-1443d89bb97e"}]}, "mendeley": {"formattedCitation": "(Droege, 2007, p. 354, which in turn may give offenders good incentives to inflict damages, as they would find the lower cost of pursuing their objectives.

reparation when not all the means are available, that obligation ought to be limited to undertake all the available resources and efforts to redress, with due diligence, but not to ensure the result of making whole all the victims with all the remedies. Thus, certain remedies may result more important than others (Commission on Human Rights, 2005a, p. Article 34(6); d'Argent & de Ghellinck, 2018, p. 359). Therefore, the list is open and built upon State practice, which is not continuing nor uniform but part of specific arrangements in transitional contexts (Ferstman, 2018). This more flexible approach may offer to victims less than what is expected from the legal understanding of reparation, and requires broadening the intended goals of remedies, thus moving from attaining the victims' restoration of the prior status-quo to advancing less immediate results such as recognition and reconciliation (Grosman, 2018, pp. 372, 378; Office of the United Nations. High Commissioner of Human Rights, 2008, pp. 27–32).⁶

The international standard is a complex message raising expectations among war victims. While some of its parts are mandatory, others fall within the international community's aspirations or serve as guideline without reaching the level of a general binding rule. Thus, standards bear no binding force as an international rule, but it is difficult to claim that a State can fulfill its obligations without following such "best practices" (d'Argent & de Ghellinck, 2018, p. 359). This paradox would not be problematic if one had to apply the standard to similar contexts. But context-driven solutions are needed in a world in which victims receive the same message, thus creating similar expectations. Therefore, in order to set realistic expectations about *how* to

⁶ Considering measures of non-repetition, economic restrictions are not an excuse for inaction as there is always something that can, and must, be done, no matter the cost or the complexity of the task ahead (Human Rights Council, 2015, para. 37).

implement reparations at the domestic level, it is first necessary to know *what* is mandatory out of what is portrayed as the international standard.⁷ The answer to the second question offers “room” for interpretation, and this paper walks into it by shedding some lights on ambiguous corners.

To contribute to answering this question is the purpose of this paper, which develops two sections: the first one presents findings about the reparative measures regarded as the ISoR, whereas the second delves into what can be considered its “grey zone” and the implications upon right-holders and duty-bearers. The survey is premised on the study of every component of the standard, considering whether there exist rights or obligations under Humanitarian Law (IHL) and Human Rights Law (IHRL). In doing so, the study takes account of customary and treaty law, as well as case law from treaty bodies and the Inter-American Court of Human Rights -IACtHR.

The Core of Reparations⁸

The ISoR comprises measures aiming to relief the suffered harm and enable victims to claim the protection of their rights before state

authorities or other competent bodies.⁹ The group of remedies considered to be part of reparation includes restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition, as well as investigation, prosecution, punishment of evildoers, and procedural mechanisms to claim redress.

Restitution

The purpose of restitution is to re-establish the victims’ rights, thus allowing them to return to the conditions existing before violations (International Law Commission, 2001, p. Commentary (2) to Article 35). Material and legal restoration is mandatory as much it be possible,¹⁰ and the obligation extends to the extent it be proportional to the victims’ conditions and the suffered harm (International Law Commission, 2001, para. Commentary (5)(7) to Article 30, Commentary (7)(11) to Article 35). Restitution is deemed to be the first obligation States must fulfill when committing international wrongful acts, and it is part of customary IHL law applicable to both international and non-international armed conflicts (Henckaerts & Doswald-Beck, 2005,

⁷ The problem of unrealistic expectations is that they can undermine trust in law. That is why it is preferable to create modest domestic reparation programmes and try hard to implement its remedies, despite their limited scope, than to design too ambitious policies likely to leave empty-handed victims or many of them waiting (Sánchez León & Sandoval-Villalba, 2020, p. 566).

⁸ This section is based on doctoral research for the project Limiting Reparations for Massive and Gross Violations under International Law. *A case study on the Legal Framework for Reparations in Colombia*, supervised by Professor Göran Sluiter and Professor Liesbeth Zegveld in School of Law of the University of Amsterdam. The author draws upon findings reported in the draft chapter *The Right to Reparation to War Victims under the International Law Applicable to the Colombian Armed Conflicts, which is part of his doctoral thesis.*

⁹ Some scholars distinguish between procedural and substantive remedies, the first group clustering the judicial and administrative mechanisms intended to give victims institutional avenues to claim substantive remedies (Office of the United Nations. High Commissioner of Human Rights, 2008, p. 6; Security Council, 2004, paras 16–19; Shelton, 2015).

