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### **Bibliography**

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**Reparations.** When violations of IHL take place, both State and individual responsibility exist [art. 51 GCI; art. 52 GCII; art. 131 GCIII; art. 148 GCIV].

In the case of State responsibility [see: **State Responsibility**], the violating State is obliged to make full reparation for the loss or injury caused [Judgment, *Case Concerning the Factory at Chorzow*, PCIJ, para. 102; art. 31 Draft Articles on State Responsibility; art. 38 Second Protocol to the Hague Convention for the Protection of Cultural Property; art. 51 GCI; art. 52 GCII; art. 131 GCIII; art. 148 GCIV]. This obligation exists in both international and non-international armed conflicts.

Traditionally, States have had to seek reparation from another State for violations of IHL. In general, there are three forms of reparation that can be awarded or agreed upon either individually or in combination [art. 34 Draft Articles on State Responsibility]. These include restitution, compensation, and satisfaction, with a preference for restitution where possible [art. 35 ILC Commentary on the Draft Articles on State Responsibility].

Restitution is meant to re-establish the situation that existed before the injury took place. Restitution could entail allowing the return of individuals wrongfully displaced, the release of individuals wrongfully detained, or the return of stolen, seized or confiscated property. However, when restitution is not materially possible or inadequate, compensation is a way to ensure full reparation for the injury caused. Compensation is appropriate for economically assessable damage, such as, amongst other things, physical harm, material damages, and the costs of medical, legal, and social services. Lastly, satisfaction is also an option, principally where restitution or compensation are not possible, but also in combination with them. Satisfaction refers to a wide range of measures. It can include measures aimed at the cessation of violations, guarantees of non-repetition, public disclosure of the truth, a public apology, sanctions against persons liable for the violations, and commemorations and tributes to the victims.

In addition to States claiming reparation against other States, which is the classical model, emphasis has increasingly been placed on reparations sought

directly by individuals against State violations [art. 33(2) Draft Articles on State Responsibility; art. 33 ILC Commentary on the Draft Articles on State Responsibility; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law]. Individuals have received direct reparation through a variety of processes, including inter-State agreements, national legislation, and national court proceedings, both attached to criminal processes and in separate civil proceedings, though this last avenue has been especially difficult to collect damages [see e.g. Judgment, Prefecture of Voiotia (Greece) v. Federal Republic of Germany, Areios Pagos (Supreme Court); Decision, Kadić v. Karadžić and Doe v. Karadžić, US Court of Appeals; Decision, Kovač v. Karadžić, Tribunal de Grande Instance]. The establishment of compensation or claims commissions have been particularly successful when there are funds available for individual awards [e.g. Commission for Real Property Claims of Displaced Persons and Refugees (Bosnia and Herzegovina); UN Compensation Commission (Iraqi occupation of Kuwait); the Eritrea-Ethiopia Claims Commission].

In addition to State responsibility, individuals may, under certain circumstances, be held criminally accountable for violations of IHL and may be required to pay reparations [see: **Individual Criminal Responsibility**]. The road towards recognizing a tangible right to reparation within international criminal law was not always easy. Although the Statutes of the ICTY and ICTR enabled these tribunals to decide on cases of restitution of property [art. 24(3) ICTY Statute; art. 23(3) ICTR Statute], they were silent when it came to awarding compensation to victims. In their RPE, some attempt was made to deal with issues of compensation, but these rules simply noted that victims could bring an action for damages in a national court or other competent body to obtain compensation and that the Tribunals would transmit judgments detailing convictions to national courts [rule 105 ICTR RPE; rule 106 ICTY RPE]. Given the difficulties facing victims and the complex judicial processes at the national level, the result of these weak reparation provisions was unsurprisingly disappointing with no measures ordered by the Chambers.

With the creation of the ICC in 2002, States aimed to address these shortcomings of the ICTY and ICTR by creating the Trust Fund for Victims (TFV) [art. 79 ICC Statute]. In addition to implementing reparation awards ordered by the Court against specific convicted individuals, the TFV may also finance other projects for the benefit of victims and victim communities through its assistance mandate. Importantly, in addition to the three traditional forms of reparation, the TFV also recognizes awards related to rehabilitation, which may include medical and psychological care as well as more general social

services. In addition to symbolic and individual monetary payments, the ICC and the TFV have favored collective reparation awards aimed at improving the lives of victims and victim communities, through the provision of specialized services [Judgment on the Appeals against the “Decision Establishing the Principles and Procedures to be Applied to Reparations”, Lubanga, ICC, Appeals Chamber, paras. 151–157; Order for Reparations pursuant to Article 75 of the Statute, Katanga, ICC, Trial Chamber II; Reparations Order, Al-Mahdi, ICC, Trial Chamber VIII]. This collective approach, even when combined with symbolic and individual measures, recognizes the mass victimization aspect of these violations and the limitations that exist when it comes to the rights of individuals to directly receive individually-accessed restitution or compensation for violations of IHL.

The demands for reparation for victims of violations of IHL continue to resonate and recently calls for a different reparative model have arisen where reparations no longer place victims back in unequal and marginalized positions. Rather, it is argued that reparations should aim to improve, empower, and transform the position of victims within society. Developments in the future will likely include more emphasis on collective reparations for harms suffered and attempts to make awards or assistance more transformative in the communities that have suffered injury. This is certainly the position taken by the TFV, which aims for reparative justice for victims and transforming lives, and may impact upon State reparations in the years to come.

Overall, reparation for violations of IHL is important not just to acknowledge and address the harm suffered by the State, or in some cases directly by individual victims, but also to help improve compliance with international law. However, while the right to reparation clearly exists in the law, practical issues of political will, available funds, or valuation plague the implementation of this right in practice.

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