¹⁰ According to the ILC, restitution is mandatory to the extent it is possible. However, the existence of legal and practical obstacles to its implementation does not relieve from the obligation to restitution. So, obstacles do not mean impossibility (International Law Association, 2010, p. Commentary (2) to Article 7; International Law Commission, 2001, p. Commentary (1)(5)(7)(8) to Article 35; United Nations, 2005, para. 19) but only to enlist those that have been deemed from the recent developments in international law, such as the draft articles on international responsibility of state. (See ILA Declaration on Substantive Issues of Reparations. comment 3 to article 1.

p. Rule 150; International Law Commission, 2001, p. Commentary (1)(5)(7)(8) to Article 35 in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10. In the field of IHRL, this measure is deemed to be a substantive remedy to protect civil and political rights and springs as one of the mechanisms to tackle torture/ill-treatment (Committee against Torture, 2012, para. 8; Human Rights Committee, 2004b; Nations, 1966, p. Article 2). Return and restitution of properties for internally displaced persons are considered the legal consequence of violations of their freedoms of movement and choosing residence, as well as of other rights such as property, privacy, and housing (Henckaerts & Doswald-Beck, 2005, p. Rule 133; Kälin, 2008, pp. 127, 128, 131, 132, 134, 135; Nations, 1966, p. Article 17; Organization of American States, n.d., p. Article 17, Article 21, Article 26; U. Nations, 1966, p. Article 11(1); United Nations, n.d.-b, p. Article 5(e)(iii), n.d.-a, p. Article 27; United Nations General Assembly, 1979, p. Article 14(2)(h); United Nations Secretary-General's Representative on internally displaced persons, 1998, p. Principle 28, Principle 29(2); United Nations Security Council, 2016, para. 73)"given": "", "non-dropping-particle": "", "parse-names": false, "suffix": ""}], "id": "ITEM-1", "issued": {"date-parts": [{"1998", "2", "11"}]}, "publisher-place": "Geneva", "title": "Guiding Principles on Internal Displacement. E/ CN.4/1998/53/Add.2", "type": "report"}, "locator": "Principle 28, Principle 29(2. States must ensure family reunion and voluntary, safe, and decent return to habitual place or resettlement in other one (Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, 1977, p. Article 4(3)(b); Henckaerts & Doswald-Beck, 2005, p. Rule 131 (464), Rule 132; I/A Court H.R., 2013b, para. 220, 2016, paras 224, 239–241, 248; Kälin, 2008, pp. 127, 128, 131, 132; United Nations Secretary-General's

Representative on internally displaced persons, 1998, p. Principle 15(d), Principle 17(3), Principle 28) although certain provisions have been embodied obligations for fighters and protection for persons who do not or no longer take part in hostilities, this legal framework does not offer the same detailed protection envisaged for parties in IACs. (See numbers 2.1. and 2.2. of this argument in the text page xxxv. At the Inter-American level, restitution is considered mandatory in cases of violence against women and forced displacement (Human Rights Committee, 2010, para. 23; I/A Court H.R., 2013b, paras 220, 459, 460, 2016, paras 224, 239–241; Inter-American Commission on Human Rights, 2018a, paras 146, 148; Organization of American States, 1994b, para. Article 7(g), Article 9).

Compensation

Being restitution impossible or not enough, damages can be redressed through compensation, a remedy involving payments for losses subject to financial appraisal, such as past and future loss of earnings, and costs derived from injury, such as medical attention, rehabilitation, and legal assistance (International Committee of the Red Cross (ICRC), 1987a, para. 3655; International Law Association, 2010, para. Commentary (2) to Article 8; International Law Commission, 2001, p. Commentary (1)(3)(5)(21) to Article 36; United Nations, 2005, para. 20) in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10. It is included the interest from the date when compensation should have been paid until the effective reparation (International Law Association, 2010, p. Commentary (4) to Article 8; International Law Commission, 2001, p. Commentary (1)(5) to Article 38) but only to enlist those that have been deemed from the recent developments in international law, such as the draft articles on international responsibility of state. (See ILA Declaration on Substantive Issues of Reparations.

comment 3 to article 1. Money can also serve to award moral damage, but this is more with the purpose of easing those harms that hardly fall into monetary terms (Carrillo, 2006, p. 524; I/A Court H.R., 2001b, para. 524; International Law Commission, 2001, p. Commentary (1)(4) (16)(19) to Article 36). This remedy is set out mandatory in IHL treaty and customary law (Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, n.d., p. Article 90; Henckaerts & Doswald-Beck, 2005, p. Rule 150) although certain provisions have been embodied obligations for fighters and protection for persons who do not or no longer take part in hostilities, this legal framework does not offer the same detailed protection envisaged for parties in IACs. (See numbers 2.1. and 2.2. of this argument in the text page xxxv, as well as in IHRL treaty law for acts breaching the prohibition of enforced disappearance and torture or ill-treatment (Organization of American States, 1985, p. Article 9; United Nations, 1987, p. Article 14, 2006, p. Article 24). In the settings of torture, indemnification alone does not suffice to make reparation as other remedies must be ensured and awarded (Committee against Torture, 2012, paras 9, 10). From the Inter-American Court's case law, compensation must be proportional to the suffered harm, so it ought not over-burden those responsible for payments. (I/A Court H.R., 1989, 1998; International Committee of the Red Cross (ICRC), 1987a; International Law Association, 2010; International Law Commission, 2001) in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10. This tribunal has also ruled indemnification for drop in income victims would have received, had not the violation occurred. It also awarded consequential damages, payments made to cover funeral, medical care, and legal costs and expenses (Carrillo, 2006, p. 518; I/A Court H.R., 2013b, para. 479).

Rehabilitation

Rehabilitation is a form of non-monetary reparation intended to re-establish those skills lost with the harm and involves medical-psychological care, legal and social assistance, as well as education and labour training. (Committee against Torture, 2012, para. 11; United Nations, 2005, para. 21) On IHL grounds, victims of mines must be assisted for their care, rehabilitation, and social inclusion according to their age and gender (Meeting of States Parties to the 1980 CCW Convention, 2003, p. Article 8(2); United Nations, 1997, p. Article 6(3), 2008, p. Article 5). Considering IHRL treaty law, the State is bound to provide all the necessary remedies to ensure full recovery from torture/ill-treatment, by using available resources and respecting the victims' background and privacy, also by allowing them to freely choose suppliers (Committee against Torture, 2012, paras 12–15; United Nations, 1987, p. Article 14). Similarly, child soldiers must be demobilized or released and ensured 'physical and psychological recovery and social reintegration' in healthy and decent conditions (United Nations, n.d.-a, p. Article 39). Children's needs and views must be considered, especially those affected by sexual violence, and trained staff ought to be leading the implementation of remedies (Committee on the Rights of the Child, 2007, para. 37, 2015; Inter-American Commission on Human Rights, 2018b, para. 190; UNICEF, 2007; United Nations, n.d.-a, p. Article 39, n.d.-c, p. Article 6(3)). Regarding victims of enforced disappearance, their rights and legal status must be protected while absent (United Nations, 2006, p. Article 24(6)). Finally, as forms of rehabilitation, the Inter-American Court ruled medical treatment and medication, following the victims' consent and family circumstances. These remedies were deemed adequate to alleviate damages to existence conditions, values, work relations, and family bonds. (I/A Court H.R., 2005)

Satisfaction

Satisfaction epitomizes symbolic reparation by aiming to stop abuses, disclose facts, and restore dignity and memory of victims (International Law Association, 2010, p. Article 9 (Commentary-2); International Law Commission, 2001, p. Article 37 (Commentary-2,4); United Nations, 2005, para. 22) but only to enlist those that have been deemed from the recent developments in international law, such as the draft articles on international responsibility of state. (See ILA Declaration on Substantive Issues of Reparations. comment 3 to article 1. The first goal can be accomplished through effective investigation, as well as criminal prosecution and sanctions (Henckaerts & Doswald-Beck, 2005, p. Rule 150 (540, 544)) although certain provisions have been embodied obligations for fighters and protection for persons who do not or no longer take part in hostilities, this legal framework does not offer the same detailed protection envisaged for parties in IACs. (See numbers 2.1. and 2.2. of this argument in the text page xxxv.¹¹ The second involves searching for and releasing missing persons, identifying mortal victims' bodies, recovering their remains, and burying them according to relatives' interests and traditions. (Commission on Human Rights, 2005b, p. Principle 34; Committee against Torture, 2010; Committee on Enforced Disappearances, 2016; Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, n.d., p. Article 32, 1977, p. Article 4(3)(b), Article 8; Grosman, 2018, p. 373; Henckaerts & Doswald-Beck, 2005, p. Rule 117 (423-427);

¹¹ In the field of State's responsibility for internationally wrongful acts, the cessation of violations entails a consequence of breaches of international law different from reparation (International Law Commission, 2001, p. Article 30 (Commentary-1,4,7)).

ICRC, 1987; International Committee of the Red Cross (ICRC), 1987a, para. Article 4(3) (b), Article 8, 1987b; United Nations, 2006, p. Article 18(1), Article 24(2)(3))"accessed":{"date-parts":["2020", "2", "20"]}, "author":{"dropping-particle":",", "family":"ICRC", "given":"","non-dropping-particle":"","parse-names":false, "suffix":""}, "container-title":"Treaties, States Parties and Commentaries", "id":"ITEM-4", "issued":{"date-parts":["1987"]}, "title":"Commentary of 1987 on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).¹² These latter are entitled to associate and participate in the search and location, as well as to be legally assisted in their attempts to protect the disappeared persons' legal status (Human Rights Committee, 2018, para. 58; United Nations, 2006, p. Article 24(6)(7)). The third purpose may be effected through memorials, public apologies, and the acceptance of responsibility for crimes. (CITE (International Law Association, 2010, p. Article 9 (Commentary-2)) but only to enlist those that have been deemed from the recent developments in international law, such as the draft articles on international responsibility of state. (See ILA Declaration on Substantive Issues of Reparations. comment 3 to article 1).

¹² There is growing practice of extending the scope of the right to know the truth to human rights violations other than enforced disappearance, and the Inter-American Court considered truth as a right stemming from the protection of other liberties enshrined in the American Convention, such as the rights to a fair trial, receive information, and judicial protection (Groome, 2018, pp. 61, 66; I/A Court H.R., 2014b, paras 508-511, 2017, para. 220). Besides search and release, persons shall be informed about the causes leading to atrocities, the progress and result of investigations, and the perpetrators' identity. Accordingly, the State has to establish institutions enabling facts disclosure (Commission on Human Rights, 2005b, p. Principle 2, 2006, paras 8, 29, 33, 38, 55; Human Rights Council, 2013, paras 20, 90).

Evildoers should not be humiliated but they must not avoid such acts (International Law Association, 2010, p. Article 9 (Commentary-3); International Law Commission, 2001, p. Article 37(3) (Commentary-8)) but only to enlist those that have been deemed from the recent developments in international law, such as the draft articles on international responsibility of state. (See ILA Declaration on Substantive Issues of Reparations. comment 3 to article 1. For satisfaction's sake, educational reforms spreading knowledge about violations and international law may be in order (Committee against Torture, 2012, paras 16, 17; United Nations, 2005, para. 22).

The Inter-American Court has ruled some of them in cases of war-related mass atrocities (Burgorgue-Larsen, Úbeda de Torres, & Greenstein, 2011, para. 10.28.)). The tribunal considered its judgments fulfil satisfaction provided that they were published by considering the involved victims' cultural background. The reason is that rulings advance fact disclosure (I/A Court H.R., 2004b, paras 81, 102, 2013b, paras 441, 450; International Law Commission, 2001, para. Article 37 (Commentary-6)). In the same vein, the Court has ordered the State to publicly apologize and honour victims' memory by erecting monuments and designating public places after them (I/A Court H.R., 2004b, para. 100, 101, 2005, para. 315, 2006, para. 408, 2011, para. 208). Under the label of satisfaction, the Court also ordered the location of corpses and their deserving disposal by following the victims' customs and beliefs (I/A Court H.R., 2000, para. 121, 2002, paras 79–83). States have been burdened with the obligation to produce and broadcast documentaries disclosing the truth of atrocities (I/A Court H.R., 2014b, para. 579).

Measures of Non-Repetition

Non-repetition comprises measures intended to counter impunity, amend laws, and make comprehensive institutional changes for the

sake of knowledge and respect of international law (Commission on Human Rights, 2005b; Grosman, 2018; Mayer-Rieckh & Duthie, 2018b). Other purposes during transitions involves controlling the military, as well as dismantling and demobilizing parastatal groups (Commission on Human Rights, 2005b, p. Principle 35, Principle 37; Duthie & Mayer-Rieckh, 2018, pp. 402, 404). Pursuing to these goals, the States have to commit to review legislation, strengthen independent judicature, sanction evildoers by respecting their rights (Commission on Human Rights, 2005b, p. Principle 36(a); Mayer-Rieckh & Duthie, 2018b, pp. 394, 395), oversee the security forces and criminal proceedings, as well as to protect human rights defenders, train public servants, and implement conduct codes (Commission on Human Rights, 2005a, p. Principle 35, Principle 36, Principle 38; Committee against Torture, 2012, para. 18; Human Rights Committee, 2004b, para. 17; Organization of American States, 1994b, p. Article 7; United Nations, 2005, para. 23). These tasks can be undertaken along with individual reparations but the implementation will depend on the type of violations addressed and the available resources and capabilities (Committee against Torture, 2012, para. 32; International Law Commission, 2001, p. Article 30(b) (Commentary-13); Mayer-Rieckh & Duthie, 2018a, pp. 384–388; United Nations, 2005, para. 23).¹³

On IHL grounds, non-recurrence involves specific obligations regarding the use of anti-personnel mines, namely deactivation/ destruction of explosives, register of artifacts,

¹³ Some of these measures overlap with satisfaction, e.g. those fostering truth disclosure and responsibility acknowledgment (International Law Association, 2010, p. Article 10 (Commentary-1); International Law Commission, 2001, p. Article 37 (Commentary-5)) in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10).

and prevention of new incidents (Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, 1996, p. Article 14(1)(2); United Nations, 1997, p. Article 9); hence parties to conflict have to take preventative action in the wake of hostilities, such as minefields clearance, fencing and marking risk areas, recording and sharing data about installed mines with periodic monitoring and training (Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, 1996, p. Article 3(2)(10)(11), Article 5(2)(a), Article 9, Article 10(1), Article 14(1)(3)). Besides, the Ottawa Treaty sets out the States' duty to destroy mines under their control (United Nations, 1997, p. Article 1(2), Article 4, Article 5(1)(2), Article 7(1-c)).

Following IHRL treaty law, non-repetition is a form of reparation in cases of murder, enforced disappearance, torture, and ill-treatment. It is enshrined as reparation in the ICCPR, the ICPPED and the CAT (Committee against Torture, 2012, paras 2, 18; Human Rights Committee, 2004b, para. 15; United Nations, 2005, para. 23, 2006, p. Article 24(5)). The Inter-American Court ruled the States to prevent new violations by implementing legal protection of rights, training on international law, housing, health care, education and infrastructure (Burgogue-Larsen et al., 2011, para. 10.29; I/A Court H.R., 2000, para. 85, 2004b, paras 104–110, 2005, para. 316,317, 2006, 2009, paras 251–252, 2014a, para. 244). Similarly, the United Nations General Assembly adopted the Principles considering it a form of reparation (United Nations, 2005, para. 23).

Investigation, Prosecution, and Punishment of Evildoers

The ISoR also includes the obligation to conduct thorough, prompt, and impartial investigation of facts when there is ground to suspect the occurrence of violations. This duty is considered

to correspond to the right to an effective remedy against breaches of civil and political liberties and follows from torture/ill-treatment and enforced disappearance (Human Rights Committee, 2004b, para. 15; I/A Court H.R., 2018, paras 183–188; Nations, 1966, p. Article 2; Organization of American States, 1985, p. Article 6, Article 8; United Nations, 1987, p. Article 12, 2006, p. Article 12(1)(2)). At the regional level, it stems from the States' general duty to respect and ensure rights (I/A Court H.R., 2005, paras 233–237; Organization of American States, n.d., p. Article 1). A number of measures must be undertaken by the State to investigate murder and enforced disappearance. In the first case, it is mandatory to enquire into the circumstances and reasons for killings, make autopsies with the relatives' consent and participation, as well as ensure the latter's security and opportunity to provide evidence (Human Rights Committee, 2018, paras 27, 28, 64). In the second, fact-finding and disclosure must take place even without formal complaints with witnesses, relatives, and counsellors being duly informed and protected. These two obligations bind States until the missing persons' whereabouts are clarified (Committee on Enforced Disappearances, 2016, para. 20; Human Rights Committee, 2018, para. 58; United Nations, 2006).

Perpetrators must be prosecuted and punished. It is envisaged as an obligation in cases of use of anti-personnel mines (Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, 1996, p. Article 14(1)(2); United Nations, 1997, p. Article 9), while, considering violations of civil and political liberties, the Human Rights Committee holds that the right to remedy involves wrongdoers undertaking their personal responsibility, so the States ought to avoid amnesties or any other immunities or statutory limitations to criminal justice (Human Rights Committee, 2004b, para. 16). In

similar vein, the Inter-American Commission and the Court laid down that factual or legal impediments to justice must be removed (I/A Court H.R., 2001a, paras 41, 48, 2004b, paras 97–99; Inter-American Commission on Human Rights, 2013, para. Executive Summary 48). These obligations are clearly envisaged for cases of enforced disappearance as prosecution and punishment applies to any perpetrator and co-perpetrator, even when they did not act under officials' authorization, acquiescence, or support (Human Rights Committee, 2004b, paras 16, 18; I/A Court H.R., 2014b, paras 228, 234; Organization of American States, 1994a, p. Article I(b); United Nations, 2006, p. Article 3).

Procedural Remedies

Procedural remedies are also part of the ISoR, so victims and survivors must be enabled to complain and request reparation through judicial, administrative, civil, and disciplinary mechanisms granting effective, prompt, and enforceable response and protection (Commission on Human Rights, 2005b, p. Principle 32; d'Argent & de Ghellinck, 2018, pp. 349, 353; International Law Association. International Committee on Reparation for Victims of Armed Conflict (Shuichi Furuya-Co-rapporteur), 2014, p. Principle 1 (789)). Also, judicial review of decisions on this respect shall be guaranteed (Commission on Human Rights, 2005b, p. Principle 32; d'Argent & de Ghellinck, 2018, p. 352). The States are expected to meet the persons' needs during proceedings, as well as to consider their economic, educational, and cultural background. (Commission on Human Rights, 2005b, p. Principle 33; d'Argent & de Ghellinck, 2018, p. 353; International Law Association. International Committee on Reparation for Victims of Armed Conflict (Shuichi Furuya-Co-rapporteur), 2014, para. Principle 3 (792), Principle 5 (794, 796); Laplante, 2018, pp. 361, 364; United Nations, 2005)). Under the ICCPR,

CAT, and the ICPPED, these recourses imply legal reforms that should not be undertaken on discriminatory or economic basis (Committee against Torture, 2008, para. 3; Human Rights Committee, 2004b, paras 13–15, 20; Nations, 1966, p. Article 2(3); United Nations, n.d.-b, p. Article 6, 1987, p. Article 13, Article 16, 2006, p. Article 8(2)). Regarding torture, the States have to re-frame their legal framework by setting out clear entitlements and procedures, proscribing restrictions based on ability, time, and financial support, while recourses shall be gender, culture, and age-sensitive, with claimants being duly informed (Committee against Torture, 2012, paras 5, 21, 29, 32–36, 39, 40). Similar duties bind States to protect citizens from enforced disappearance (Committee on Enforced Disappearances, 2016, para. 20; Human Rights Committee, 2018, para. 58; United Nations, 2006, p. Article 24(2)(6)). Following the ACHR and the Inter-American Court's case law, violations give rise to a 'simple, prompt, and effective (judicial) recourse', which must be ensured by removing excessive burdens (I/A Court H.R., 2007, para. 198, 2013a, paras 189–190; Organization of American States, n.d., p. Article 8, Article 25).

The Grey Zones of Reparations and its Implications

The comprehensive scope of the standard lends itself to be less clear about the binding and reparative character of some measures. This section delves into two grey zones by considering, firstly, how certain forms of reparations are not mandatory, and secondly, whether assistance to internally displaced people, truth telling, non-repetition, and criminal prosecution entirely fall within the range of reparation.

Aspirational Measures

Although the ISoR embodies the attempt to bring the fullest protection to victims and survivors,

thus including a wider range of measures to relieve the suffered harm, some of these actions are but aspirations or particular arrangements rather than general obligations binding States or evildoers (d'Argent & de Ghellinck, 2018, pp. 355, 356). The call for gender-sensitive approaches to reparation underpins new developments and proposals, some of them already envisaged as clear mandates while others still framed in aspirational terms. Whereas States are bound to protect women from stigmatization during investigation and proceedings and must remove discriminatory rules and practices, they are “encouraged” to adopt an intersectional stance to ensure that women and girls’ vulnerabilities are considered during public hearings (Committee against Torture, 2012, paras 33, 39; Committee on the Elimination of Discrimination & against Women, 2013, para. 81(e)(g); Committee on the Elimination of Discrimination against Women, 2017, para. 23, 24(b), 26(a)(c), 28, 33(a)(b), 38(c); Human Rights Committee, 2004a, para. 14, 2010, para. 18; Organization of American States, 1994b, p. Article 7(b)(f); United Nations Secretary-General, 2012, para. 117(C)). States are also urged to establish more stringent control over firearms trade as a form to prevent violence against women, but it is expressed as a proposal instead of an obligation (Committee on the Elimination of Discrimination against Women, 2017, para. 31(c)). In similar vein, amnesties are seen as mechanisms that can potentially affect human rights in transitional justice settings, so international practice moves towards their prohibition; yet there is no such thing as a general ban of amnesties (Commission on Human Rights, 2006, para. 45; Seibert-Fohr, 2009, p. 286).

Measures with Reparative Effect

Besides the distinction between what is mandatory and hortatory, another grey area appears as to what measures can be considered to *be* reparative or *have* reparative effect. Reparative mechanisms, on one hand, aim to redress the

damage caused by acts breaching international law, being victims/survivors the intended beneficiaries; on the other hand, measures with reparative effect mainly respond to demands other than alleviating harm, such as advancing justice or reconciliation, seeking to bring broader-scope benefits, not only for victims but also for the entire society (Security Council, 2004). Of the remedies enlisted in the ISoR, some of them seem to fall out of the scope of reparation.

Assistance and humanitarian aid to people in forced displacement is stated as an obligation attendant to their right to return in safe and decent conditions (United Nations Secretary-General’s Representative on internally displaced persons, 1998, p. Principle 3(1)), yet the reparative character of these measures is not obvious. Against the backdrop of war, chances are that civilians have to be forcibly moved for the sake of protection or due to military reasons (Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, 1977, p. Article 17(1); Henckaerts & Doswald-Beck, 2005, p. Rule 131; ICRC, 1987, para. 4856; United Nations Secretary-General’s Representative on internally displaced persons, 1998, p. Principle 6(2)(b), Principle 18(2)) although certain provisions have been embodied obligations for fighters and protection for persons who do not or no longer take part in hostilities, this legal framework does not offer the same detailed protection envisaged for parties in IACs. (See numbers 2.1. and 2.2. of this argument in the text page xxxv. In such instances, civilian population must be ensured shelter, food, healthcare, and personal security (Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, 1977, p. Article 17(1); United Nations Secretary-General’s Representative on internally displaced persons, 1998, p. Principle 7(2), Principle 18(2)). However, as displacement is exceptional but not an abridgement of humanitarian law,

assistance should not be regarded as a form of reparation. Being forced displacement unlawful, the obligation to protect civilians' rights through humanitarian aid stands but as independent from reparation (Committee on Economic, 2017, para. 52; I/A Court H.R., 2016, para. 241; Kälin, 2008, pp. 20, 114, 115; United Nations Secretary-General's Representative on internally displaced persons, 1998, p. Principle 3, Principle 24, Principle 25).

Truth seeking and fact-disclosure also lie in the grey zone between reparations and other transitional justice mechanisms. From the United Nations' principles and guidelines, the right to remedy involves both reparation and access to relevant information about violations, being disclosure and learning of truth a shared goal. Thus, "verification of the facts and full and public disclosure of the truth", which is considered as a form of satisfaction, appears to be similar to the separate right to access to information, which aims to "seek and obtain information on the causes leading to their victimization and on the causes and conditions of the gross violations (...) and to learn the truth in regard to these violations" (United Nations, 2005, para. 11(b)(c), 22(b), 24). Moreover, truth telling is deemed to have a two-fold nature as individual and collective right, because it serves not only the victims' but also the society's interests (De Greiff, 2006; Tomuschat, 1999, p. 20). Therefore, although victims must participate in re-building truth of past atrocities, non-victims are also entitled to preserve collective memory through documenting violations and non-judicial mechanisms (Commission on Human Rights, 2005a, p. Principle 2; Office of the United Nations High Commissioner of Human Rights, 2006, pp. 1–3; United Nations, 2010, para. B2).

Considering violations other than murder, torture, and enforced disappearance, measures of non-repetition are seemingly beyond reparations. Non-recurrence is seen as an obligation stemming from States' international

wrongful acts other than reparation: to ensure the future fulfilling of obligations (International Law Commission, 2001, p. Article 30(b) (Commentary-1, 9, 11)). In similar vein, it is considered apart from reparations as guarantees to reinforce international law and ensure human rights (Mayer-Rieckh & Duthie, 2018b, pp. 384, 385), whereas it is regarded as a set of positive interventions working in tandem with reparations to advance transitional justice (Human Rights Council, 2015). In the field of international criminal law, these measures are not recognized as reparation under the International Criminal Court Statute (Assembly of States Parties to the Rome Statute of the International Criminal Court, 1998, p. Article 75).

It is also contended the reparative character of the obligations to ensure judicial/administrative mechanisms to claim redress. Two interpretations compete on this question. The first one was held in the United Nations Resolution 60/147 of 2005 (Van Boven Principles) and considers access to justice as the procedural component of the right to remedy, which ought to be regarded as independent from reparation (United Nations, 2005, para. 11(a), 12). From the second stance, supported by the Commission on Human Rights (Joinet Principles), procedural and substantive remedies stem from the obligation to make reparation, so no distinction applies to them (Commission on Human Rights, 2005b, p. Principle 32; d'Argent & de Ghellinck, 2018, pp. 349, 351, 352).

Regarding obligations to investigate and bring perpetrators to justice, it is debatable whether the latter duty falls within the scope of reparation. International legal developments show that investigation is part of reparation, whereas prosecution and punishment remain under doubt, better seen as mechanisms to enhance rule of law and prevent future violations (Commission on Human Rights, 2006, paras 10, 25, 30, 42, 45, 56; Diplomatic Conference

on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, 1977, p. Article 4(3)(b); Groome, 2018, p. 65; ICRC, 1987, para. 4554; International Committee of the Red Cross (ICRC), 1987b, paras 1211–1216; Office of the High Commissioner for Human Rights, 2005; Seibert-Fohr, 2009, p. 287; United Nations, 2006, p. Article 18(1), Article 24(2)(3)). Despite its reparative effect, criminal justice plays out as means to attain deterrence and express social and institutional disapproval, instead of reparation; that is why the current international criminal law framework points to trial the top-rank perpetrators of the most hideous international crimes, which is far from punishing any evildoer committing every crime (Seibert-Fohr, 2009, pp. 281–285, 287, 292; Shelton, 2015, pp. 4, 18; United Nations, 2010, para. b1). However, confusion arises when “Judicial and administrative sanctions against persons liable for the violations” is stated as part of satisfaction, or when “bringing to justice the perpetrators of human rights violations” is recorded as part of the obligation to make reparation, according to United Nations (Human Rights Committee, 2004b, paras 16, 18; United Nations, 2005, para. 22(f)). The Nairobi’s Declaration on Women’s and Girls’ Right to a Remedy and Reparation also blurs the distinction by asserting that: “[E]nding impunity through legal proceedings for crimes against women and girls is a crucial component of reparation policies and a requirement under international law” (International Meeting on Women’s and Girls’ Right to a Remedy and Reparation, 2007, p. 1–F).

The Inter-American Court’s case law did not offer a clear account on the nature of the prosecution-and-punishment duty, as it has moved from considering that investigation and proceedings epitomizes satisfaction and non-recurrence, because of the contribution to fact-disclosure, to rule fighting impunity as an independent form of reparation (I/A Court

H.R., 2002, para. 77, 2004b, paras 97–99, 2004a, para. 259, 2009, para. 234, 2010, paras 253–263, 2011, paras 182–192, 2014a, paras 186–191; Inter-American Commission on Human Rights, 2013, para. Executive Summary, par 36, 49). Yet its view on the right to remedy and effective protection through judicial avenues does not stretches to punishment. In other words, victims are vested with the right to claim reparation and investigation of violations, but not to have their perpetrators punished before courts. A similar interpretation is given to the right to access to justice in the United Nations Resolution 60/147 (Organization of American States, n.d., p. Article 1(1), Article 8, Article 25; Shelton, 2015, pp. 107–110; United Nations, 2005, paras 12–14).

Implications of Having Grey Zones

Signaling ambiguities in the ISoR would be fruitless unless these grey zones had no implications, but they do have. Consider non-recurrence as the independent obligation to undertake positive interventions for the benefit of the entire society and not only victims (Human Rights Council, 2015), these preventive actions ought to be taken even in the absence of victims, who might not necessarily be directly benefitted nor entitled to claim them (Mayer-Rieckh & Duthie, 2018b, p. 385). Singling out non-repetition also limits the transformative approach to reparations because redressing the harm would not involve addressing the underlying conditions of violations, although such more restricted scope may elicit less political resistance (Mayer-Rieckh & Duthie, 2018b, pp. 388, 389).

The idea of having non-recurrence as an independent obligation put some remedies on the borderline of reparation and raises questions about their reparative character. For instance, child soldiers’ reintegration involves measures that directly redress their harm but are also seen as part of the non-repetition subset: family reunification, access to health,

education, as well as training and assistance for livelihood development and re-gaining a social role (Commission on Human Rights, 2005b, p. Principle 36(d), Principle 37; Duthie & Mayer-Rieckh, 2018, p. 402; United Nations Inter-Agency Working Group on DDR, 2006, pp. 30–32). Besides, this interpretation would not clearly burden non-State actors but States as the primary guardians of the citizens' rights. Yet ensuring non-recurrence will nourish the implementation of reparations, thereby contributing to restore social bonds (Commission on Human Rights, 2005b, p. Principle 34, Principle 35; Duthie & Mayer-Rieckh, 2018, p. 409; Frank Haldemann, 2018, p. 335; Frank Haldemann & Unger, 2018, pp. 6, 11, 15, 17; Mayer-Rieckh & Duthie, 2018b, p. 395).

Conclusión

A question was raised concerning the ISoR: what remedies of that standard qualify as obligations to redress the harm suffered by war victims? This paper identifies a core of mandatory measures, namely restitution, compensation, rehabilitation, and satisfaction. The obligation to conduct thorough and impartial investigation is also part of this group. Other measures and mechanisms are listed as forms of reparations but they are still aspirations or context-wise solutions, or serve purposes other than righting victims. First, there are actions not reaching the level of a general international obligation, which are expressed in aspirational terms: measures to conduct investigation and prosecution of violations against women from an intersectional approach, control over firearms trade to prevent gender-oriented crimes, and the prohibition of amnesties and statutory limitations to criminal justice. Second, the standard includes mechanisms that do not necessarily redress the harm nor target only victims/survivors, thus

advancing mediate and broader goals, i.e. justice and reconciliation. Despite the reparative effect, some cases in point are assistance to internally displaced people, truth telling, non-repetition, and criminal prosecution.

Delving into these two grey zones of the ISoR better equips us to address the question about how to implement it in diverse contexts where one size does not fit all. Although the delivered message about reparations is one of comprehensive remedies for all the victims, we may do well by expecting less from some measures that are not enshrined in international instruments as general mandates yet. We should also consider that assistance, truth disclosure, non-recurrence, and criminal justice go beyond the victim-perpetrator relationship, and so these tasks can be undertaken in the absence of entitled victims but without necessarily seeking to make them whole. From this perspective, the image of reparations may emerge with fewer ambiguities, yet the question whether it would be more feasible needs to be answered by also pointing to other angle: the practice of reparations. Still we need a shared language to respond to those who bear the brunt of war, but we should be careful not to ever extend its interpretation, otherwise it can create unrealistic expectation. The question remains, How to reconcile the ideal with the real?

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